THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2020-001189

South Carolina Coastal Conservation League, Inc., Elizabeth M. Smith, and Abraham B. Jenkins, Jr, and

Plaintiffs/ Appellants,

v.

Charleston County, South Carolina, South Carolina Transportation Infrastructure Bank, and South Carolina Department of Transportation,

Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CASE NO. 2019-CP-40-03032
South Carolina Coastal Conservation League, Inc., Elizabeth M. Smith, Abraham B. Jenkins, Jr., and South Carolina Public Interest Foundation, Plaintiffs, vs. Charleston County, South Carolina, South Carolina Transportation Infrastructure Bank, and South Carolina Department of Transportation, Defendants.	**ORDER GRANTING DEFENDANT CHARLESTON COUNTY'S MOTION TO DISMISS**

This Court held a hearing on January 6, 2020, to decide Defendant Charleston County's ("County") Motion to Dismiss the Plaintiffs' Second Amended Complaint. The attorneys present were as follows: W. Andrew Gowder, Jr. representing Plaintiffs South Carolina Coastal Conservation League, Inc., Elizabeth M. Smith and Abraham B. Jenkins, Jr.; Christopher K. DeScherer representing the Plaintiff South Carolina Coastal Conservation League; James Carpenter representing the Plaintiff South Carolina Public Interest Foundation; Joseph Dawson, III, Bernard E. Ferrara, Jr., and Johanna S. Gardner representing Defendant Charleston County, South Carolina; Robert E. Tyson, Jr. and Jasmine D. Smith representing the South Carolina Transportation Infrastructure Bank; and Linda McDonald representing the South Carolina Department of Transportation. The County contends *inter alia* that 1) the Plaintiffs lack standing to bring this action; 2) the Plaintiffs' 2004 and 2016 Transportation Sales Tax Referendum Ballot question declaratory judgment claims are time-barred pursuant to South Carolina Election laws; and 3) the Plaintiffs' claims fail to state facts sufficient to constitute a cause of action pursuant to

Rule 12(b)(6) SCRCP, or in the alternative, the Plaintiffs' claims are moot by subsequent legislative acts of Charleston County Council ("Council"). Based upon a careful consideration of the pleadings, the memoranda of law submitted by the parties, oral arguments presented, and the reasons set forth below, I find and conclude that the Plaintiffs lack standing to bring their first and second cause of action and, therefore, should be dismissed. As additional grounds for this dismissal, I find that the Plaintiffs' 2004 and 2016 Transportation Sales Tax Referendum Ballot question claims and their concomitant challenge to the 2004 and 2016 Transportation Sales Tax ordinances authorizing use of Transportation Act funds for the Mark Clark Expressway are time-barred pursuant to South Carolina Election laws.

In the alternative, even if the Plaintiffs had standing or their claims were not time-barred, I find that the Plaintiffs' claims under all of their causes of action fail to state facts sufficient to constitute a cause of action regarding the County's authority or procedures used to fulfill the South Carolina Transportation Infrastructure Bank Act's ("Infrastructure Bank Act" or "Act") requirements. However, I deny the County's claim this Court lacks subject matter jurisdiction under the South Carolina Revenue Procedures Act.

FINDINGS OF FACT

The Mark Clark Expressway ("MCE") is an interstate facility, which begins at an uncompleted interchange with US 17/Savannah Highway and SC 7/Sam Rittenberg Boulevard in the West Ashley section of the City of Charleston, South Carolina. The interstate currently terminates in a partial flyover interchange onto US 17N/Johnnie Dodds Boulevard in Mount Pleasant, South Carolina. The completion of the MCE involves the construction of approximately 8 miles of highway from James Island to West Ashley. In 2006, the Infrastructure Bank approved the MCE as an eligible project under the Infrastructure Bank Act. In 2007, the County, the South

Carolina Department of Transportation ("SCDOT"), and the Bank entered a three-party Intergovernmental Agreement ("2007 IGA"), pursuant to the Infrastructure Bank Act. See, S.C. Code Ann. § 11-43-180(A).

Under the 2007 IGA, the Bank committed to provide $420 million in financial assistance to complete the MCE. The SCDOT agreed to provide project oversight, management, and accept the project into its maintenance system when completed. The County, as the project sponsor, agreed to provide a local match of $117 million from proceeds of the Charleston County Transportation Sales Tax ("Transportation Sales Tax" or "TST")[1] for highway and road construction and improvements, pursuant to the schedule attached to the 2007 IGA. In January 2019, the parties agreed to the First Amended Intergovernmental Agreement for Charleston County Mark Clark Expressway Extension Project in Charleston County, South Carolina ("2019 Amended IGA").

According to the 2019 Amended IGA, the MCE's project costs have escalated to approximately $725 million. In addition, the Infrastructure Bank has conditioned its continued financial assistance for the project on the County's commitment to guarantee payment of the cost escalation to complete the MCE. Thus, the 2019 Amended IGA contractually obligates the County (among other financial considerations) to cover project costs above the Bank's $420 million commitment, to include an appropriation pledge stating, "[t]he County Council shall adopt a budget for each Fiscal Year appropriating revenues of the Sales Tax, or any federal or state grant

[1] The Optional Methods for Financing Transportation Facilities Act ("Transportation Act" or "Act") authorizes counties to impose a sales and use tax not to exceed one percent to fund transportation projects to include: highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities in Charleston County. See, S.C. Code Ann. § 4-37-10 et seq. Pursuant to the Act, the County has enacted two ordinances imposing a ½ penny tax each as a result of two voter approved referendums.

proceeds, or any lawful source to fund the payment obligations of the County under this Agreement."

The Plaintiffs are the South Carolina Coastal Conservation League, Inc. ("CCL") and the South Carolina Public Interest Foundation ("SCPIF"), two South Carolina non-profit corporations that purport to have thousands of supporters who are citizens of South Carolina, and two named individuals. The Plaintiffs challenge (among other procedural issues) the County's authority to commit proceeds of the 2004 and 2016 Transportation Sales Tax to fund the MCE. Specifically, Plaintiffs challenge whether "either County Ordinance Number 1324 or County Ordinance Number 1907 authorize transportation sales tax expenditures for the Project due to the factual circumstances surrounding their adoption *and the ensuing referenda.*" See, Second Am. Compl. ¶ 16 (emphasis added). In addition, Plaintiffs question under the auspice of the "contract with voters" doctrine, whether ". . . S.C. Code Ann. § 4-37-10, et. seq., and the language of the aforementioned Ordinances prohibit First Half Cent and the Second Half Cent revenue from funding the Project." Further, Plaintiffs challenge whether the County violated South Carolina's Freedom of Information Act ("FOIA") closed meetings laws because it held an executive session and took action at its August 20, 2019, Special Finance Committee meeting regarding an agenda item listed as "Transportation Sales Tax Budget." I find that the Plaintiffs cannot pursue these claims for the following reasons.

CONCLUSIONS OF LAW

I. PLAINTIFFS LACK STANDING.

Based upon the foregoing Findings of Fact, I conclude that the Plaintiffs lack standing as non-profit corporations and citizens of South Carolina to present a justiciable case or controversy to challenge the validity and enforceability of the 2019 Amended IGA; and therefore, they cannot

invoke the judicial power of this Court to adjudicate their claims. "[A] private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom." ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 198, 669 S.E.2d 337, 340-41 (2008). Under South Carolina law, a party can acquire standing: "(1) by statute; (2) through the rubric of 'constitutional standing'; or (3) under the 'public importance' exception." ATC S., 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). Plaintiffs do not plead standing based on a statute regarding their first and second causes of action; however, they assert they have constitutional, public importance, taxpayer, and associational standing. I find, as a matter of law, that none of the Plaintiffs' claims satisfy the standing requirements.

A. Constitutional Standing.

Plaintiffs contend they meet the common law test for constitutional standing because they "*voted on*" the 2004 and 2016 Transportation Sales Tax referendums, based on the understanding and representations of Council (and the ordinances) that 2004 and 2016 Transportation Sales Tax revenues would not be used to fund the MCE. See, Second Am. Compl. ¶¶ 59 and 63. Plaintiffs cite to comments made by individual Council members during public debates over the adoption of the 2016 Transportation Sales Tax Ordinance. Equally, the Plaintiffs claim that the expenditure of sales tax:

> . . . revenue[s] for the Project directly, materially, and substantially [*undermine*] *the goals* of improved connectivity of existing roadways, safety improvements, public transit, drainage facilities and flood control, bicycle lanes, and as a result Greenbelt funded conservation initiatives will all suffer and not be *completed as pledged* and promised by the County, [and that they] *pay First Half Cent and Second Half-Cent sales Tax on a regular basis.*

See, Second Am. Compl. ¶ 58; see also, Second Am. Compl. ¶ 60 (emphasis added).

At the outset, Plaintiffs alleged comments from individual Council members, if accurate, are not binding on Council as a legislative body in 2004, 2016, or today.[2] The South Carolina Court of Appeals *in dicta* rejected a similar attempt to attack individual council member's comments stating:

> We are aware of no authority allowing someone challenging action by Council to interrogate members individually to impeach Council's decision. The governing body of a municipality acts as a collective body, not as individuals, and decisions made in this fashion are the product of debate and compromise. If individuals are not satisfied with decisions made by members of a municipal government within the limits of the law, their remedy is at the polls, not the courts.

Bear Enters. v. Cnty. of Greenville, 319 S.C. 137, 139 n.1, 459 S.E.2d 883, 885 (Ct.App.1995)

Moreover, Plaintiffs' reliance on aspirational goals like "improved connectivity of existing roadways, safety improvements, public transit, drainage facilities and flood control, bicycle lanes" are insufficient facts to support, let alone prove, constitutional standing. The United States Supreme Court in Lujan v. Defenders of Wildlife provided a three-part test to establish constitutional standing:

> **First**, the plaintiff must have suffered an 'injury in fact'- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not 'conjectural' or 'hypothetical,'' **Second**, there must be a causal connection between the injury and the conduct complained of - the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.' **Third**, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (emphasis added).

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[2] Of note, there could be no debates by Council in 2004 regarding the use of Transportation Sales Tax revenues for the MCE because the Project was initiated in 2006. This conundrum highlights the deficiency in the Plaintiffs' claims that only delineated and named roads (or for that matter, greenbelts and mass transit systems) voted on and/or debated by Council at the time, the ordinance was adopted are eligible for penny tax funding. I decline to construe the Transportation Act to require the same.

The South Carolina Supreme Court in ATC S., citing Lujan, held that "[t]he principle of standing under the United States Constitution is 'an essential and unchanging part of the case-or-controversy requirement of Article III.'" ATC S., at 195, 669 S.E.2d at 339. Moreover, "[t]he party seeking to establish standing carries the burden of demonstrating each of the three elements. Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res., 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001). The Plaintiffs fail to carry their burden to meet this test. Equally, Plaintiffs' claim and status as taxpayers cannot carry their burden to demonstrate each of the three elements. The South Carolina Supreme Court in ATC S., rejected a similar claim holding that:

> The injury to ATC, however, as a taxpayer is common to all property owners in Charleston County. This feature of commonality defeats the constitutional requirement of a concrete and particularized injury. As the United States Supreme Court observed, a taxpayer lacks standing when he 'suffers in some indefinite way in common with people generally.' Frothingham v. Mellon, 262 U.S. 447, 488, 43 S. Ct. 597, 67 L. Ed. 1078 (1923).

ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 198, 669 S.E.2d 337, 340-41 (2008); see also, Bodman v. State, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013) (". . . [W]e unanimously closed the door to a litigant asserting standing simply by virtue of his status as a taxpayer for this reason.").

Similarly, the Plaintiffs' status as voters and members of associations with common interests fail to meet the common law test for constitutional standing. South Carolina law provides that:

> An organization has associational standing 'if one or more of its members will suffer an individual injury by virtue of the contested act.' (citation omitted). 'The three part test for associational standing requires that an association's members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'

Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 76, 753 S.E.2d 846, 851 (2014) (Holding that ". . . these injuries, even if actually suffered by individual complainants, are 'only generalized grievances suffered by the public as a whole which are insufficient to establish standing . . . 'By particularized, we mean that the injury must affect the plaintiff in a personal and individual way.'").

As concluded above, the taxpayers and individual association members have not suffered a concrete, particularized injury because they fail to show a personal interest other than that shared in common by all members of the public.[3]

B. Public Importance Exception.

Plaintiffs contend they have standing under the public importance exception to the general standing requirement. I disagree.[4] "This Court has long recognized the 'public importance' exception to the general standing requirements. '[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.'" ATC S., 380 at 198, 669 S.E.2d at 341. Application of the doctrine requires a "cautious balancing of the competing interests presented." Id. The South Carolina Supreme Court in ATC S. explained:

> An appropriate balance between the competing policy concerns underlying the issue of standing must be realized. Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public

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[3] Assuming *arguendo* that the nonprofit corporation Plaintiffs survive the first prong of the constitutional standing test, they fail to satisfy the third prong of the three-part associational standing test in Carnival Corp – that neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Georgetown Cnty. League of Women Voters v. Smith Land Co., 393 S.C. 350, 360, 713 S.E.2d 287, 293 (2011) (Hearn, K., dissenting) ("In my view, in order to satisfy this prong, the organization must show that the right it seeks to vindicate is common to the membership and the interests of the harmed members in the proceeding derives from their membership. (citation omitted). '[T]he association may assert the rights of its members, at least so long as the challenged infractions adversely affect its members' associational ties.").

[4] I take judicial notice of the fact that the CCL took a different stance regarding the public importance of the MCE in a companion case when it stated:

> This may be a project of significance to Charleston County Council, but that does not mean that the public supports it or that public interest considerations necessarily favor resolving this case in the Supreme Court. Not every dispute that is in some way related to an expensive transportation project merits consideration by the Supreme Court.

See, Brief of Proposed Amicus Curiae South Carolina Coastal Conservation League at 12, Case No. 2017-001606.

> officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.

Id. 380 S.C. at 199, 669 S.E.2d at 341 (citing Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004)).

Plaintiffs point to several appellate cases in South Carolina namely where SCPIF was a litigant and where the court applied the exception. However, the cases cited by the Plaintiffs are distinguishable from this case because they involve constitutional challenges and there was *no* judicial guidance addressing the issues. South Carolina law requires that:

> . . . when deciding whether to confer public importance standing, courts must . . . also determine whether the party presents an issue of public importance and whether future guidance on that issue is needed. (citation omitted). However, as this Court has acknowledged, since many issues may be of public interest, or importance, '[t]he key . . . is whether a resolution is needed for future guidance.'

S.C. Pub. Interest Found. v. S.C. DOT, 421 S.C. 110, 118-19, 804 S.E.2d 854, 859 (2017)

While it is correct that the South Carolina Supreme Court in S.C. DOT found that inspecting bridges within private, gated communities was of public importance because it involved both the conduct of a governmental entity and the expenditure of public funds. Id. However, the Court further held that "[a]dditionally, future guidance is needed since there is no judicial guidance addressing the issues . . . ." Id. 421 S.C. 110, 119, 804 S.E.2d 854, 859 (2017). "Although a close call, we find the policy concerns that we must balance in determining whether to confer public importance standing weigh in Petitioners' favor given the factors already mentioned and the issue involved implicates both statutory and *constitutional* provisions." Id. (emphasis added).

In this case, Plaintiffs do not allege a constitutional infirmity. More importantly, future guidance is not needed through this Court. South Carolina law provides that the South Carolina Department of Revenue ("SCDOR") has a statutory duty to administer and enforce the Act. See, Richland Cnty. v. S.C. Dep't of Revenue, 422 S.C. 292, 306, 811 S.E.2d 758, 765 (2018) ("Based on these authorities, the circuit court properly found that DOR's extensive administrative,

oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code confer upon DOR a duty in ensuring the County's expenditures of Penny Tax revenues comply with the revenue laws DOR is charged with enforcing.").

Equally, several courts have construed the Transportation Act's enabling legislation, requirements, and permissible expenditures, to include permissible expenditures under the County's referendum. See, Douan v. Charleston Cnty. Council, 356 S.C. 602, 590 S.E.2d 484 (2003) (finding that the referendum question failed to comply with the statutory form referendum question in the Transportation Act); Douan, W.J. v. Charleston County, before the Charleston County Board of Elections and Voter Registration (Nov. 15, 2004), aff'd, South Carolina Election Commission (Dec. 3, 2004), cert. denied, South Carolina Supreme Ct., (Jan. 20, 2005) (challenging the County's statutory compliance with the Transportation Act's form referendum question and its concomitant delineation of projects derived from the 2004 Transportation Sales Tax ordinance); Richland Cnty., 422 S.C. 292, 811 S.E.2d 758, (2018), South Carolina Public Interest Foundation et al., v. Richland County et al, 2016-CP-40-02875, (appeal docketed, No. 2018-000794 (Ct.App. Apr. 30, 2018) (finding that a project which lists "mass transit systems" complies with the Transportation Act). Since there is judicial guidance on the question, I find that the public importance exception should not be applied in this case.

II. PLAINTIFFS FAIL TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION.

Notwithstanding this Court's decision finding that the Plaintiffs lack standing, I equally find that the Plaintiffs fail to state facts sufficient to constitute a cause of action regarding the causes of action in their Complaint. A motion to dismiss under Rule 12(b)(6), SCRCP, "must be granted if the facts and inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case." Gray v. State Farm Auto. Ins. Co., 327 S.C. 646, 651, 491

S.E.2d 272, 275 (Ct.App.1997). In a motion to dismiss, the Court must accept "well pled facts" as true, but it need not accept "unsupported conclusions" of law. Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 426, 559 S.E.2d 362, 364–65 (Ct.App.2001); see also, Sec'y of State for Defence v. Trimble Navigation Ltd., 484 F.3d 700, 705 (4th Cir. 2007) ("In reviewing the dismissal of a complaint under Rule 12(b)(6), we may properly take judicial notice of matters of public record."). The test for sufficiency of a declaratory judgment action "is not whether the complaint shows that the plaintiff is entitled to a declaration of rights according to his theory, but whether he is entitled to a declaration of rights at all." Dimukes v. Carletta, 269 S.C. 110, 112, 236 S.E.2d 421, 422 (1977). The United States Supreme Court in Ashcroft v. Iqbal opined:

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. (citation omitted). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. (citation omitted). The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Ibid. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. (citation omitted).

Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009).

"Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id., 556 U.S. 662, 679, 129 S. Ct. 1937, 1950 (2009).

In the case at bar, the Plaintiffs espouse *inter alia* the following legal theories to support their declaratory judgment causes of action: 1) the "contract with voters" doctrine prohibits the expenditure of Transportation Act revenues for the MCE, 2) the 2004 and 2016 Transportation Sales Tax ballot questions and ordinances do not authorize the expenditure of Transportation Sales Tax revenues for the MCE, 3) the County's appropriation pledge unlawfully binds future councils,

and 4) the County's Fiscal Year 2019 appropriations of Transportation Sales Tax revenues were unlawful.[5]

A. Contract with Voters Doctrine and Use of Transportation Sales Tax Revenues for the MCE.

Plaintiffs ask this Court to take judicial notice of a circuit court case (Estes v. Berry, 2017-CP-17-00351) incorporating the concept of a "contract with voters" citing 16 MCQUILLIN MUN. CORP. § 44:238 (3d ed.), which states:

> Funds raised by taxation may legally be spent only for public purposes. If there is no specific provision relating to the disposition of revenues they may be applied in any manner not inconsistent with the governing statute or charter provision. . . A city violates its' 'contract' with voters only if it uses tax proceeds approved by voters in a way that the voters did not approve.

Id. at § 44:238 (3d ed.).

The provision referenced above is not applicable to this case because the Transportation Act governs the permissible uses of the penny tax revenues. Even if it were applicable, all the Plaintiffs are not voters (i.e., CCL and SCPIF) or eligible to vote in Charleston County, let alone voted to support the imposition of the Transportation Sales Tax. Furthermore, if the ordinance incorporating the referendum question created a "contract with voters," the referendum ballot question did not preclude the expenditure of revenues on the MCE. The 2004 and 2016 Transportation Sales Tax referendum questions do not itemize lists of individual roads, greenbelts, or mass transit system projects to legitimize the Plaintiffs' claims that the MCE is *not* an authorized

[5] Plaintiffs contend that the County failed to properly appropriate funds to pay its initial draw request from the SCDOT. However, Plaintiffs note in their Second Amended Complaint that the County rescinded this action and simultaneously approved funding from its approved Fiscal Year 2019 Transportation Sales Tax operating budget. Given these allegations in Plaintiffs complaint, I find that the County's action of rescinding the earlier approval and simultaneously approving funding from its approved Fiscal Year 2019 Transportation Sales Tax operating budget moots Plaintiffs' declaratory judgment claim on this matter and, therefore, dismiss the same. See, S.C. Pub. Interest Found. v. S.C. DOT, 421 S.C. 110, 120, 804 S.E.2d 854, 860 (2017) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.").

project. Therefore, the ballot questions do not limit the County's discretion to finance unspecified roads over the twenty-five-year collection period of the Transportation Sales tax.[6]

Moreover, under South Carolina's Election laws, the deadline to challenge the imposition of the 2004 or 2016 Transportation Sales Tax referendums or its enabling question has expired; and therefore, the Transportation Sales Tax referendum ballot questions are lawful and valid. See, S.C. Code Ann. § 7-17-30; see also, Sims v. Ham, 275 S.C. 369, 371, 271 S.E.2d 316, 318 (1980) ("Generally, a protest must be lodged within the statutory time period *or it is barred.*") (emphasis added). Accordingly, the 2004 and 2016 Transportation Sale Tax referendum questions do not preclude the use of Transportation Sales Tax revenues to fund the MCE project. Therefore, the Plaintiffs fail to show how they are entitled to a declaration of a right under State law.

Since the Plaintiffs failed to timely challenge the County's compliance with the Transportation Act to impose a tax for non-individually named projects in the 2004 and 2016 Transportation Sales Tax referendum questions, I equally find that the Plaintiffs are precluded from collaterally attacking the same issue in the 2004 and 2016 Transportation Sales Tax ordinances. While I am mindful of the fact that the Plaintiffs claim that their challenge did not ripen until after the passage of the referendums, that fact does not alter the gravamen of the Plaintiffs' claim. The Plaintiffs claims clearly target the ordinances' delineation of non-individually named projects, which the legislature directly tied to the questions presented to the voters in the statutory form ballot question. See, S.C. Code Ann. § 4-37-30.

Furthermore, I find that the 2004 and 2016 Transportation Sales Tax ordinances on their face do not limit or restrict the use of penny tax funds for any road, to include the MCE; and

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[6] I note that the Plaintiffs do not challenge the expenditure of Transportation Sales Tax revenues on greenbelts or mass transit systems in the County's 2004 or 2016 Transportation Sales Tax ordinances or referenda, which does not delineate individually listed greenbelt or mass transit projects.

therefore, the ordinances comply with the Transportation Act. See, S.C. Code Ann. § 4-37-10 et seq.; see also, Richland Cnty., 422 S.C. at 298, 811 S.E.2d at 761, 768 ("The types of projects permitted to be funded with such a tax are 'highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects.'")("A proper expenditure of Penny Tax funds must be tethered to a specific transportation-related capital project or the administration of specific transportation project."). It is clear from the language of the ordinances that Council listed two projects (i.e., Project 1 and Project 2) and its intent in Project 1 was to finance the costs of "highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto."[7] Equally, Council provided that the tax would be imposed for 25 years and for a maximum total cost. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Charleston Cnty. Assessor v. LMP Props., 403 S.C. 194, 198-99, 743 S.E.2d 88, 90 (Ct.App.2013). "If a statute's language is plain, unambiguous, and conveys a clear meaning 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). Since Council's legislative intent is clear from the plain words of the ordinances, the Plaintiffs have no right to impose another meaning; and therefore, it is not enough for the Plaintiffs to say the expenditure of sales tax revenues on the MCE is not permissible, and pass muster in a motion to dismiss pursuant to Rule 12(b)(6). See, Gray v. State Farm Auto. Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (Ct.App.1997)

B. Binding Future Councils and Authority to Execute the 2019 Amended IGA.

[7] The 2016 Sales Tax Ordinance description of projects differs from the 2004 Sales Tax Ordinance description in that the 2016 ordinance projects provides a non-exhaustive list of roads prefaced by the phrase "which may include but not limited to . . . ."

Plaintiffs ask this Court to find, as a matter of law, that it is an *ultra vires* act for Council to agree by contract to appropriate funding every year to meet the terms of a financing agreement with the Infrastructure Bank because the financing agreement extends beyond the terms of the members who approved the agreement. The Plaintiffs reason that neither the 2019 Amended IGA nor the MCE project implicates the County's business or proprietary powers, rather they involve the County's legislative or governmental powers.[8] I disagree. First, the County is not building the MCE or contracting away a police power. Therefore, Council is not exercising a governmental or legislative function. Second, the County has entered a financing agreement with the Bank, a political subdivision of the State, to obtain $420 million as matching funds for a project that the SCDOT is contractually obligated to construct and accept into the State Highway system. The County is empowered pursuant to Home Rule "to make and execute contracts," which is a business power. See, S.C. Code Ann.§ 4-9-30(3). Furthermore, the legislature adopted the Infrastructure Bank Act, which authorizes the Bank to provide financial assistance to local governments for ". . . constructing and improving highway and transportation facilities necessary for public purposes." S.C. Code Ann. § 11-43-120(C). The legislature also promulgated the maximum term for financial assistance. S.C. Code Ann. § 11-43-180(A) ("The term of the loan or other financial assistance must not exceed the useful life of the project.").

More importantly, the legislature has authorized the Bank and local governments to exercise their business powers to do the following:

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[8] I also disagree that Council's approval of the 2019 Amended IGA was a legislative act that required a public hearing and the adoption of an ordinance to execute the agreement. First, S.C. Code Ann. § 4-9-130 provides an exhaustive list of actions which require a public hearing before final council action. Authorizing and executing intergovernmental agreements and contracts are not enumerated in the list. See, S.C. Code Ann. § 4-9-130. Secondly, S.C. Code Ann. § 4-9-120 does not specify contracts as legislative acts that require an ordinance to approve. See also, S.C. Code Ann. § 4-9-30(3).

> *The bank may require the government unit* or private entity *to enter into a financing agreement* in connection with its loan obligation or other financial assistance. The board shall determine the form and content of loan applications, financing agreements, and loan obligations including the term and rate or rates of interest on a financing agreement. The terms and conditions of a loan or other financial assistance from federal accounts shall comply with applicable federal requirements.

S.C. Code Ann. § 11-43-180(A) (emphasis added).

In addition, the Act authorizes local governments to perform the obligations of the financing agreement, which provides:

> Qualified borrowers entering into financing agreements and issuing loan obligations to the bank *may perform any acts, take any action, adopt any proceedings, and make and carry out any contracts or agreements with the bank as may be agreed to by the bank and any qualified borrower for the carrying out of the purposes contemplated by this chapter.*

S.C. Code Ann.§ 11-43-190(A) (emphasis added); see also, S.C. Code Ann.§ 11-43-190(C) ("A qualified borrower may . . . pledge, assign, and grant security interest in project revenues . . . to secure its obligations as provided in this chapter . . . to meet its obligations under a financing agreement . . . .).

It is clear from the 2019 Amended IGA that the Infrastructure Bank required the County to agree to the revised terms to secure and maintain its $420 million funding for the MCE project. The Act clearly authorizes the Bank to require a financing agreement without regard to County Council member's terms. Nevertheless, Plaintiffs ask this Court to construe the County's roles and responsibilities under the 2019 Amended IGA as an exercise of its legislative or governmental powers, rather than its business or proprietary powers. The Plaintiffs cite City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth. as authority for this proposition. The South Carolina Supreme Court in City of Beaufort held that:

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

City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth., 325 S.C. 174, 178-79, 480 S.E.2d 728, 731 (1997).

The Plaintiffs' reliance on City of Beaufort is misplaced when harmonized with the Infrastructure Bank Act; and therefore, I decline to do so. "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. (citation omitted) (where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason)." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). "The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd." Charleston Cnty. Assessor v. Univ. Ventures, LLC, 427 S.C. 273, 285, 831 S.E.2d 412, 418 (2019). It would lead to an absurd result to construe the aforementioned enabling authority to require local government to agree to terms that exceed the terms of the legislative body who approved it only to find that as a matter of law it was an *ultra vires* act. Therefore, I find that the County's contractual obligations under the 2019 Amended IGA do not violate State law, rather, they are consistent therewith.

C. S.C. Freedom of Information Act ("FOIA").

As an alternative ground for relief, Plaintiffs contend that the County violated FOIA's closed meetings authorization at its August 20, 2019, Special Finance Committee meeting. I find that the Plaintiffs pleadings fail to show a legal deficiency on this claim. Plaintiffs admit in their complaint that Council held a Special Finance Committee meeting, and it had an agenda that listed "Transportation Sales Tax Budget". However, Plaintiffs challenge whether Council lawfully went into executive session to discuss the agenda item because the agenda item "Transportation Sales Tax Budget" is not a statutory reason for going into executive session. South Carolina law provides in pertinent part:

> (a) A public body may hold a meeting closed to the public for one or more of the following reasons: . . .
>
> (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, *the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege,* settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

S.C. Code Ann. § 30-4-70(a)(2) (emphasis added).

Plaintiffs assert in their Second Amended Complaint that the County stated the following reason for going into executive session:

> There is a need for an Executive Session to talk about *this agenda item associated with a lawsuit that was filed by the Coastal Conservation League against Charleston County* and I would ask that you entertain an Executive Session to discuss that matter and to receive legal advice. And I also believe you said there is a need to address a personnel matter.

Based on the above-referenced statement alleged by the Plaintiffs, I find that the County properly held a closed meeting, and the Plaintiffs have failed to show how they could prevail on this theory; and therefore, I dismiss this cause of action. See, Gray v. State Farm Auto. Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (Ct.App.1997) ("A motion to dismiss under Rule 12(b)(6), SCRCP 'must be granted if the facts and inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case.'").[9]

THEREFORE, IT IS ORDERED that the Plaintiffs' Second Amended Complaint be dismissed.

IT IS FURTHER ORDERED that this case be ended and stricken with prejudice from the calendar.

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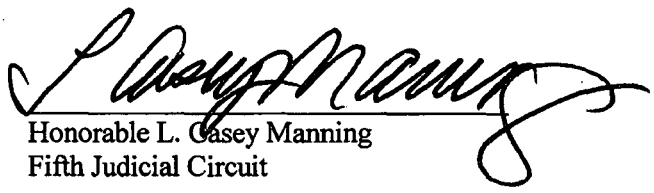
[9] Plaintiffs also suggest that the County violated FOIA because it acted on an unnoticed item it placed on its Special Finance Committee agenda. See, Brock v. Town of Mount Pleasant, 415 S.C. 625, 785 S.E.2d 198 (2016). I equally find that the Plaintiffs cannot prevail of this theory either because no unnoticed item was added to the Special Finance Committee agenda. Therefore, no additional notice requirements were triggered under FOIA, and Brock is not applicable to this case.

AND IT IS SO ORDERED.



Honorable L. Casey Manning
Fifth Judicial Circuit

Columbia, South Carolina
24, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2019-CP-40-03032
South Carolina Coastal Conservation League, Inc., Elizabeth M. Smith, Abraham B. Jenkins, Jr., and South Carolina Public Interest Foundation,	)	
Plaintiffs,	)	
vs.	)	**ORDER DENYING PLAINTIFFS' MOTIONS TO ALTER OR AMEND ORDER GRANTING DEFENDANT CHARLESTON COUNTY'S MOTION TO DISMISS**
Charleston County, South Carolina, South Carolina Transportation Infrastructure Bank, and South Carolina Department of Transportation,	)	
Defendants.	)	

This Court issued the Order Granting Defendant Charleston County's ("County") Motion to Dismiss ("Order") on February 24, 2020. On March 4, 2020, pursuant to Rule 59(e), SCRCP, the Plaintiff South Carolina Public Interest Foundation ("SCPIF") filed a Motion to Alter or Amend the Order and Judgment Entered February 24, 2020. The SCPIF contends *inter alia* that ". . . the Order failed to address the claim that Charleston County violated the Penny Tax Act, S.C. Code Ann. § 4-37-10, ff., and broke their promises that the Penny Tax funds would not fund the Mark Clark Expressway Extension Project ("The Project")." SCPIF Pl.'s Mot. Recons. 1. Equally, on March 5, 2020, pursuant to Rule 59(e), SCRCP, the Plaintiff South Carolina Coastal Conservation League, Inc. ("CCL") Elizabeth M. Smith, and Abraham B. Jenkins Jr., (collectively "CCL Plaintiffs") filed a Motion to Alter or Amend the Order and Judgment. CCL, Elizabeth M. Smith, and Abraham B. Jenkins Jr., contend that this Court,

> . . . did not directly address the claim in the Second Amended Complaint alleging that Charleston County passed a supplemental appropriation ordinance on February 12, 2019, appropriating Half-Cent revenue, without providing the required fifteen

day public notice and the three ordinance readings, in violation of S.C. Code Ann. §§ 4-9-120 and -130.

CCL Pl.s' Mot. Recons. 1.

Although the Plaintiffs timely filed their motions pursuant to Rule 59(e), SCRCP, neither of the Plaintiffs provided the Court with a copy of these motions in accordance with Rule 59(g) SCRCP. Therefore, based upon the failure of the Plaintiffs to comply with Rule 59(g) SCRCP, I deny the Plaintiffs' motions to alter or amend. See, Smith v. Fedor, 422 S.C. 118, 126 (Ct.App. 2017) (". . . trial court may deny the motion solely on the basis of the rule.")

THEREFORE, IT IS ORDERED that the Plaintiffs' motions to alter or amend are denied.

AND IT IS SO ORDERED.

_____
Honorable L. Casey Manning
Fifth Judicial Circuit

Columbia, South Carolina
_____, 2020

Richland Common Pleas

Case Caption: South Carolina Coastal Conservation League Inc , plaintiff, et al vs Charleston County South Carolina , defendant, et al

Case Number: 2019CP4003032

Type: Order/Amend

So Ordered

s/L. Casey Manning, 2061

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	CASE NO.: 2019-CP-40-03032
South Carolina Coastal Conservation League, Inc., Elizabeth M. Smith, Abraham B. Jenkins, Jr., and South Carolina Public Interest Foundation Plaintiffs,	)	
v.	)	**SECOND AMENDED COMPLAINT**
	)	
Charleston County, South Carolina; South Carolina Transportation Infrastructure Bank; and South Carolina Department of Transportation, Defendants.	)	(Declaratory Judgment) *Non-Jury*

TO: THE ABOVE-NAMED DEFENDANTS

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

PARTIES

1. Plaintiff South Carolina Coastal Conservation League, Inc. (the "CCL") is a non-profit corporation in good standing organized and existing under South Carolina law.

2. Plaintiffs Elizabeth M. Smith and Abraham B. Jenkins, Jr. are each citizens, residents, property owners, registered voters and taxpayers in the County of Charleston, South Carolina.

3. The South Carolina Public Interest Foundation ("SCPIF") is a non-profit corporation in good standing organized and existing under South Carolina law.

4. Defendant Charleston County, South Carolina (the "County") is a county government and body politic created under and subject to the laws of the State of South Carolina.

5. Defendant South Carolina Transportation Infrastructure Bank (the "Bank") is a

body corporate, body politic, and instrumentality of the State of South Carolina established through 1997 Act. No. 148.

6. Defendant South Carolina Department of Transportation (the "DOT") is a state agency of the State of South Carolina.

JURISDICTION AND VENUE

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

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

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

FACTUAL ALLEGATIONS

10. This action arises out of that certain First Amended Intergovernmental Agreement for Charleston County Mark Clark Expressway Extension Project in Charleston County, South

Carolina dated January 10, 2019 and signed by the County, the Bank, and the DOT (the "Amended IGA"). A copy of the Amended IGA is attached hereto as **Exhibit A** and its terms are incorporated herein by reference.

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

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

Use of Transportation Sales Tax Revenue for the Project

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

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

15. The Amended IGA defines "Sales Tax" as follows:

> the roads portion of the one-half percent sales and use tax established in Charleston County by approval of a referendum following the adoption of Charleston County

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

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

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

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

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

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

19. Charleston County Ordinance Number 1454, adopted July 18, 2006, authorized the issuance of $205 million in additional bonds for specified road projects and $95 million in additional bonds for Greenbelt projects in connection with the First Half-Cent revenue – subject to public referendum. Ordinance Number 1454 is attached hereto as **Exhibit C** and incorporated herein by reference. The language of the approved referendum is contained in Ordinance Number 1454. The referendum language specifies the following project list:

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

The referendum was approved by a majority of voters.

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

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funds from the First Half-Cent have been exhausted.

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

a. Projects of regional significance:

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

b. Projects of local significance:

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

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

23. Further, neither the First Half Cent or the Second Half Cent ordinances specify all of the project or projects or include a description of the project or projects for which the proceeds of the tax are to be used or the estimated capital cost of the project or projects to be funded from proceeds of the tax as required by S.C. Code Ann. § 4-37-30(A)(1)(a) and (c). Rather, the First Half Cent ordinance specified only $113,000,000 out of $1.3 billion, less than 10%, leaving the

remaining 90%+ unspecified. In the Second Half Cent, the ordinance specified several projects, but not the Project, and the ordinance language did not specify "the estimated capital cost of the project or projects."

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

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

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

a. Prior to deliberating on Ordinance Number 1907, County Council went into executive session to receive legal advice on the original intergovernmental agreement with the Bank regarding funding and managing the Project. Upon information and belief, funding the Project by way of Second Half-Cent dollars was discussed during executive session.

b. After emerging from executive session, Councilmember Teddy Pryor made a motion to add an additional ballot question to Ordinance Number 1907. This new question would specifically authorize funding the Project up to $200 million and reduce the funding for other road projects by that same amount. Councilmember Anna Johnson seconded that motion. After extensive debate among the councilmembers, the motion to specifically authorize funding for the Project failed by a five to four vote.

c. Councilmember Herb Sass then made a motion to put a non-binding ballot question on the referendum to gauge public support for the Project. After extensive discussion, Councilmember Sass withdrew this motion.

d. Councilmember Vic Rawl then made a motion to add the "Johns Island Connector" to the projects of regional significance list. Councilmember Elliott Summey asked what the "Johns Island Connector" meant, and Councilmember Rawl responded it was up for interpretation. Councilmember Joe Qualey reminded his colleagues that legal counsel for the County had

advised against adding the Project to the referendum question.[2] Councilmember Rawl's motion failed by a vote of six to three.

e. Councilmember Rawl next moved to amend Ordinance Number 1907 by removing the project list entirely. Councilmember Qualey seconded the motion. In the ensuing discussion, Councilmember Sass referred to the Project as the "elephant in the room" and noted his belief that Council was "deadlocked on this issue." The Chair stated that Council Members who said Council would put this project out to the public for referendum and then not honor it are being disingenuous. The Chair further stated that while technically future Councils would have the opportunity to stray away from the list through legislative action, he did not believe any Council would have the will to go against a vote of the people. He pointed out that the second question on the referendum would be a vote to issue bonds. The Chair stated that he was disappointed with the situation with 526, but he hoped Council wouldn't let this "tar baby" saddle the rest of the needed projects. The motion failed by a vote of five to three and one abstention.

f. Councilmember Qualey then moved for a non-binding ballot question as follows: "Do you want to complete the 526?" Councilmember Sass seconded the motion. The motion failed by a vote of five to four.

g. Finally, Councilmember Summey called for the second reading of Ordinance 1907 with no amendments. The vote failed by a vote of five to four.

27. The discussions, motions, and votes at the July 21, 2016 County Council meeting leave no doubt that County Council explicitly rejected the concept of funding the Project with Second Half-Cent funds.

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

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

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

a. Councilmember Sass moved to amend Ordinance Number 1907 to remove the list of projects from the ballot question, but not the ordinance itself. Councilmember Condon seconded the motion. The County's attorney confirmed on the record that the project list, which did not include the Project, would remain in the ordinance. The amendment passed by a vote of six to two with one abstention.

b. Prior to calling the question on third reading of Ordinance Number 1907, Councilmember Sass noted the project list contained in the ordinance, which did not include the Project, was a well thought out list and that every project was needed. Councilmember Pryor confirmed the Project was not under consideration. Councilmember Johnson lamented that the Project was not listed, and would not support it for that reason.

c. After calling the question, Ordinance Number 1907, as amended, was approved by a vote of six to three. Councilmembers Johnson, Darby, and Rawl voted "nay."

d. Finally, after the adoption of Ordinance Number 1907, as amended, Councilmember Rawl moved to place a non-binding ballot question on the referendum where the Second Half-Cent was to be voted on. The question would be "Do you want Charleston County to complete the Mark Clark/526 project?" Councilmember Summey seconded. The vote failed five to four. No question pertaining to the Project was ultimately placed on the ballot.

30. On October 29, 2016, which was after the adoption of Ordinance Number 1907 and mere days **before** the Second Half Cent referendum vote, Councilmember Sass wrote an editorial in the Post & Courier assuring voters the Second Half-Cent *would not* be used to fund the Project. This editorial is attached hereto as **Exhibit E** and incorporated herein by reference. Some notable comments from that editorial include the following:

a. "**The half-penny sales tax program Charleston County Council passed this summer**, which is on the November ballot, was the result of careful study of our road and transit needs and **did not include funding for the Mark Clark** [the Project]." (Emphasis added)

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

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

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

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

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

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

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

Binding Future Councils to Pledge Transportation Sales Tax Revenue

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

Agreement." (Emphasis Added).

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

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

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

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

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

40. The budget and supplemental appropriation approval processes are quintessential legislative functions. These funding actions both require public notice and three ordinance readings pursuant to S.C. Code Ann. §§ 4-9-120, -130. Moreover, the provision of public infrastructure is a legislative function.

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

County Appropriations Under the Amended IGA

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

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

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

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

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

County Authority to Execute the Amended IGA

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

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

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

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

51. However, prior to executing the Amended IGA, the County failed to provide public notice fifteen days in advance of the hearing and the requisite three ordinance readings pursuant

to S.C. Code Ann. §§ 4-9-120 and -130.

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

STANDING ALLEGATIONS

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

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

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

56. The South Carolina Public Interest Foundation ("SCPIF") is a not-for-profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the upholding and proper application of the South Carolina Constitution. The SCPIF brings this action individually on its behalf and on behalf of all others similarly situated, as a representative of taxpayers and because of the great public importance of the issues that this civil action raises and that are capable of being repeated.

57. The County's unauthorized and unlawful commitment and diversion of First Half-Cent and Second Half-Cent revenue to the Project, via the Amended IGA and appropriations thereunder to date, directly threaten the CCL's, the SCPIF's and their supporters' interests. Spending these monies on the Project will inevitably come at the expense of the specific projects identified in Charleston County Ordinance Numbers 1324, 1454, and 1907.

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

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

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

61. Given the foregoing, the CCL, the SCPIF and their members have a direct, concrete, and particularized interest in the outcome of this litigation.

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

63. Further, Plaintiffs Smith and Jenkins voted for the referenda with the understanding that the authorized sales tax proceeds would not be used for the funding of the 526 project and are entitled to standing based on their status as taxpayers and fee payers, and because of the great public importance of the issues that this civil action raises, that are capable of being repeated and regarding which judicial guidance is required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIRST CAUSE OF ACTION
Declaratory Judgment

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

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

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

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

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

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

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

a. The County cannot legally spend First Half-Cent and Second Half-Cent revenue on the project because the referenda and the ordinances that authorized them do not comply with the express language of S.C. Code Ann. § 4-37-30(A)(1) which require (a) the project or projects and a description of the project or projects for which the proceeds of the tax are to be used, and (c) the estimated capital cost of the project or projects to be funded in whole or in part from proceeds of the tax and the principal amount of bonds to be supported by the tax;
b. The County cannot legally spend First Half-Cent and Second Half-Cent revenue on the project because the referenda and the ordinances that authorized them listed projects other than the Project, and the Project was never the subject of an ordinance passed by Council or the subject of a referendum submitted to the voters;
c. The County cannot legally spend First Half-Cent and Second Half-Cent revenue on the Project pursuant to, among other things, the "contract with voters" doctrine.
d. Paragraph 3.2(B) of the Amended IGA is void and unenforceable to the extent it mandates or allows the County to fund the Project with First Half-Cent and Second Half-Cent revenue.
e. Paragraph 3.2(C) of the Amended IGA unlawfully binds future County Councils, in contravention of State law, by mandating future County Councils use its legislative power to adopt annual budget and supplemental appropriation ordinances to fund the Project with First Half-Cent and Second Half-Cent revenue.
f. The present and future County Councils are not obligated to, rather they are prohibited from, allocating First Half-Cent and Second Half-Cent revenue to

the Project through the annual budgetary and supplemental appropriation processes.

g. The County's fiscal year 2019 appropriation of First Half-Cent and Second Half-Cent revenue was unlawfully adopted pursuant to S.C. Code Ann. §§ 4-9-120 and -130.
h. The County lacked authority to execute the Amended IGA because it failed to provide the requisite statutory notice and ordinance readings pursuant to S.C. Code Ann. §§ 4-9-120 and -130.
i. The Amended IGA is not a binding, fully executed contract under South Carolina law.

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

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

84. Based on the aforementioned declarations, Plaintiffs respectfully seek an Order prohibiting the County from pledging, allocating, spending, transferring, or otherwise utilizing First Half-Cent and Second Half-Cent revenue for the Project by way of the Amended IGA or otherwise.

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

FOR A THIRD CAUSE OF ACTION

(Violation of the S.C. Freedom of Information Act)

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

87. On or about August 20, 2019, Charleston County Council held a Special Finance Committee meeting with an agenda item that stated: Transportation Sales Tax Budget (executive session).

88. When Council reached that item on the agenda, the county attorney stated: "There is a need for an Executive Session to talk about this agenda item associated with a lawsuit that was filed by the Coastal Conservation League against Charleston County and I would ask that you entertain an Executive Session to discuss that matter and to receive legal advice. And I also believe you said there is a need to address a personnel matter."

89. When Council returned from executive session, the Chair stated: "No actions were taken, no motions were made."

90. Council Member Moody then made the following motion without any preceding discussion of the budget or the lawsuit: On February 12, 2019, council voted to 1.) Authorize payment of $3,156,640 withdraw request for the SCDOT for the Mark Clark Expressway Project, and, 2.) Appropriate $3,156,640 from proceeds of the Transportation Sales Tax fund balance. I move to rescind $3,156,640 appropriation from the Transportation Sales Tax fund balance and to fund the payment to the SCDOT from the approved FY2019 Transportation Sales Tax operating budget.

91. The "Transportation Sales Tax Budget" is not an enumerated reason for going into executive session listed in the open meetings law, S.C. Code Ann. § 30-4-70(a)-(b) (2007).

92. Unnoticed items may be added to an executive session discussion at the time of a meeting, but after the executive session concludes and the public body reconvenes in open session, any action taken or decision made must be properly noticed and, in the case of special meetings, such items may not exceed the scope of the purpose for which the meeting was called.

93. Notice is sufficient if the agency reflects that, upon returning to open session, action may be taken on the items discussed during the executive session.

94. The agenda for this Special Meeting failed to state that any action might be taken

after the executive session, therefore it was improper for the Finance Committee to do so.

95. These actions violated S.C. Code Ann. § 30-4-70(a)-(b) (2007).

96. The Plaintiffs are entitled to declaratory and injunctive relief pursuant to S.C. Code Ann. § 30-4-100 (A) declaring that such conduct by Charleston County violated the Freedom of Information Act and enjoining any such further conduct. Further under S.C. Code Ann. § 30-4-100 (B), Plaintiffs are entitled to an award of attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION
(Attorneys' Fees Pursuant to the State Action Statute)

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for this Honorable Court to grant the declaratory, injunctive, and other relief requested herein; grant attorneys' fees and costs pursuant to S.C. Code Ann. § 15-77-300 and S.C. Code Ann. § 30-4-100 (B) and grant such other, further, or different relief as may be deemed just and proper.

Respectfully Submitted,

AUSTEN & GOWDER, LLC

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ATTORNEYS FOR SOUTH CAROLINA PUBLIC INTEREST FOUNDATION

November __, 2019
Charleston, South Carolina

EXHIBIT A

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

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

WITNESSETH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I

1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

2. Term of Agreement

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

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

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

ARTICLE III

3. Funding Commitments of Parties

3.1 Bank

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

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

3.2 County

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

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

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

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

3.3 Respective Allocations and Order of Payments

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

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

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

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

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

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

ARTICLE IV

4. Additional Obligations of the County and SCDOT

4.1 Additional Documents and Actions

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

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

4.2 Additional Warranties, and Covenants

The County and Bank warrant and covenant that:

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

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

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

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

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

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

4.3 Reimbursement of Bank

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

4.4 Extension Project Reporting

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

4.5 Assistance with Municipal Cooperation and Agreements

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

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

ARTICLE V

5. Extension Project Administration

5.1 Extension Project Administration

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

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

5.2 Contracting Methods

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

5.3 Scope of Extension Project

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

5.4 Extension Project Delivery.

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

5.5 Utility Relocations

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

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

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

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

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

5.6 Acceptance

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

5.7 Right-of-Way Acquisition

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

5.8 Public Information

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

ARTICLE VI

6. SCDOT Draw Requests

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

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

6.1 Conditions Precedent to Bank's Disbursements

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

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

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

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

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

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

6.2 Conditions Precedent to County's Payments

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

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

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

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

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

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

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

ARTICLE VII

7. Indemnification of Bank.

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

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

ARTICLE VIII

8. Rights and Remedies

8.1 Events of Default

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

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

8.2 Remedies for Bank and County

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

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

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

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

8.3 Remedies Cumulative; Nonwaiver; Attorney's Fees

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

ARTICLE IX

9. General Conditions

9.1 Waivers

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

9.2 Benefit and Rights of Third Parties

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

9.3 No Liability of Bank

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

9.4 Assignment

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

9.5 Captions

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

9.6 Notices

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

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

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

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

South Carolina Department of Transportation:
Secretary
P.O. Box 191
Columbia, SC 29202-0191 or
955 Park Street, Room 314
Columbia, SC 29201

9.7 Amendments

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

9.8 Savings Clause

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

9.9 Execution in Counterparts

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

9.10 Authority to Execute

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

9.11 Releases

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

(SEPARATE SIGNATURE PAGES FOR EACH PARTY TO BE ADDED)

SIGNATURE PAGE FOR BANK

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

South Carolina Transportation Infrastructure Bank:

By: _____
John B. White, Jr.
Chairman 1/10/19

Attest:

By: _____
Robert E. Tyson, Jr.
General Counsel

(SEAL)

SIGNATURE PAGE FOR SCDOT

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

South Carolina Department of Transportation:

By: _____
Christy A. Hall
Secretary of Transportation

Recommended by:

By: _____
Linda C. McDonald
Chief Counsel

(SEAL)

SIGNATURE PAGE FOR CHARLESTON COUNTY

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

Charleston County, South Carolina

By: J. Elliott Summey

Printed Name: J. Elliott Summey

Title: Chairman

Attest:

By: Kristin L. Salisbury

Printed Name: Kristin L. Salisbury

Title: Clerk of Council

(SEAL)

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

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EXHIBIT B

Ord #1324 adopted 8/11/04

CHARLESTON COUNTY ORDINANCE NO. 1324

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

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

Section 1. **Recitals and Legislative Findings**. As an incident to the enactment of this Ordinance, the County Council of Charleston County, South Carolina (the ACounty Council@) have made the following findings:

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

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

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

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

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

(ii) For financing the costs of greenbelts

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) on April 30, 2030; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHARLESTON COUNTY SPECIAL SALES AND USE TAX

QUESTION 1

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

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

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

YES

NO

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

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

QUESTION 2

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

YES

NO

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

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

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

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

4.4 In the referendum on the issuance of bonds, all qualified electors desiring to vote in favor of the issuance of bonds for the stated purpose shall vote Ayes@ and all qualified electors opposed to the issuance of bonds shall vote Ano@. If a majority of the electors voting in the referendum shall vote in favor of the issuance of bonds, then the issuance of bonds shall be authorized in accordance with S.C. Constitution Article X, Section 14, Paragraph (6). Expenses of the referendum must be paid by Charleston County government.

Section 5. Imposition of Tax Subject to Referendum.

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

Section 6. Miscellaneous.

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

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

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

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

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

ENACTED THIS 10TH DAY OF AUGUST, 2004.

CHARLESTON COUNTY COUNCIL

(SEAL)

_____
Chairman

_____
Clerk of Council

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

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EXHIBIT C

Ord. #1454

Adopted 7/18/06

AN ORDINANCE

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

WHEREAS, pursuant to ordinance number 1324, adopted August 10, 2004 (the "Ordinance"), Charleston County Council provided for the imposition of a ½ of one percent sales and use tax (the "Transportation Sales Tax") pursuant to the provisions of Section 4-37-10 *et seq.* of the Code of Laws of South Carolina, 1976, as amended (the "Act") and subject to the favorable result of a referendum vote in the County (the "Referendum"), and

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

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

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

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

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

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

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

SECTION 1

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

SECTION 2

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

SECTION 3

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

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

SECTION 4

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

SECTION 5

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

> QUESTION 1:
> Shall Charleston County be empowered to issue not exceeding $205,000,000 of general obligation bonds of Charleston County, payable from the ½- cent special sales and use tax approved by referendum November 2, 2004, the bonds maturing over a period ending no later than 2030, to fund the costs of highways, roads, streets, bridges, and other transportation- related projects facilities, and drainage facilities related thereto, including, but not limited to the following projects:
>
> > Widening and improvements to US Route 17/Johnnie Dodds Boulevard from the Arthur Ravenel, Jr. Bridge to the Interstate I-526 Overpass
> > Folly Road (SC 171)/Maybank Highway (SC 700) Intersection Improvements
> > James Island Connector (SC 30) Interchange Loop to Folly Road (SC 171)
> > Harbor View Road (S-1028) Improvements
> > Interstate I-526 Loop Ramp to Glenn McConnell Parkway (SC 61 Spur)

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

YES

NO

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

QUESTION 2:

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

YES

NO

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

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

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

SECTION 6

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

SECTION 7

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

(a) to join in the action of County Council in providing for the giving of Notice of Election;

(b) to name the Managers of Election;

(c) to provide polling places for the Election;

(d) to print and make available the form of ballot set forth in this Ordinance;

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

SECTION 8 Miscellaneous.

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

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

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

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

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

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

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

DULY ADOPTED this 18th day of July, 2006.

Leon E. Stavrinakis
Chairman, Charleston County Council

Attest:
Beverly T. Craven
Clerk of Council

First Reading: June 7, 2006

Second Reading: June 21, 2006

Third Reading: July 18, 2006

NOTICE OF ELECTION

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON

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

The polls shall be open from 7:00 a.m. until 7:00 p.m. at the locations designated below [TO BE COMPLETED]. The Managers of Election shall see that each person offering to vote takes the oath that he/she is qualified to vote at this election according to the Constitution of this State and he/she has not voted before in this election.
Voters who are blind, physically disabled, or unable to read or write are entitled to assistance in casting their ballot. This assistance may be given by anyone the voter chooses except his employer, an agent of his employer, or an officer or agent of his union. The Managers must be notified if assistance is needed.

Voters who are unable to enter their polling place due to physical handicap or age may vote in the vehicle in which they drove, or were driven, to the polls. When notified, the Managers will help these voters using the curbside voting provision.
In an effort to notify the disabled voter of inaccessibility of a polling place, an asterisk * is being placed after a polling place that is listed below. The asterisk indicates a polling place is inaccessible to handicapped voters.

Registered electors who cannot vote in person may be eligible to vote by absentee ballot. Persons wishing more information concerning absentee voting should contact the Board of Elections and Voter Registration of Charleston County at 744-VOTE (8683).
At 2:00 p.m. on election day the County Election Commission will begin its examination of the absentee ballot return envelopes at the Board of Elections & Voter Registration office, 4367 Headquarters Road, North Charleston, SC.
On Friday, November 10, 2006 at 10:00 a.m. the County Board of Canvassers will hold a hearing to determine the validity of all ballots cast in these elections. This hearing will be at the Board of Elections and Voter Registration office, 4367 Headquarters Road, North Charleston, SC.

The following Countywide Referendum Questions will appear on the ballot:

QUESTION 1:

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

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

QUESTION 2:

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

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

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

EXHIBIT D

#1907

Adopted 8/9/16

AN ORDINANCE

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

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

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

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

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

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

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

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

(ii) For financing the costs of greenbelts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) on April 30, 2042; or

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

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

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

2.9 The Sales and Use Tax is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of Title 12 of the Code of Laws of South Carolina1976, as amended, and the enforcement provisions of Chapter 54 of Title 12 of the Code of Laws of South Carolina1976, as amended. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 of the Code of Laws of South Carolina1976, as amended, are exempt from the tax imposed by this Ordinance. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture Food Stamps are exempt from the tax imposed by this Ordinance. The tax imposed by this Ordinance also applies to tangible property subject to the use tax in Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina1976, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHARLESTON COUNTY SPECIAL SALES AND USE TAX

QUESTION 1

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

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

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

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

YES _____
NO _____

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

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

QUESTION 2

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

YES _____
NO _____

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

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

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

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

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

Section 5. Imposition of Tax Subject to Referendum.

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

Section 6. Miscellaneous.

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

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

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

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

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

Enacted this 9th day of August, 2016.

CHARLESTON COUNTY, SOUTH CAROLINA

By: J. Elliott Summey
Its: Chairman of Charleston County Council

ATTEST:

Clerk of Charleston County Council
Charleston County, South Carolina

First Reading: 7/19/16
Public Hearing: 7/21/16
Second Reading: 7/27/16
Third Reading: 8/9/16

EXHIBIT E

Opinion

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

Complete the penny to meet road needs

BY HERB SASS
OCT 29, 2016

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Please vote to complete the penny.

Herb Sass is a member of Charleston County Council.

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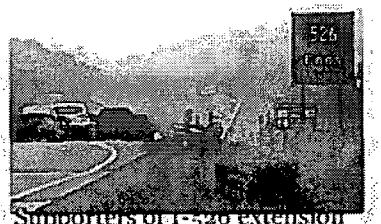

Supporters of I-526 extension push to win SC state approval

Here's how more than billion will be spent improving

Hicks column: Toll roads are a conversation worth having, if

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CASE NO. 2019-CP-40-03032
South Carolina Coastal Conservation League, Inc., Elizabeth M. Smith, Abraham B. Jenkins, Jr., and South Carolina Public Interest Foundation, Plaintiffs, vs. Charleston County, South Carolina, South Carolina Transportation Infrastructure Bank, and South Carolina Department of Transportation, Defendants.	)	**DEFENDANT CHARLESTON COUNTY'S NOTICE OF MOTION AND MOTION TO DISMISS**

TO: PLAINTIFFS, W. ANDREW GOWDER, JR., ESQUIRE, JAMES CARPENTER, ESQUIRE, CHRISTOPHER K. DESCHERER, ESQUIRE, AND ANGELA KILBERT, ESQUIRE, ATTORNEYS FOR PLAINTIFFS

Defendant Charleston County, South Carolina ("Charleston County" or the "County"), gives notice and moves this Court for an order dismissing Plaintiffs' Second Amended Complaint. This motion is based on the grounds that 1) the Plaintiffs lack standing to bring this action; 2) the Plaintiffs' 2004 and 2016 Transportation Sales Tax Referendum Ballot question declaratory judgment claims are time-barred pursuant South Carolina Election laws; 3) the Plaintiffs' claims fail to state facts sufficient to constitute a cause of action regarding the County's authority to fulfill the South Carolina Transportation Infrastructure Bank Act's ("Infrastructure Bank Act" or "Act") requirements or to implement the Act's financing agreement obligations in the "First Amended Intergovernmental Agreement for Charleston County Mark Clark Expressway Extension Project in Charleston County, South Carolina" ("2019 IGA"), or in the alternative, the Plaintiffs' claims are moot by subsequent legislative acts of Charleston County Council; and 4) this Court lacks

jurisdiction to adjudicate the Plaintiffs' tax disputes, pursuant to the South Carolina Revenue Procedures Act.

The County contends that the Plaintiffs fail to plead any valid basis for standing necessary to bring this action. See ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 198, 669 S.E.2d 337, 340-41 (2008) ("[A] private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom.").[1] Furthermore, the Plaintiffs lack a sufficient basis to establish standing by the public importance exception because resolution is not needed for future guidance given the South Carolina Department of Revenue's ("SCDOR") statutory duty to administer and enforce the Optional Methods for Financing Transportation Facilities Act ("Transportation Sales Tax"). See Richland Cnty. v. S.C. Dep't of Revenue, 422 S.C. 292, 306, 811 S.E.2d 758, 765 (2018) ("Based on these authorities, the circuit court properly found that DOR's extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code confer upon DOR a duty in ensuring the County's expenditures of Penny Tax revenues comply with the revenue laws DOR is charged with enforcing.").

Notwithstanding the lack of a justiciable case or controversy between the parties, South Carolina Election laws prohibit the Plaintiffs from challenging the sufficiency of the 2004 or 2016 Transportation Sales Tax Referendum Ballot questions after the statutory deadline to do so. See S.C. Code Ann. § 7-17-30. Therefore, the Plaintiffs are time-barred from challenging whether the

[1] In ATC S., the South Carolina Supreme Court rejected taxpayer standing as a legal basis to file suit holding that "[Plaintiff] further relies on its status as a taxpayer to acquire standing. The injury to [Plaintiff], however, as a taxpayer is common to all property owners in Charleston County. This feature of commonality defeats the constitutional requirement of a concrete and particularized injury." 380 S.C. at 198, 669 S.E.2d at 340-41.

2004 or 2016 Transportation Sales Tax Referendum Ballot questions' language limits the use of Transportation Sales Tax revenues to pay for the Mark Clark Expressway Extension Project.

In addition, the Plaintiffs also fail to state facts sufficient to constitute a cause of action regarding the County's authority or its contractual obligations under the Infrastructure Bank Act to commit 2004 or 2016 Transportation Sales Tax funds to complete the Mark Clark Expressway project. On January 10, 2019, the County, the SCDOT, and the South Carolina Transportation Infrastructure Bank ("Bank") agreed to the 2019 IGA contract amendment. Under the 2019 IGA, the County agreed *inter alia* to fund and complete the Mark Clark Expressway project *via* the Transportation Sales Tax and other financial sources pursuant to the Bank's financing agreement requirements.

The County's contractual obligations under the 2019 IGA do not violate State law, the 2004 or 2016 Transportation Sales Tax Referendum Ballot questions, or County ordinances. Rather, the County's contractual obligations are consistent with them. See S.C. Code Ann. §§ 4-37-10 to -50 (Supp. 2018) and S.C. Code Ann. § 11-43-190 ("Qualified borrowers entering into financing agreements and issuing loan obligations to the bank may perform any acts, take any action, adopt any proceedings, and make and carry out any contracts or agreements with the bank as may be agreed to by the bank and any qualified borrower for the carrying out of the purposes contemplated by this chapter."); see also County Ordinance Number 1324 – 2004 Transportation Sales and Use Tax, and County Ordinance Number 1907 – 2016 Transportation Sales and Use Tax; and Richland Cnty., 422 S.C. at 298, 811 S.E.2d at 761 ("The types of projects permitted to be funded with such a tax are 'highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects.'"). Moreover, South Carolina jurisprudence does not

recognize the "contract with voters" doctrine; and therefore, the Plaintiffs have failed to show they are entitled to relief under a recognized legal theory in South Carolina.

In the alternative, assuming the Plaintiffs have standing and they are not challenging the 2004 or 2016 Transportation Sales Tax Referendum ballot questions, to the extent the Plaintiffs have a dispute concerning property taxes, the South Carolina Revenue Procedures Act is the Plaintiffs' exclusive remedy. See S.C. Code Ann. §§ 12-60-10 to -3390 (2014 & Supp. 2018). Therefore, this Court lacks jurisdiction over the subject matter.

This Motion will be supported by the pleadings, a memorandum of law in support of the Motion, and oral argument.

CHARLESTON COUNTY ATTORNEY'S OFFICE

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Attorneys for Defendant
Charleston County, South Carolina

December 9, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
South Carolina Coastal Conservation League, Inc. Michelle Renee Orth, Elizabeth M. Smith, and Abraham B. Jenkins, Jr., and South Carolina Public Interest Foundation,	)	Civil Action No. 2019-CP-40-03032
Plaintiffs,	)	**ANSWER OF DEFENDANT SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK TO PLAINTIFFS' SECOND AMENDED COMPLAINT**
vs.	)	
Charleston County, South Carolina, South Carolina Transportation Infrastructure Bank, and South Carolina Department of Transportation,	)	
Defendants.	)	

Defendant South Carolina Transportation Infrastructure Bank (the "Bank") denies each and every allegation in the Second Amended Complaint filed by South Carolina Coastal Conservation League, Inc., Michelle Renee Orth, Elizabeth M. Smith, Abraham B. Jenkins, Jr. and South Carolina Public Interest Foundation (collectively, "Plaintiffs"), except those matters expressly admitted below. The Bank further responds to the Second Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Regarding the allegations contained in paragraph 1 of the Second Amended Complaint, the Bank is without information sufficient to form a belief, thus the allegations are denied.

2. Regarding the allegations contained in paragraph 2 of the Second Amended Complaint, the Bank is without information sufficient to form a belief, thus the allegations are denied.

3. Regarding the allegations contained in paragraph 3 of the Second Amended Complaint, the Bank is without information sufficient to form a belief, thus the allegations are denied.

4. Regarding the allegations contained in paragraph 4 of the Second Amended Complaint, the Bank admits the allegations.

5. Regarding the allegations contained in paragraph 5 of the Second Amended Complaint, the Bank admits the allegations.

6. Regarding the allegations contained in paragraph 6 of the Second Amended Complaint, the Bank admits the allegations.

7. Paragraph 7 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

8. Paragraph 8 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

9. Paragraph 9 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

10. Paragraph 10 of the Second Amended Complaint does not require a response, but to the extent a response is required, the Bank denies the allegations.

11. Regarding the allegations contained in paragraph 11 of the Second Amended Complaint, the Bank craves reference to the terms of the Amended Intergovernmental Agreement ("Amended IGA"); thus, any allegations inconsistent with the Amended IGA are denied.

12. Paragraph 12 of the Second Amended Complaint does not require a response, but to the extent a response is required, the Bank denies the allegations.

13. Regarding the allegations contained in paragraph 13 of the Second Amended Complaint, the Bank craves reference to the statute; thus, any allegations inconsistent with the statute are denied.

14. Regarding the allegations contained in paragraph 14 of the Second Amended Complaint, the Bank craves reference to the terms of the Amended IGA; thus, any allegations inconsistent with the Amended IGA are denied.

15. Regarding the allegations contained in paragraph 15 of the Second Amended Complaint, the Bank craves reference to the terms of the Amended IGA; thus, any allegations inconsistent with the Amended IGA are denied.

16. Paragraph 16 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

17. Regarding the allegations contained in paragraph 17 of the Second Amended Complaint, the Bank craves reference to the terms of the Ordinance Number 1324; thus, any allegations inconsistent with the Ordinance are denied.

18. Regarding the allegations contained in paragraph 18 of the Second Amended Complaint, the Bank craves reference to the terms of the Ordinance Number 1324; thus, any allegations inconsistent with the Ordinance are denied.

19. Regarding the allegations contained in paragraph 19 of the Second Amended Complaint, the Bank craves reference to the terms of the Ordinance Number 1454; thus, any allegations inconsistent with the Ordinance are denied.

20. Regarding the allegations contained in paragraph 20 of the Second Amended Complaint, the Bank craves reference to the terms of the Ordinance Number 1907; thus, any allegations inconsistent with the Ordinance are denied.

21. Regarding the allegations contained in paragraph 21 of the Second Amended Complaint, the Bank craves reference to the terms of the Ordinance Number 1907; thus, any allegations inconsistent with the Ordinance are denied.

22. Regarding the allegations contained in paragraph 22 of the Second Amended Complaint, the Bank craves reference to the terms of the Ordinances Number 1324, 1454, and 1907; thus, any allegations inconsistent with the Ordinances are denied.

23. Paragraph 23 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

24. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 24 of the Second Amended Complaint; thus, the allegations contained in paragraph 24 of the Second Amended Complaint are denied.

25. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 25 of the Second Amended Complaint; thus, the allegations contained in paragraph 25 of the Second Amended Complaint are denied.

26. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 26 of the Second Amended Complaint; thus, the allegations contained in paragraph 26 of the Second Amended Complaint are denied.

27. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 27 of the Second Amended Complaint; thus, the allegations contained in paragraph 27 of the Second Amended Complaint are denied.

28. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 28 of the Second Amended Complaint; thus, the allegations contained in paragraph 28 of the Second Amended Complaint are denied.

29. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 29 of the Second Amended Complaint; thus, the allegations contained in paragraph 29 of the Second Amended Complaint are denied.

30. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 30 of the Second Amended Complaint; thus, the allegations contained in paragraph 30 of the Second Amended Complaint are denied.

31. Regarding the allegations contained in paragraph 31 of the Second Amended Complaint, the Bank craves reference to the language of the newspaper editorial; thus, any allegations inconsistent with the newspaper editorial are denied.

32. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 32 of the Second Amended Complaint; thus, the allegations contained in paragraph 32 of the Second Amended Complaint are denied.

33. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 33 of the Second Amended Complaint; thus, the allegations contained in paragraph 33 of the Second Amended Complaint are denied.

34. Paragraph 34 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

35. Paragraph 35 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

36. Regarding the allegations contained in paragraph 36 of the Second Amended Complaint, the Bank craves reference to the terms of the Amended IGA; thus, any allegations inconsistent with the Amended IGA are denied.

37. Regarding the allegations contained in paragraph 37 of the Second Amended Complaint, the Bank craves reference to the terms of the Amended IGA; thus, any allegations inconsistent with the Amended IGA are denied.

38. Regarding the allegations contained in paragraph 38 of the Second Amended Complaint, the Bank craves reference to the language of the Supreme Court opinion; thus, any allegations inconsistent with the Supreme Court opinion are denied.

39. Paragraph 39 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

40. Paragraph 40 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

41. Paragraph 41 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

42. Paragraph 42 of the Second Amended Complaint does not require a response, but to the extent a response is required, the Bank denies the allegations.

43. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 43 of the Second Amended Complaint; thus, the allegations contained in paragraph 43 of the Second Amended Complaint are denied.

44. Paragraph 44 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

45. Paragraph 45 of the Second Amended Complaint does not require a response, but to the extent a response is required, the Bank denies the allegations.

46. Paragraph 46 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

47. Paragraph 47 of the Second Amended Complaint does not require a response, but to the extent a response is required, the Bank denies the allegations.

48. Paragraph 48 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

49. Regarding the allegations contained in paragraph 49 of the Second Amended Complaint, the Bank craves reference to the terms of the Amended IGA; thus, any allegations inconsistent with the Amended IGA are denied.

50. Paragraph 50 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

51. Paragraph 51 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

52. Paragraph 52 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

53. Paragraph 53 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

54. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 54 of the Second Amended Complaint; thus, the allegations contained in paragraph 54 of the Second Amended Complaint are denied.

55. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 55 of the Second Amended Complaint; thus, the allegations contained in paragraph 55 of the Second Amended Complaint are denied.

56. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 56 of the Second Amended Complaint; thus, the allegations contained in paragraph 56 of the Second Amended Complaint are denied.

57. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 57 of the Second Amended Complaint; thus, the allegations contained in paragraph 57 of the Second Amended Complaint are denied.

58. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 58 of the Second Amended Complaint; thus, the allegations contained in paragraph 58 of the Second Amended Complaint are denied.

59. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 59 of the Second Amended Complaint; thus, the allegations contained in paragraph 59 of the Second Amended Complaint are denied.

60. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 60 of the Second Amended Complaint; thus, the allegations contained in paragraph 60 of the Second Amended Complaint are denied.

61. Paragraph 61 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

62. Paragraph 62 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

63. Paragraph 63 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

64. Paragraph 64 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

65. Paragraph 65 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

66. Paragraph 66 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

67. Paragraph 67 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

68. Paragraph 68 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

69. Paragraph 69 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

70. Paragraph 70 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

71. Paragraph 71 of the Second Amended Complaint does not require a response, but to the extent a response is required, the Bank denies the allegations.

72. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 72 of the Second Amended Complaint; thus, the allegations contained in paragraph 72 of the Second Amended Complaint are denied.

73. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 73 of the Second Amended Complaint; thus, the allegations contained in paragraph 73 of the Second Amended Complaint are denied.

74. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 74 of the Second Amended Complaint; thus, the allegations contained in paragraph 74 of the Second Amended Complaint are denied.

75. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 75 of the Second Amended Complaint; thus, the allegations contained in paragraph 75 of the Second Amended Complaint are denied.

76. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 76 of the Second Amended Complaint; thus, the allegations contained in paragraph 76 of the Second Amended Complaint are denied.

77. Responding to the allegations of paragraph 77 of the Second Amended Complaint, the Bank would reaffirm and reallege each defense asserted above and incorporate it by reference as if set forth fully herein.

78. Regarding the allegations contained in paragraph 78 of the Second Amended Complaint, the Bank craves reference to the language of the statute; thus, any allegations inconsistent with the statute are denied.

79. Paragraph 79 of the Second Amended Complaint does not require a response, but to the extent a response is required, the Bank denies the allegations.

80. Paragraph 80 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

81. Regarding the allegations contained in paragraph 81 of the Second Amended Complaint, the Bank admits the allegations.

82. Paragraph 82 of the Second Amended Complaint does not require a response, but to the extent a response is required, the Bank denies the allegations.

83. Responding to the allegations of paragraph 83 of the Second Amended Complaint, the Bank would reaffirm and reallege each defense asserted above and incorporate it by reference as if set forth fully herein.

84. Paragraph 84 of the Second Amended Complaint does not require a response, but to the extent a response is required, the Bank denies the allegations.

85. Paragraph 85 of the Second Amended Complaint does not require a response, but to the extent a response is required, the Bank denies the allegations.

86. Responding to the allegations of paragraph 86 of the Second Amended Complaint, the Bank would reaffirm and reallege each defense asserted above and incorporate it by reference as if set forth fully herein.

87. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 87 of the Second Amended Complaint; thus, the allegations contained in paragraph 87 of the Second Amended Complaint are denied.

88. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 88 of the Second Amended Complaint; thus, the allegations contained in paragraph 88 of the Second Amended Complaint are denied.

89. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 89 of the Second Amended Complaint; thus, the allegations contained in paragraph 89 of the Second Amended Complaint are denied.

90. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 90 of the Second Amended Complaint; thus, the allegations contained in paragraph 90 of the Second Amended Complaint are denied.

91. Regarding the allegations contained in paragraph 91 of the Second Amended Complaint, the Bank craves reference to the statute; thus, any allegations inconsistent with the statute are denied.

92. Paragraph 92 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

93. Paragraph 93 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

94. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 94 of the Second Amended Complaint; thus, the allegations contained in paragraph 94 of the Second Amended Complaint are denied.

95. Paragraph 95 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

96. Paragraph 96 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

97. Responding to the allegations of paragraph 97 of the Second Amended Complaint, the Bank would reaffirm and reallege each defense asserted above and incorporate it by reference as if set forth fully herein.

98. The Bank is without information sufficient to form a belief as to the allegations contained in paragraph 98 of the Second Amended Complaint, thus the allegations contained in paragraph 98 of the Second Amended Complaint are denied.

99. Paragraph 99 of the Second Amended Complaint calls for a legal conclusion of law; thus, no response is warranted, but to the extent a response is warranted, the Bank denies the allegations.

FOR A SECOND DEFENSE

100. The Bank reiterates and realleges the foregoing defenses as if fully repeated herein.

101. The Second Amended Complaint fails to state a claim upon which relief may be granted against the Bank and, therefore, should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

102. The Bank reiterates and realleges the foregoing defenses as if fully repeated herein.

103. The plaintiffs' claims against the Bank are barred, in whole or in part, by a lack of privity.

FOR A FOURTH DEFENSE

104. The Bank reiterates and realleges the foregoing defenses as if fully repeated herein.

105. The Bank will rely on all defenses lawfully available to it at the time of trial and expressly reserve the right to assert additional defenses as such become known.

WHEREFORE, having fully answered the plaintiffs' Second Amended Complaint, the South Carolina Transportation Infrastructure Bank prays that it be dismissed, with prejudice, and for such other relief as the Court may deem just and proper.

[Signature Page Follows]

Respectfully submitted,

ROBINSON GRAY STEPP & LAFFITTE

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Columbia, South Carolina
December 9, 2019

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND South Carolina Coastal Conservation League, Inc., Michelle Renee Orth, Elizabeth M. Smith, and Abraham B. Jenkins, Jr., Plaintiffs, vs. Charleston County, South Carolina, South Carolina Transportation Infrastructure Bank, and South Carolina Department of Transportation, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT **C.A. No.: 2019-CP-40-03032** **ANSWER OF DEFENDANT SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendant South Carolina Department of Transportation (hereinafter referred to as "Defendant SCDOT") answers Plaintiffs' Second Amended Complaint herein as follows:

FOR A FIRST DEFENSE

1. Defendant SCDOT denies each and every allegation of the Plaintiffs' Amended Complaint not hereinafter specifically admitted, qualified or explained.

2. Defendant SCDOT is without knowledge or information sufficient to form a belief as the truth of the allegations of Paragraphs 1, 2, 3, and therefore denies them.

3. The allegations of Paragraphs 4- 6 are admitted.

4. Defendant SCDOT denies the allegations of Paragraphs 7-9.

5. Defendant SCDOT admits the allegations of Paragraphs 10-12.

6. Answering Paragraph 13, Defendant SCDOT craves reference to the statute for its language, and denies any statements or conclusions inconsistent therewith.

7. Answering Paragraphs 14 -15, Defendant SCDOT craves reference to the Amended IGA for its language, and denies any statements or conclusions inconsistent therewith.

8. Defendant SCDOT is without knowledge or information sufficient to form a belief as the truth of the allegations of Paragraphs 16 -33, and therefore denies them.

9. Defendant SCDOT denies the allegations of Paragraph 34-35.

10. Answering the allegations of Paragraph 36, Defendant SCDOT craves reference to the Amended IGA for its language.

11. Answering the allegations of Paragraph 37, Defendant SCDOT craves reference to the Amended IGA for its language and denies any allegations inconsistent therewith.

12. Answering the allegations of Paragraph 38, Defendant SCDOT craves reference to decision of the S. C. Supreme Court, and denies any allegations inconsistent therewith.

13. Defendant SCDOT is without knowledge or information sufficient to form a belief as the truth of the allegations of Paragraphs 39-42, and therefore denies them.

14. Defendant SCDOT admits the allegations of Paragraph 43.

15. Defendant SCDOT is without knowledge or information sufficient to form a belief as the truth of the allegations of Paragraphs 44-48, and therefore denies them.

16. Answering Paragraph 49, Defendant SCDOT craves reference to the terms of the Amended IGA, and denies any allegations inconsistent therewith.

17. Defendant SCDOT is without knowledge or information sufficient to form a belief as the truth of the allegations of Paragraphs 50-71, and therefore denies them.

18. Defendant SCDOT has insufficient information to admit the allegations in Paragraph 72 as to the motivations or actions of the Defendant Bank, and therefore denies same and demands strict proof thereof. Defendant SCDOT denies the remaining allegations of Paragraph 72.

19. Defendant SCDOT is without knowledge or information sufficient to form a belief as the truth of the allegations of Paragraphs 73-76, and therefore denies them.

20. In response to Paragraph 77, Defendant SCDOT reiterates and restates all the preceding paragraphs of this Answer.

21. Answering Paragraph 78, Defendant SCDOT craves reference to the statute for its language and denies any allegations inconsistent therewith.

22. Defendant SCDOT is without knowledge or information sufficient to form a belief as the truth of the allegations of Paragraphs 79 -80, and therefore denies them.

23. Defendant SCDOT admits the allegations of Paragraph 81.

24. Defendant SCDOT is without knowledge or information sufficient to form a belief as the truth of the allegations of Paragraph 82 and therefore denies them.

25. In response to Paragraph 83, Defendant SCDOT reiterates and restates all the preceding paragraphs of this Answer.

26. Defendant SCDOT is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 84-85 and therefore denies them.

27. In response to Paragraph 86, Defendant SCDOT reiterates and restates all the preceding paragraphs of this Answer.

28. Defendant SCDOT is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 87-90 and therefore denies them.

29. Answering Paragraph 91, Defendant SCDOT craves reference to the statute and denies any allegations inconsistent therewith.

30. Defendant SCDOT is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 92-96 and therefore denies them.

31. In response to Paragraph 97, Defendant SCDOT reiterates and restates all the preceding paragraphs of this Answer.

32. Defendant SCDOT is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 98-99, and therefore denies them.

FOR A SECOND DEFENSE

33. Defendant SCDOT reiterates and restates all the preceding paragraphs of this Answer.

34. The Second Amended Complaint fails to state a claim on which relief may be granted and therefore should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

35. Defendant SCDOT reiterates and restates all the preceding paragraphs of this Answer.

36. The Plaintiff is not a party to the Amended IGA that is being challenged in this lawsuit, therefore, Plaintiff's claims against SCDOT are barred, in whole or in part, by a lack of privity.

Wherefore, having fully answered, Defendant SCDOT prays that this Court issue such Order as is just and proper.

South Carolina Department of Transportation

s/ Linda C. McDonald, Chief Counsel
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December 10, 2019
Columbia, South Carolina

MR. FERRARA: We've met before.

THE COURT: Yes, sir.

MR. DAWSON: Your Honor, it's a pleasure to be here in Columbia. The county has filed a motion to dismiss, and this case centers around a dispute regarding the county sales tax program. Charleston County levied a sales tax ---

THE COURT: It's not the penny tax like we had. Go ahead.

MR. DAWSON: Yes, Your Honor. So, another discussion on the penny tax. The county has in two instances done a half penny ---

THE COURT: Well, didn't Tommy Cooper resolve all those issues about two years ago?

MR. DAWSON: Your Honor, I'd love to say that he has so that you can tell me I can go home now because one of the things I'm going to tell you is that it has been resolved.

Your Honor, we, the county, has entered into an intergovernmental agreement with the South Carolina Infrastructure Bank and the Department of Transportation. We're all defendants in this case. We have filed a motion to dismiss the plaintiffs' complaint because we believe there are three or four different problems. The first problem we believe, Your Honor, is they lack standing. The

second issue we have asserted ---

THE COURT: They claim to be taxpayers, right?

MR. DAWSON: They claim to be taxpayers; they claim to be voters, even as an organization. They claim to be a lot of things. I'm going to talk about a few of those, Your Honor.

THE COURT: All right. Yes, sir.

MR. DAWSON: Equally, Your Honor, we believe that some of the claims that they have raised are time barred because they are the result of a referendum put to the Charleston County voters. And as Your Honor knows, there is a period of time under the statute to raise challenges to that referendum, and we don't believe they've done that in time. We've also asserted a claim regarding the Revenue Procedures Act suggesting that this court does not have jurisdiction. I say those four things, Your Honor, because I think it's important for me to first start with why I believe this case is time barred.

THE COURT: All right.

MR. DAWSON: The two instances that the ---

THE COURT: The election was when, the referendum?

MR. DAWSON: Two, two elections, Your Honor. That's why I said there was two half-penny sales tax.

THE COURT: All right.

MR. DAWSON: One in 2004.

THE COURT: Two thousand?

MR. DAWSON: In 2004, yes, sir, I said that, 2004.

THE COURT: Yes, sir.

MR. DAWSON: And the second one in 2016.

THE COURT: All right.

MR. DAWSON: So, we clearly are a decade or more from the first referendum and more than a number of years from the second. And, Your Honor, I raise that because the issue that's being raised here in part challenges ---

THE COURT: If it's a government entity two-year deal or three years? Two years? Are y'all disputing that?

MR. CARPENTER: I, I'd like to wait until ---

THE COURT: All right. That's fine.

MR. CARPENTER: I've got a completely different take on the law.

THE COURT: That's all right. That's all right. We'll take it one at the time.

MR. DAWSON: Yes, sir, and, Your Honor, as you know, we wouldn't be here today if we all agreed. So, we clearly disagree. The county's position is, however, under the statute 17-17-30, there is a period of time by which the plaintiffs, if they, in fact, disputed the way in which the referendum was offered to the voters, the ballot question, there was a prescribed time to challenge that ballot.

THE COURT: And what was that time?

MR. DAWSON: That statute says that it would have been the Wednesday after the Charleston County Board of Election and Voter Registration certified it.

THE COURT: The Wednesday after?

MR. DAWSON: Yes, sir.

THE COURT: All right.

MR. DAWSON: Certified those results.

THE COURT: All right.

MR. DAWSON: That obviously occurred in 2004 by a different group of taxpayers and in 2016, it did not occur here. And so the county's position is real simple. If they take exception under the enabling act that authorizes Charleston County to impose the sales tax, the penny tax, if they felt that that ballot question was flawed or it violated state statute, their time to challenge it would have been back either in 2004 -- which, Your Honor, that did occur with a different group of people and in 2016.

Your Honor, I'm remiss. I would like to hand you something, if you don't mind.

THE COURT: Yes, sir.

MR. DAWSON: I have a copy of the county's memorandum and the exhibits that I might talk from, and if it's okay, I'd like to approach the court to hand these documents to you.

THE COURT: Yes, sir.

MR. CARPENTER: This is a motion to dismiss. He's attached seven exhibits to his motion to dismiss, which are improper. The first four are okay because they're exhibits in the complaint.

THE COURT: I tell you what. This is nonjury. Relax, gentlemen. This is nonjury. Even if I didn't want to hear it myself, he has the right to proffer at least. I can't keep it out of the record. Is that what you're asking me to do?

MR. CARPENTER: No, he doesn't have...

THE COURT: What now?

MR. CARPENTER: I, I did -- could I explain why I disagree?

THE COURT: Sure you can explain why you disagree.

MR. CARPENTER: Okay. On a motion to dismiss, the court's viewpoint is to look at the four corners of the complaint. He's adding things to the complaint, and that is improper on a motion to dismiss.

THE COURT: I'll take that -- you've made your point. This is nonjury, gentlemen. Y'all understand my point, too. So, whether I disagree or agree, I've still got to look at it, make it part of the record. I don't have to consider it, but I have to look at it as a proffer. We all agree with that?

Okay, let me see what you have. Whether it counts or

not, it doesn't matter. I've got to make it part of the record. I can't exclude it.

Y'all want a remand on this?

MR. DAWSON: Your Honor, these obviously are the documents ---

THE COURT: Court's exhibit. Go ahead.

MR. DAWSON: Thank you, Your Honor. These are obviously are documents that we have filed with the court, and we are offering to you that document's in the file.

THE COURT: All right.

MR. DAWSON: To that point, Your Honor, just so I can be clear on the record.

THE COURT: Let me do this. Mark this as a court's exhibit.

(MEMORANDA BY DEFENSE MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 1.)

THE COURT: Yes, sir.

MR. DAWSON: We believe there are a couple of reasons ---

THE COURT: That it's objected to. Go ahead.

MR. DAWSON: And it's in our brief, Your Honor, in page 2. We cite it in a footnote, anticipating this argument would be raised. We believe that the court is empowered even in a 12(b)(6) motion to consider -- to take judicial notice of ---

THE COURT: Is this -- go ahead.

MR. DAWSON: ---matters of public record. The documents that I have added beyond those that were attached to the plaintiffs' complaint are matters the court should to take judicial notice of because they are matters of public record, and those are the two items that ---

THE COURT: You know I can continue this case. I don't have to hear it. Y'all understand that, don't you?

MR. GOWDER: Your Honor, I'm sorry, and I don't mean to interrupt Mr. Dawson.

THE COURT: But you have.

MR. GOWDER: The only thing that I would say is that one of the matters that he has attached is not a matter of public record. It's a brief filed in another case completely.

THE COURT: I remind y'all: I can continue this. I don't have to hear it. Y'all want to be polite to each other, let one person finish, let the next person counter and make his point, or do you want me to leave and just go home? What do y'all want to do?

MR. GOWDER: It's up to you, Your Honor.

THE COURT: All right. Continue. Everybody's going to get a chance to say whatever it is they want to say whether I like it or not, whether I disagree or not, but we'll make a full record.

Proceed, sir.

MR. DAWSON: Your Honor, I would ask the court again in regard to the fact that we believe the case is time barred, we believe under South Carolina Code 4-37-30, which is the Transportation Act, the act that authorizes the penny tax, it prescribes the statutory form for the ballot question. We believe that that statutory form was followed. And I point that out to Your Honor, and I'd ask you to take judicial notice of a case back in 2003 that the South Carolina Supreme Court heard regarding the ballot question that's at question here today.

The plaintiffs are going to say, well, we're not really concerned or complaining about the referendum but, in fact, they say that in their brief -- excuse me, in their, in their complaint and in their brief. So, I bring that to the court's attention because our supreme court has reviewed the county's question and initially struck down the question and, therefore, nullified the election results. The county put on a second referendum correcting the problems that the court had indicated.

Your Honor, the case I'm referring to, just for the record, is *Douan vs. Charleston County Council*, and that case is cited at 590 SE 2d 484. And in that case, the supreme court did, in fact, review and scrutinize the county ballot question and gave guidance on how, in fact,

to do the question properly. The county did again in 2004. That case was challenged again, and the Charleston County Board of Elections and Voter Registration and the State Election Commission affirmed those results, and our state supreme court denied cert to review that same question again.

The reason why, Your Honor, I start my presentation out with that fact is because when I address the standing issue, as the court knows -- because the court has recently addressed an issue involving standing that went up to our state supreme court in the case of *South Carolina Public Interest Foundation vs. The Department of Transportation* as it relates to standing. And, Your Honor, I will not go through every item in my brief. I do intend to highlight a few of those items.

With regard to the public importance exception to the standing rule, our supreme court has said, one, there's got to be public importance, but secondly, it's got to be something that needs future guidance. In the case Your Honor dealt with some years ago with the Department of Transportation, one of the issues that Chief Justice Beatty pointed out was that there was no guidance on the issue of whether or not the Department of Transportation could, in fact, work on a bridge that was on private property.

Your Honor, I point this out because this case is

different, and it's different in that in order to be able to survive this motion alleging that they do not have standing under the public importance exception, one of the things that they have to demonstrate is that there is a need for future guidance. The court stated, before we started my presentation, acknowledging a similar case that Judge Cooper has recently dismissed because the court -- again construing 4-37-30, which is the enabling legislation that authorizes the tax that Richland County has adopted and Charleston County has adopted, that particular court said that the way in which the county, Charleston -- Richland County in this instance -- has laid out their sales-tax authorization by way of projects was valid.

The plaintiffs in this case, Your Honor, believe that in order for a ballot question and referendum ordinance to be valid, it must itemize every road that you intend to work on. The supreme court has not said that; Judge Cooper didn't say that. They're asking you, Your Honor, in this case to say that, in fact, it is required.

Again, I draw your attention to 4-37-30 because there is a form ballot question in the statute the county followed verbatim. And in that form ballot question, Your Honor, it does not require you to list the projects as they have asked you to do so or would ask you to do so in this case.

So, Your Honor, we believe, one, you should throw the case out because, one, the very premise by which they are challenging, that should have been raised at the end of the election. They will argue, Your Honor, however, that the question didn't include the project in question, which is the Mark Clark Expressway. Your Honor, as a practical matter, the county's ordinance and ballot question simply referred to roads, bridges, and other transportation-related project facilities. It referred to mass transit. So, the fact that it doesn't mention the particular road in question doesn't necessarily mean that that road is not a permissible project under the statute.

I draw your attention to another case, and it is a Richland County case involving the Department of Revenue. In the last couple of years, the Department of Revenue challenged Richland County's sales tax, again asserting that some of the uses of the sales tax funds were improper. They were in that case litigating over administrative costs. Again, our state supreme court, reviewing similar language that's in Charleston County's ordinance, similar ballot question, did make a finding that the Richland County sales tax was flawed or violated state law because it didn't list projects. It simply acknowledged that if you're going to work on a project and you're going to have administrative costs, they've got to be tied to the

project, not that there's a failure to itemize projects as the plaintiffs will suggest to you here today.

Your Honor, the third area I want to talk about briefly which is with regard to our 12(b)(6) motion, the plaintiffs have identified a series of actions or acts that they believe are in violation of either the enabling legislation, 4-37-30, or are in violation of home rule, and they assert that in several instances. One, that county council exceeded their authority when they entered into this intergovernmental agreement with the Department of Transportation and the infrastructure bank because the very act of entering into this contract could not occur because it would bind future councils.

Your Honor, in our brief we cite to several provisions under the, the Infrastructure Bank Act which, in fact, requires for a local government to be able to obtain financing from the infrastructure bank. In this instance, the financial assistance here was $420 million from the infrastructure bank to our local community to fund this project. Your Honor, unfortunately, because when this occurred -- it was in 2006, 2007 -- the cost of the project gets escalated and county council has agreed to cover the cost above $420 million. The plaintiffs in this case have stated in their complaint -- and we believe it's not enough to simply state legal conclusions to survive a motion to

dismiss under 12(b)(6). They simply state that, well, you can't do that because we believe that's a legislative power, not a business power and, therefore, you can't bind future councils.

Your Honor, I acknowledge that policy argument. However, there's a statute, though, that requires the county to fulfill the terms of a financing agreement as promulgated by the bank. And in this instance, the finance agreement terms are those defined by the infrastructure bank which state law requires. And so to suggest, then, that you cannot bind a future council and, therefore, you cannot fulfill this requirement would, in essence, say that the statute is invalid because no local government could ever enter into a financing agreement or repay money over a period of time that's confined to the term of the individual council members who actually voted to approve it. So, you'd be limited to two to four years under every financing agreement, and that's just -- it's not practical. It's not possible.

Your Honor, they equally raise questions with regard to the way in which the county has appropriated monies to pay its portion of the project. Your Honor, we, again, believe that the statute they relied on -- and we're not debating the facts that they suggest that arrive at the conclusion. We're simply challenging the legal conclusion

that they've raised that somehow county council can only -- can, can only adopt a contract through an ordinance of three readings in a public hearing. We just don't believe that home rule at 4-9-120-130 or 140, in fact, stands for that proposition.

Equally, Your Honor, the plaintiffs in this case have asserted that they believe that the county has violated the Freedom of Information Act. And in this particular case, Your Honor, we believe, one, that the acts that they claim that were violated have been rescinded and reapproved and so, therefore, the issues that they're raising are moot. But equally, Your Honor, we believe the very premise of the law that they base their FOIA violation center around the fact that the county had the transportation sales tax budget question on its agenda. They claim that it was improper for the county to go into executive session to talk about that in light of a pending and threatened claim by the plaintiffs in this case and, therefore, you can't go into executive session to talk about it. Well, Your Honor, that's not what 30-40-70(a) says. It prescribes the way in which a local government can go into closed session. And it requires you to identify the item and to say whether not there is a pending or threatened claim. In their complaint, they say that, but yet they draw the conclusion that that is a violation of FOIA.

Equally to the point that they have raised, and I suspect they will raise again and I can look for an opportunity to respond to it, they claim that somehow this item was an unnoticed item on the agenda, yet their very complaint acknowledges that it was on the agenda. And the fact that the county, after coming out of executive session, took action on that item that they claim is a violation of FOIA -- and I suspect -- they cite to a case called *Brock vs. Mount Pleasant* which does stand for the proposition that when there is an unnoticed item, you can't go out of executive session and take action. But, Your Honor, I think the key distinction here is that the county, one, had it on an agenda and, two, when it took action with finality, the fact that it was going to take action on recommendation was, in fact, on the agenda and, therefore, the public was on notice that that council could take action on that item.

Your Honor, those are the key things that, aside from the information that's in my brief, I wanted to articulate to the court today. I obviously invite any questions and look forward to responding to any issues that are raised by plaintiffs.

THE COURT: Thank you, sir.

Mr. Carpenter, are you going to talk?

MR. CARPENTER: Yes, sir, although I think that

opposing counsel made half my arguments for me, but I'm always leery when opposing counsel makes my arguments for me.

THE COURT: I suspect arguments coming from the opposite side also, but that's neither here nor there. Everybody does it all the time.

MR. CARPENTER: Anyway, this case is about Charleston County violating the Penny Tax Act. That's the first thing. The second thing is Charleston County made promises and representations about what those penny tax revenues would be used for, and now they're trying to renege on those promises. If I could begin with the ---

THE COURT: How a penny could cause so much trouble in Richland and Charleston County, I do not know, but go ahead.

MR. CARPENTER: People think they won the lottery, Judge.

THE COURT: Because they turn it into millions of dollars. Go ahead.

MR. CARPENTER: Your Honor, I, I brought with me a few copies of this statute to which he referred, and I've underlined certain portions that seem to me to be ---

THE COURT: I'll be happy to look at it.

MR. CARPENTER: --- important.

(A PAUSE.)

MR. CARPENTER: Your Honor, the Penny Tax Act is found in 4-37-30, and it says that it provides a way for counties to raise a limited amount of money. If you look at paragraph 8 there at the top of the page, it says that:

> A governing body of a county may impose by ordinance a sales and use tax in an amount not to exceed 1 percent within its jurisdiction for a single project or multiple projects, and for a specific period of time to collect a limited amount of money.

Now, there are conditions on how they have to do this. Paragraph 1(a) -- A(1) says:

> The ordinance must specify the project or projects and a description of the project or projects.

In, in the two tax ordinances that Charleston County passed, they, they failed to comply with this statutory provision. In the first one in 2004 ---

THE COURT: So, what's the remedy? Give all the money back?

MR. CARPENTER: Well, I don't think we can do that, but I think we're after a declaration and an injunction.

THE COURT: All right.

MR. CARPENTER: In the 2004 Penny Tax Act, they raised a billion 3, or they're in the process of raising a billion

3 over twenty-five years. They listed certain projects and they listed the estimated capital cost of the project, which is another requirement here, only totaling 113 million. That's less than 10 percent of the 1.3 billion. The rest of it appears to be some kind of slush fund that they can use as they choose. But the statute requires that they collect a limited amount of money, the ordinance must specify the project or projects, a description of the project or projects, the maximum time, the length of payment, and the estimated capital cost of the project or projects.

Now Richland County, as you mentioned, has had its troubles with its own penny tax. The one thing they did right was they listed the projects and they listed the estimated capital costs, and when you added up those capital costs, it totaled the amount they were going to raise. That's the way it's supposed to be done. Charleston County didn't do that in 2004. They did less than 10 percent.

THE COURT: What about his position that it's over ten years ago? You're out of time.

MR. CARPENTER: Well, we're not contesting the referendum like he said.

THE COURT: The 2004 to 2016.

MR. CARPENTER: Well, it's 2019 and they're still

collecting. They'll collect it from '4 to '29.

THE COURT: All right, sir.

MR. CARPENTER: So, they've got ten more years of these unless they've already raised 1.3 billion. They've got ten more years of these collections that they're doing. They're collecting and spending. So, there's an ongoing violation, so there's no statute of limitations problem.

They, they violated -- the, the law, the statute says that they're supposed to use those penny tax monies for the projects specified in the ordinance, and they can't use them for anything else. So, we would ask for an injunction that they not be able to use those penny tax funds from the first, from the 2004, for anything but the projects specified in the 2004 ordinance.

Now when they came around to 2016, they didn't specify any costs. They listed a few projects, but they didn't specify. They didn't particularly describe them, and they certainly didn't list the capital cost of the project or projects. They said here are some projects we're going to do. We're going to raise $2 billion, $2.1 billion, but he didn't -- they didn't say how much each project was going to cost. They didn't show that the total of those projects was going to be the 2.1 billion. They implied the opposite, that they were going to do those. Then they were going to make up their minds as they go along over the next

twenty-five years whatever the projects they wanted to use this money for, which is not what the statute requires. Says the limited amount of money, the specific projects that have to have a capital cost estimate there, and they use that money for those projects and no other projects. That's, that's the way the authorizing act is written.

Now, he mentioned the *Richland vs. The DOR* case, which I'm sure the court has heard about. This was the case where Richland County sued when the Department of Revenue decided to stop rendering the money back to Richland County because Richland County wouldn't agree with the Department of Revenue about what were legitimate expenses. And I have this case, and I've highlighted some things I'd like to draw the court's attention to.

THE COURT: Sure. Yes, sir.

MR. CARPENTER: In the Richland County case, there's headnote number 2, which I'll get to in the text in a minute, but the headnote of number 2 says that:

> The expenditure of millions of dollars in tax revenues was an issue of wide concern both to the DOR and to the residents and taxpayers of the county.

Well in that case, I think it was about $1 billion here in Richland County that they were going to raise over the twenty-five years or so. If you look over further into

the opinion.

THE COURT: What page?

MR. CARPENTER: Page 5, at the top of the page:

> The revenues generated from such a tax must be used in accordance with the statutory restrictions imposed by the General Assembly.

Now, that's pretty much black letter law that the county has to follow the General Assembly's restrictions that are written into the statute. Now the next paragraph:

> The local ordinance must specify the projects for which the proceeds of the tax are to be used.

And they say at the bottom of the next column, that they raised $1 billion for specified transportation projects. If you look at the next page:

> The penny tax fund expenditures that were unrelated to the specific transportation projects were improper as they exceeded the scope of the Transportation Act.

The supreme court was taking the act itself, looking at the conduct of Richland County, and finding where it fell short. Like I said, they did it right. They listed the projects; they listed the capital cost. That's fine.

The issue of standing arose later in the -- forgive me if I skipped over it. Bottom of Page 8, left column: The expenditure of millions ---

THE COURT: Give me a chance to find it, please. Yes. Go ahead.

MR. CARPENTER: The expenditure of millions of dollars of pretax revenues is an issue of wide concern both to the DOR and the residents and taxpayers of Richland County, and the circuit court correctly determined the DOR has standing, and we affirm.

They, they ruled there this was an issue of great public importance when Richland County was spending -- was raising and spending a billion dollars. Charleston County is raising and spending $3 billion, and we contend they are doing it in violation of the statute. So, if the Richland County case was of great public importance, then likewise the Charleston case is an issue of great public importance when they're violating the ---

THE COURT: Richland County or Charleston County?

MR. CARPENTER: Did I, did I misspeak?

THE COURT: No. Go ahead.

MR. CARPENTER: You think that 3 billion might not mean as much to Charleston?

THE COURT: I'm not sure about the coast. Go ahead, Mr. Carpenter.

MR. CARPENTER: Well, it made sense to me when I thought about it.

THE COURT: Okay.

MR. CARPENTER: Over on page 10, the court discusses the Department of Revenue's injunction. The Department of Revenue asked for an injunction to stop them from violating the statute. The trial court, Judge Cooper, denied the injunction. The supreme court imposed the injunction from the supreme court, and they say here ---

THE COURT: Well, a lot of trial judges around here don't pay much attention to other places sometimes. Go ahead.

MR. CARPENTER: I think they have to pay attention to the supreme court.

THE COURT: Well, maybe so.

MR. CARPENTER: They're not far away, you know?

THE COURT: They're right down the street near the post office.

MR. CARPENTER: That's right, yeah.

THE COURT: Or the John C. Calhoun building.

MR. CARPENTER: The supreme court said: It is

> axiomatic that the county's ordinance may not expand the scope of expenditures authorized in the enabling provision of the Transportation Act.

And I'm reading from page 10.

THE COURT: All right.

MR. CARPENTER: They also said: Local governments'

enactments and regulations must be authorized by the enabling act. They can do -- they can be no broader than the statutory grant of power, and a proper expenditure of the penny tax funds must be tethered to a specific transportation-related capital project for the administration of a specific transportation project.

So, the Richland County case, I think, stands for the proposition that they've got to specify. The supreme court read the statute and said the ordinance must specify the projects. And neither in 2004 nor in 2016 did they specify the projects as the statute requires with a description, with an estimated capital cost, and so on. They, like I said, in 2004 they specified only 113 million out of 1.3 billion. In 2006, they listed some projects but they didn't say what they were going to cost; they didn't specify the anticipated capital cost. So, the -- Charleston County, in passing these two ordinances, violated the enabling statute, enabling statute. And because they continue to collect these monies, they continue to violate the statute and, therefore, we think this is a timely brought case.

THE COURT: All right.

MR. CARPENTER: The second claim I'd like to address is that in 2016 -- and we've set this out in some detail in

the complaint and also in our memos in opposition. When Charleston County Council was discussing this second penny tax ordinance in 2016, they had squabble after squabble after squabble about whether they were going to specifically include the Mark Clark Expressway, which is the extension of 526 down to Daniel Island, I believe, and they were split down the middle. They couldn't get a vote through one way or the other. They couldn't get a vote through to ask for an advisory referendum. So, they finally pulled all references to the Mark Clark Expressway, or 526 or whatever they want to call it, out of the ordinance. That is not specified and intentionally not specified.

Well, the statute says they must specify, and they didn't do it. They just intentionally refused to specify that particular one. And there was a councilman who wrote an editorial just a couple days before the vote saying no, we took that out of there. The Mark Clark is not a part of this. We, we voted and we've given our word, et cetera, et cetera. And now three years later, they want to have a new ordinance and, and go back on their word that they made in 2006, but it's not just going back on their word.

There's a statutory violation that the project must be specified in the ordinance, and they specifically refused to include the Mark Clark Expressway in the ordinance. So,

they can't now spend these penny tax dollars on the Mark Clark when they specifically refused to do it.

But the broader principle is that when you have a referendum and you tell people what the referendum is going to say and they vote on it and they pass it, that you can't go back on what you told them the referendum was going to be. And this case -- the best case at this point is called *Cornelius vs. Oconee County*. If I could hand this up to the court?

THE COURT: Yes, sir.

MR. CARPENTER: This is a case I had some involvement with. There was, there was a lady named Susan ---

THE COURT: Mr. Sloan have any involvement in it?

MR. CARPENTER: No. She came to me independently. I'm not sure how she got me, but maybe it's because she heard of me from Mr. Sloan.

THE COURT: Okay. Go ahead, Mr. Carpenter.

MR. CARPENTER: Susie Cornelius lived up in the hinterlands of Oconee County.

THE COURT: Oconee?

MR. CARPENTER: Yes, toward the mountains.

THE COURT: Go ahead.

MR. CARPENTER: At the George coast, and back in '76 when they wanted to build a county sewer project, the way they got the referendum acceptable to the voters was they

said there'd be no taxpayer funds used to construct or maintain the sewer system.

THE COURT: So, was Macaulay in the senate during this period of time, Alexander Macaulay?

MR. CARPENTER: He may have been.

THE COURT: Yeah, probably was. Go ahead.

MR. CARPENTER: It was '76, but the senate didn't have anything to do with this. This was all county stuff.

THE COURT: All right.

MR. CARPENTER: The one -- there were three conditions on that referendum that, that -- well, three sources of funds: grants, money generated by the system, and I forgot one other thing. But did not -- the important thing is it did not include taxpayer money. So, they rocked along with that for twenty-something years.

And then the county fathers decided, well, we got a chance to, you know, get some development down here in the lower part of the county. We're going to use our taxpayer money. We're going to expand the sewer system down that way and pick up the rest area coming in from ---

THE COURT: Did that include West Union?

MR. CARPENTER: Yes. Well, this, this was specifically the rest area on the interstate, Interstate 85. They wanted to run some pump lines and so on.

THE COURT: Yes, sir.

MR. CARPENTER: So, she went complaining to the county about it, and the county attorney says I'll tell you what. I'll draft you a complaint, and you bring a lawsuit. We'll let the courts settle this. So, he drafted her a complaint. This is not in the opinion, but this is what happened, remember. He drafted her complaint and then she came to me, and we revised it and so on. We had a hearing and we won. The trial judge ruled they had to follow the conditions they had made in the referendum earlier. They appealed to the supreme court. The supreme court affirmed, and there are things in here that I think are relevant to the issue -- one of the issues in, in today's case.

On page 3 of the opinion, the court summarized the allegations:

> Cornelius contended this funding scheme of *ad valorem* tax dollars violated the conditions set by the '76 referendum.

Go over to the next page, the top of the left column: We hold ---

THE COURT: Page 4?

MR. CARPENTER: Yes:

> We hold that a county seeking to expand a utility cannot ignore the express terms of the referendum that initially authorized the county to own and operate the utility.

Farther down that column:

> Oconee County chose to include such a restriction in the referendum and presented to the voters. Accordingly, the voters of Oconee County approved the referendum but only on the condition that specific, non tax-based financing be used to construct, operate, and maintain sewer system. To now permit the county to use the fact of a favorable vote as a license to ignore the express terms of the referendum and deploy its general taxing power to finance the system wouldn't subvert the popular will and deprive the people of the right to protect themselves against the rule of man.

Gary Hill was sitting on the supreme court and he was assigned to write this, and he earlier talked about the rule of man vs. the rule of law. And, you know, the rule of law is what we have here, and by giving the county the right to go back on the terms of the referendum puts it under the rule of man and not under the rule of law.

THE COURT: Well, Gary's father was the expert in the county. Go ahead.

MR. CARPENTER: He, he was well thought of.

THE COURT: Yes.

MR. CARPENTER: Well sought out, yes, sir.

The next column, the county contended that they had general taxing power. You know, they had, you know, home rule rights and all that stuff, and the supreme court said:

> This general taxing provision does not prevail over the specific requirement of the constitutional referendum.

Below that:

> The county general taxing authority does not trump the constitutional requirement that electors approve the operation of sewer services by referendum. The county is bound by the terms of the referendum.

And they awarded as costs attorneys' fees in that case because the county cited no viable authority supporting its position it was no longer bound by the referendum's terms.

So in this case, they passed a referendum. They offered a referendum which the county passed, saying this money not going to be used for the Mark Clark. It's going to be used for these other things. Now they're trying to renege, to take that same penny tax money, and use it for the project they said they wouldn't. So, that, that -- they can't do that.

THE COURT: The Mark Clark Expressway, 526?

MR. CARPENTER: Yes, 526.

Now, South Carolina Public Interest Foundation, they

talked about standing, claims public interest -- public importance standing, as it often does, and we think these two issues are issues of great public importance. The supreme court said a billion dollars in Richland County is an issue-wide concern and great public importance, in effect. And then in the *Cornelius vs. Oconee County* when the supreme court and just one citizen said you got to hold that, hold the terms of the referendum, the promises you made to them. We think that when Charleston County ---

THE COURT: What cases do you cite? Were they motions to dismiss, or were they after a nonjury trial?

MR. CARPENTER: The *Cornelius* case, we had a nonjury trial.

THE COURT: All right.

MR. CARPENTER: The Richland County case, there were cross motions but not a full trial. The, the county asked for an injunction. The Department of Revenue asked for an injunction. The Department of Revenue asked for a conservator to be appointed.

THE COURT: Yeah.

MR. CARPENTER: That all got sorted out by Judge Cooper, but he denied the DOR's request for an injunction. The supreme court reversed him on that and said we're issuing an injunction right now and ---

THE COURT: And Justice Beatty dissented about the

injunction.

MR. CARPENTER: He dissented on something. I can't remember what.

THE COURT: It's all right. Go ahead.

MR. CARPENTER: But the, but the supreme court sent it back down to the trial court, saying you do a more extensive injunction. I want some details about what following the statute is going to look like, and then they went ahead and did some work in the trial court implementing the supreme court's injunction. But they issued an injunction themselves.

But anyway, what my point was, these cases that are so much like ours were issues of great public importance. And when, when the county is violating the statute to the tune of $3 billion, and when the county wants to go back on the referendum and try to change the referendum with a county ordinance, that ought not to be done, and those are issues of public importance that need to be addressed by the court.

Now, we have also alleged that the individual plaintiffs in this case have taxpayer standing. They say, oh, taxpayer standing doesn't exist anymore. Well, I contend that it does. There are -- there's, there's a case that they refused taxpayer standing for a state taxpayer on a state issue. But there is a whole myriad of cases where

cities and county governments violate the law and it has to involve the collection or payment of taxpayer money, that when they do that, they have illegal collection ---

THE COURT: It's got to be a taxpayer of Charleston County or Richland County. It can't be somebody from Florence County, right?

MR. CARPENTER: That's right, and not every -- and the supreme court said in the Maulden case 120 years ago not everybody that lives in the county is necessarily a county taxpayer. Now back in those days, I think maybe they were talking about property taxes and not everybody owned property, but not every citizen is a taxpayer. And the taxpayers have standing because they're the ones paying money into the fund and they have standing -- the cases have said over and over again -- to object to illegal payments coming out of the fund, and that's what these taxpayers are doing. But we don't need more than one kind of standing.

But we've alleged public interest standing. We've alleged taxpayer standing. There's a third kind is like a little bit of a hybrid between the two, and Justice Toal talked about this in a couple of opinions. And that is when a, when a governmental body commits an *ultra vires* act, the court has granted standing to a citizen taxpayer to contest the *ultra vires* acts of governmental officials.

So, we have standing, we think, on three bases. The foundation, of course, we only have standing on public importance and *ultra vires*, but the citizens who live there and pay the tax and, and the foundation that is organized there and pays the tax, they have standing as taxpayers as well, but we only need one kind of standing, but we think we have all three kinds.

THE COURT: All right.

MR. CARPENTER: So, we think we have standing. We've stated at least two claims.

Now my colleague here, we've stated several in the complaint, but he's going to address the other causes of action, but I wanted to focus on these two here because I had some familiarity with them.

THE COURT: Thank you, sir.

Yes, sir.

MR. GOWDER: Your Honor, good afternoon.

THE COURT: Yes, sir.

MR. GOWDER: Andy Gowder for the Conservation League and Mr. Jenkins and Ms. Smith. And, Your Honor, to use a phrase that I heard you use in another matter this afternoon, I will try not to plow the same ground.

THE COURT: That's all right.

MR. GOWDER: That Mr. Carpenter did and, and we'll go -- we'll try to be brief.

Two things, Your Honor, that this case is not. I think they address some things that Mr. Dawson talked about. One thing that this case is not, this is not about change. We're not looking at any irregularities with the ballot either back in '04 or '06 or in '16. Those items that were properly identified as projects in those ordinances can be properly funded. Our point is this project, the 526 extension, that 8 miles that they want to pay for, was not in any of these ordinances and so can't be funded using the half-cent sales tax. That's point number one. So, there is no time-bar issue because it's not a ballot challenge under that statute.

The second thing that I'd like to say is that this is not a tax appeal. So, this court has full general jurisdiction over this matter because it's not a manner in which any of our plaintiffs are arguing about amount of tax or the fact of tax. Rather, what we're saying is that the public funds that are being collected are being used improperly, and so this court has full jurisdiction to decide this matter.

Your Honor, with regard to standing -- and Mr. Carpenter, I believe, is the, is the expert on it. He's probably litigated more standing cases than anybody I know. He addressed it very well, but I would like to add one additional point and, and, and hand up the case that we

cite, Your Honor, and if I may approach the bench?

THE COURT: Yes, sir.

MR. GOWDER: I want to hand up the case of *Vicary vs. The Town of Awendaw* because it's a little unusual. It is one in which the Conservation League, my client, and an individual were plaintiffs, and as the court I'm sure knows, in a 100 percent annexation case, the rules about standing and objection by anybody are very, very strict, but in this case the facts were unusual. And the court found that the plaintiffs had standing to object and found public interest standing. And on page 7 of 8, Your Honor, the court in the right-hand column, middle paragraph says:

> While this court has previously declined to utilize the public importance exception in a zoning and annexations dispute, unique facts present here compel a contrary decision.

And then down at the bottom it says:

> Unlike the local government in the ATC case, the town allegedly did not comply with the proper procedure, instead representing to the public that it had received a signed petition from the forest service when, in fact, it had not.

The point is that, you know, this case is a case that involves the use or misuse of public money. It also involves, like this case, local governments that aren't

following rules and the courts are -- have been -- the supreme court and the court of appeals have been clear that in those cases, there is public importance standing to raise objections to local governments that are not following the statutes and that are dealing improperly with public funds. So, we believe all of our plaintiffs have public importance standing in this case.

Your Honor, with regard to the -- quickly with the -- some of the causes of action, Mr. Carpenter dealt very well with the *Cornelius* case and the contract with the voters case. I've got one other case that I think is enlightening and really on all fours, I think, with the facts of this case. If I may approach and hand it up?

THE COURT: Yes, sir.

MR. GOWDER: We cite it in our brief, but it's a circuit court decision, so it's not reported to the appellate decisions. It's the *Estes* case out of Dillon County. And, Your Honor, the thing that is interesting about this case is that the court in this case looked beyond the language of the referendum or the order -- ordinance itself and looks at the parole evidence around what the county said that they would do. And that's really what we've got in this case. We've got what the ordinance says, which we don't really have an objection to because it doesn't mention the 526 case.

But what we object to is that around the submission of this matter to the voters, all of the debate and votes at county council indicated that these monies that were authorized in 2016 would not be used for 526 because it was controversial, and they wanted to make sure that they could get the sales tax referendum passed. And, in fact, they went so for after they voted to approve the ordinance and sent it to the voters, one of the county council members days before the election ---

THE COURT: Wrote an editorial.

MR. GOWDER: --- wrote an editorial and said we're not going to use it, and now they want to. So ---

THE COURT: Parenthetically, who was Mark Clark anyway? Does anybody know?

MR. GOWDER: He was a general in World War II.

THE COURT: That's what I thought.

MR. GOWDER: Yes, sir. So, anyway, the *Estes* case is similar in the ---

THE COURT: They like to name bridges in Charleston after generals.

MR. GOWDER: They do. We've got Westmoreland and Clark and all kinds of things.

THE COURT: Yeah. Yeah. Go ahead.

MR. GOWDER: So, anyway, that's, so that's that cause of action, Your Honor. We've also got a cause of action

with regard to the procedural violations in passing these ordinances and not giving the appropriate notice under the appropriation statutes.

And, in fact, it's interesting that with regard to one of them, they tried to go back and fix it. That's the one that Mr. Dawson says he thinks is moot now, but in trying to go back and fix it, they violated the Freedom of Information Act because what they did was they listed the sales tax as an agenda item on the finance committee meeting, and they did list that they were going to go into executive session. But what they didn't say is that the executive session would be about the agenda item. And, in fact, what was announced was they were going to go into executive session to talk about this lawsuit, not the sales tax. And then there was no indication on the ---

THE COURT: How do you know what they talked about?

MR. GOWDER: We don't, but what we, what we, what we -- we do know what they did when they came out, and what they did when they came out is they tried to fix the ordinance.

THE COURT: All right.

MR. GOWDER: And there's no indication on the executive committee item -- on the agenda that they would take action on that when they came out. The *Brock vs. Mount Pleasant* case would require them to do so.

So, Your Honor, the point is we don't -- we can't possibly litigate all of that here. The point is it's a 12(b)(6) motion. We filed this ---

THE COURT: I know. It's a motion on the pleadings, isn't it?

MR. GOWDER: Well, it's a 12(b)(6). It's on the pleadings, confined to the four corners of the complaint, everything assumed to be true, and we believe that we've filed a -- an extensive and detailed complaint, and we believe we stated a cause of action.

THE COURT: All right. That's fair enough.

MR. GOWDER: And we ask that you deny it.

THE COURT: Thank you, sir.

Yes, sir.

MR. DAWSON: Your Honor, in brief reply and will probably go in somewhat reverse order just so that we can address some of the things you just recently heard.

Your Honor, I don't know if you have the complaint in front of you, but Mr. Gowder has just told you that the reason for going into executive session wasn't on the agenda. He said the agenda listed transportation sales tax budget, but we didn't, but we did.

Well, the problem is their pleading says it was listed. In paragraph 88 of their pleadings -- I'm not going outside the record on this one. This is exactly what

they told you. They say their -- they say:

> The county attorney stated there is a need for an executive session to talk about this agenda item.

I'm sorry, this agenda item was transportation sales tax which he just said was on the agenda, and then it says:

> This agenda item associated with a lawsuit that was filed by the Coastal Conservation League.

So, their argument to you today is you should not dismiss this cause of action because the county didn't have the transportation sales tax agenda item on the agenda, when it did, and that the county didn't state the reason for going into executive session, but their very pleadings say that. So, whether I agree or disagree to their point, that's the words they use. They say in their complaint that there's a need for executive session to talk about this agenda item -- this agenda item is the transportation sales tax budget -- associated with a lawsuit filed by the Conservation League against the county.

I don't know what more -- how much more clear can it be on what the issue was that was on the agenda that county council ultimately went into executive session and then came back on this agenda item, which was not an unnoticed item, and then took action, and then in the, in the county council meeting where votes are taken with finality. The fact that they were taking votes on that issue was put on

the agenda.

The agenda stated -- and, Your Honor, I point you to in the document I handed you, it is Exhibit, I believe, G and H. G lists the item as transportation sales tax budget and item H lists items from special finance committee of August 29 if needed, and then it references recommendations such that the public is on notice that county council may take action on recommendations coming out of finance.

Your Honor, as it relates to this notion of -- he mentioned parole evidence, I suspect with regard to the ordinance. I'm not sure of the context there, but the case that he cited is a, a circuit court case. And the comment he made was that all votes that are undertaken -- basically the point he's trying to make is that county council comments led the voters to believe what the referendum was about.

Your Honor, we're going right back to the very thing I started with where they said this case is not about the referendum. This case is not about the ballot question. Your Honor, numerous times in their complaint, they challenge the referendum and the ordinance. Your Honor, again in the book that I handed up to you, I want to draw your attention to two exhibits. These exhibits are Exhibits E and F, and I draw your attention to those because E and F are an excerpt from the ordinance which

represents the referendum that was presented to the voters.

The reason why I point that to your attention, Your Honor, they say the Mark Clark wasn't on the referendum. Your Honor, if -- and again I almost, I feel like it would be insulting to you to ask you to look at this piece of paper, but this piece of paper references the ballot that was in front of the voters, and it simply says:

> Project number 1: financing the cost of highways, roads, streets, bridges, and other transportation-related project facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly by the county and other governmental entities.

Then it has a dollar value for that project: $1.8 billion. They say, Your Honor, it doesn't mention the Mark Clark. Therefore, you can't use it. Well, Your Honor, if that's the argument, it didn't mention any road either, but that was the project that was listed by which the voters in 2016 -- and, Your Honor, with the exception of the dollars to be raised, that's the same question from 2004. Obviously in 2004 it generated less than it did in 2016.

Your Honor, the second project listed says: Financing costs of greenbelts, 210 million. Again, it didn't list which greenbelts in Charleston County the county would use

those funds for. Yet the argument that you just heard today was that the enabling legislation requires something more than the sample ballot question.

Your Honor, they handed you statute 4-37-30. Your Honor, on page 2 of that statute, there is a sample ballot question. Your Honor, the sample ballot question and the ballot question used by the county in 2004 and 2016 are the exact same, yet they are telling you that what the legislature did violates the law. It can't violate the law. It's the same question in the statute.

Your Honor, in the whole presentation today, not one time did they invite you to look at the actual ordinance that they claim violates the law, not one time. Well, Your Honor, in the book I handed you -- and it was attached to their complaint -- it references both the 2004 ordinance and the 2016 ordinance. And, Your Honor, surprisingly, the language I just read to you in the record is the same language in the ordinance, yet they tell you today it doesn't mention the Mark Clark.

Your Honor, the problem with this argument today is the very thing the voters went into the voting booth to vote on is exactly what you have in front of you. Your Honor, their argument, however, is, well, you should rely on what elected officials say in meetings because obviously that's what you have to rely on, but don't rely on their

vote.

Well, Your Honor in our brief on page 7, we don't cite to a circuit court case. We cite to an appellate court case. We cite to the court of appeals, and on page 7 it says:

> We are aware of no authority allowing someone challenging the action by a council to interrogate members individually to impeach council's decision.

So, what they're asking you to do, Your Honor, is to rely on what a single council member said, whether it be in an editorial or otherwise, or through the product of a debate on the council floor to form the basis of what the referendum was all about. That opinion goes on to say:

> The governing body of a municipality acts as a collective body ---

That's not a surprise.

> --- not as individuals, and discussions made in this fashion are the product of debate and compromise.

Again, this is the court of appeals. If individuals are not satisfied with the decisions by members of municipal government within the limits of the law, the court of appeals said it's fine at the polls -- excuse me, it's at the polls, not the courts. You don't go to the

court to complain about what a council member promised, if, in fact, that was a promise. You say you don't get elected again.

That's what the court of appeals says, yet they tell you that, well, you should rely on what they're saying during debates. You should ignore what the actual ordinance says, and you should ignore what the referendum says because those don't count. The very things that they allege are the basis by which they are bringing this lawsuit, you should, you should ignore it.

Your Honor, I think again to the ordinance, earlier on in this presentation, they assert that the 2004 sales tax ordinance only identifies 10 percent of the $1.3 billion to be collected. That's what they told you. Again, if they didn't take you to the ordinance to show you where it says that -- because that would require you to actually look at the law and then see that the law that they are referencing -- which you should not take as true. You should look to the law to see what the words say because they are unambiguous.

The reference to the 10 percent was the fact that the county's ordinance and the referendum allowed the county to offer or present to the voters two things, two questions. First, the question on imposing the tax and the second, to issue bonds. Your Honor, the issue of the 10 percent

they're referring to is the bonds that the county council asked the voters to consider. It was $113 million in bonds, which represents about 10 percent of the $1.3 billion that they were asking the voters to impose a tax on.

And so in the bond portion of the ordinance, it does list some projects by which the county may issue bonds to go work on, but that was not the project list. The project list, Your Honor, is the very same list I read to you which identifies project number 1 and project number 2. It specifies, as they have indicated to you under the enabling statute, on page 1 of that enabling statute, it identified the project as project number 1, which is completely verbatim with the statutory ballot question. It equally provides the description of projects I indicated to you it was financing the cost of, and I read off a variety of items. And then equally, Your Honor, at the end of that ballot question and in the ordinance, it specifies the amount of money to be collected. That conforms with the statute. Yet again in the presentation, they simply draw conclusions, which is all they've done, but don't invite you to look at the law for you to construe the law as it's written, not based on the other arguments that are being raised.

Your Honor, I want to bring up one more point again,

then I will close my presentation, and that is this notion of standing. Your Honor, the cases have been cited all stand for the proposition of standing. However, one of the cases they've mentioned to you was the Richland County vs. -- excuse me, which was the Public Interest Foundation case vs. the DOT and a Richland County case. All stand for the proposition that there was two things involved. One, I acknowledge that they argued that this is a matter of public importance. We'll tell you in other cases, they have argued that it's not a matter of public importance. But in the DOR case, the supreme court also relied on the fact that the DOR had a statutory duty, and they said that the public importance coupled with a statutory duty suggests they have standing.

In the *Department of Transportation* case, the court said that there is no guidance on this issue. Chief Justice Beatty used the word no guidance. Your Honor, I've already submitted to you the *Douan* case which offers guidance because our supreme court in that case construed the ballot and the ordinance and drew the conclusion that the question was not flawed for the lack of listing the projects as project 1 and 2, describing them based on what the statute said, and drawing a conclusion on the amount of money. In the case that the supreme court construed, they said that the county's language, which is not the language

I used here today, had advocacy language in it, and it directed the county to strip out the advocacy language and use the sample question in the statute. That's all I have.

THE COURT: Yes, sir.

MR. CARPENTER: It occurs to me that my colleague, who gave a very fine presentation, might be mixing up the requirements of the referendum and the ordinance. The statute speaks to the ordinance and the ordinance requires the specificity that I discussed earlier. He wants to talk about the referendum, but the statute talks about what the ordinance has to have and the ordinance is required to specify, and we gave them the benefit of the doubt on the 113 million. If he is right, they talked about 113 million in light of the bond, but at least they named the project and said how much money they were going to spend on it. So, we gave them the benefit of the doubt on that.

But this thing where you lump the whole billion dollars together we contend is not specifying anything. It certainly doesn't comply with the statute. If he thinks it does comply with the statute, then I think we need some judicial guidance on that question.

I think the *Richland County vs. The DOR* case said pretty clearly that you have to specify these things just like the statute says. An expenditure has to relate to a specific project. So, we've alleged they violated the

enabling statute; they violated their word on the referendum, those two issues.

Now, I don't know if they're embarrassed by the fact that they're now trying to go back on what everybody said, but that's not the issue. That, that's color. That's background and flavor, but the important point is that ordinance did not specify the Mark Clark Freeway, and the statute requires them to specify and, therefore, we think we've stated two good causes of action that call for public importance standing, as well as the taxpayer standing and *ultra vires* standing.

THE COURT: All right. Thank you, Mr. Carpenter. Anything further?

MR. GOWDER: Your Honor, very briefly. Mr. Dawson suggests that we don't want you to read the ordinances. We, we attached the ordinances to our complaint. We invite you and ask you to read them.

In every case, the ordinance lists the projects that are to be funded by this ordinance and by -- and as approved by the referendum. In every case. And, in fact, you know, interestingly in the 2006 ordinance, 14-54, the projects are actually listed in the question themselves. Now, they're not listed in the ballot questions in 13-24-1907, but they're certainly part of the ordinance, and that's what the ballot -- that's what the voters were

voting on. And, in fact, the ballot question was part of the same ordinance. You can't separate the two.

So, you know, our position is that the projects that were authorized in each instance when listed in the ordinance, those are the ones that can be funded. Mark Clark was not included. It can't funded.

THE COURT: All right.

MR. GOWDER: Thank you.

THE COURT: All right, thank you for your lively presentations. How much time do y'all need to submit proposed orders, and I'm being generous as I always am. It doesn't matter to me. It might matter to y'all. Look at your schedules, make a decision. I'll set a time limit. If you need additional time, just let me know.

MR. CARPENTER: He wants twenty. We'll go along with that.

MR. GOWDER: Twenty days.

THE COURT: All right. That's fine. All right, good luck to both sides.

--- END OF TRANSCRIPT OF RECORD ---

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CASE NO. 2019-CP-40-03032
South Carolina Coastal Conservation League, Inc., Elizabeth M. Smith, Abraham B. Jenkins, Jr., and South Carolina Public Interest Foundation, Plaintiffs, vs. Charleston County, South Carolina, South Carolina Transportation Infrastructure Bank, and South Carolina Department of Transportation, Defendants.	**DEFENDANT CHARLESTON COUNTY'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendant Charleston County, South Carolina ("Charleston County" or the "County"), submits this Memorandum of Law in Support of its Motion to Dismiss Plaintiffs' Second Amended Complaint. This motion is based on the grounds that 1) the Plaintiffs lack standing to bring this action; 2) the Plaintiffs' 2004 and 2016 Transportation Sales Tax Referendum Ballot question declaratory judgment claims are time-barred pursuant South Carolina Election laws; 3) the Plaintiffs' claims fail to state facts sufficient to constitute a cause of action regarding the County's authority to fulfill the South Carolina Transportation Infrastructure Bank Act's ("Infrastructure Bank Act" or "Act") requirements or to implement the Act's financing agreement obligations in the First Amended Intergovernmental Agreement for Charleston County Mark Clark Expressway Extension Project in Charleston County, South Carolina ("2019 IGA") pursuant to Rule 12(b)(6) SCRCP, or in the alternative, the Plaintiffs' claims are moot by subsequent legislative acts of Charleston County Council ("Council"). Further, if the Plaintiffs have standing and their claims are not barred, to the extent the Plaintiffs have a dispute concerning property taxes, the South

Carolina Revenue Procedures Act is the Plaintiffs' exclusive remedy. See, S.C. Code Ann. §§ 12-60-10 to -3390 (2014 & Supp. 2018). Therefore, this Court should dismiss Plaintiffs' complaint.[1]

FACTS

The Mark Clark Expressway ("MCE") is an interstate facility, which begins at an uncompleted interchange with US 17/Savannah Highway and SC 7/Sam Rittenberg Boulevard in the West Ashley section of the City of Charleston, South Carolina. The interstate currently terminates in a partial flyover interchange onto US 17N/Johnnie Dodds Boulevard in Mount Pleasant, South Carolina. The completion of the MCE involves the construction of approximately 8 miles of highway from James Island to West Ashley. In 2006, the Infrastructure Bank approved the MCE as an eligible project under the South Carolina Transportation Infrastructure Bank Act. In 2007, the County, the South Carolina Department of Transportation ("SCDOT"), and the Bank entered a three-party Intergovernmental Agreement ("2007 IGA"), pursuant to the Infrastructure Bank Act. See, S.C. Code Ann. § 11-43-180(A) ("The bank may require the government unit or private entity to enter into a financing agreement in connection with its loan obligation or other financial assistance.").

Under the 2007 IGA, the Bank committed to providing $420 million in financial assistance to complete the MCE. The SCDOT agreed to provide project oversight, management, and accept the project into its maintenance system when completed. The County, as the project sponsor, agreed to provide a local match of $117 million from proceeds of the Charleston County

[1] "When the issue is the existence of jurisdiction in fact, the court is not confined to the allegations of the complaint, but may resort to affidavits or other evidence to determine its jurisdiction." Graham v. Lloyd's of London, 296 S.C. 249, 251, 371 S.E.2d 801, 802 (Ct.App.1988); see also, Sec'y of State for Defence v. Trimble Navigation Ltd., 484 F.3d 700, 705 (4th Cir. 2007) ("In reviewing the dismissal of a complaint under Rule 12(b)(6), we may properly take judicial notice of matters of public record."). Therefore, the County proffers "matters of public record" to support its motion to dismiss.

Transportation Sales Tax ("Transportation Sales Tax" or "TST")[2] for highway and road construction and improvements, pursuant to the schedule attached to the 2007 IGA. In January 2019, the parties agreed to an Amended Intergovernmental Agreement ("2019 Amended IGA"). See, Ex. C, 2019 Amended IGA. However, the Bank's financial assistance has not changed (i.e., provide $420 million to complete the MCE). The SCDOT's role has not changed (i.e., manage/administer the project and when completed, accept the MCE into its maintenance system).

Instead, the MCE's project costs have escalated to approximately $725 million. Conversely, the Infrastructure Bank conditioned its continued financial assistance for the project on the County's commitment to guarantee payment of the cost escalation to complete the MCE. See, S.C. Code Ann. § 11-43-130(8) ("The term 'financing agreement' includes, without limitation, a loan agreement, trust indenture, *security agreement*, reimbursement agreement, *guarantee agreement*, bond or note, ordinance or resolution, or similar instrument.") (emphasis added). As a result, the 2019 Amended IGA contractually obligates the County (among other financial considerations) to cover project costs above the Bank's $420 million commitment, to include an appropriation pledge stating, "[t]he County Council shall adopt a budget for each Fiscal Year appropriating revenues of the Sales Tax, or any federal or state grant proceeds, or any lawful source to fund the payment obligations of the County under this Agreement." 2019 Amended IGA, Article III, Section 3.2(C); see also, S.C. Code Ann. § 11-43-190(C) ("A qualified borrower may . . . pledge, assign, and grant security interest in project revenues, and, in the case of a

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[2] The Optional Methods for Financing Transportation Facilities Act ("Transportation Act" or "Act") authorizes counties to impose a sales and use tax not to exceed one percent to fund transportation projects to include: highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities in Charleston County. See, S.C. Code Ann. § 4-37-10 et seq. Pursuant to the Act, the County has enacted two ordinances imposing a ½ penny tax each as a result of two voter approved referendums. See, Ex. A, County Ordinance Number 1324 – 2004 Transportation Sales Tax, and Ex. B, County Ordinance Number 1907 – 2016 Transportation Sales Tax.

governmental unit, its project revenues, revenues derived from a special source or ad valorem taxes, to secure its obligations as provided in this chapter . . . to meet its obligations under a *financing agreement* . . . .) (emphasis added), and S.C. Code Ann. § 11-43-190(A) ("Qualified borrowers [may] . . . make and carry out any contracts or agreements with the bank as may be agreed to by the bank and any qualified borrower . . . .").

The Plaintiffs are the South Carolina Coastal Conservation League, Inc. ("CCL") and the South Carolina Public Interest Foundation ("SCPIF"), two South Carolina non-profit corporations that purport to have thousands of supporters who are citizens of South Carolina, and two named individuals. The Plaintiffs have filed this action challenging (among other procedural issues[3]) the County's authority to commit proceeds of the 2004 and 2016 Transportation Sales Tax to fund the MCE. Specifically, Plaintiffs challenge whether "either County Ordinance Number 1324 or County Ordinance Number 1907 authorize transportation sales tax expenditures for the Project due to the factual circumstances surrounding their adoption *and the ensuing referenda.*" (emphasis added). Second Am. Compl. ¶ 16. In addition, Plaintiffs question under the auspice of the "contract with voters" doctrine whether ". . . S.C. Code Ann. § 4-37-10, et. seq., and the language of the aforementioned Ordinances prohibit First Half Cent and the Second Half Cent revenue from funding the Project." Second Am. Compl. ¶ 34, citing, 16 MCQUILLIN MUN. CORP. § 44:238 (3d ed.). Lastly, Plaintiffs contend that ". . . Paragraph 3.2(C) of the Amended IGA is void and unlawful to the extent it purports to bind future County Councils and require them to use their

[3] For instance, Plaintiffs allege the County failed to properly appropriate funds to pay its initial draw request from the SCDOT. See, Second Am. Compl. ¶ 82(f). The County has rescinded its action making the initial appropriation and simultaneously approved funding from its approved Fiscal Year 2019 Transportation Sales Tax operating budget. See, Ex. D, Council Action 19-243. Therefore, Plaintiffs' claim is moot. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." S.C. Pub. Interest Found. v. S.C. DOT, 421 S.C. 110, 120, 804 S.E.2d 854, 860 (2017).

legislative authority to commit First Half-Cent and Second Half-Cent revenue. Paragraph 3.2(C) is unenforceable by the Bank, the SCDOT, or others against future County Councils." Second Am. Compl. ¶ 41.

The County contends Plaintiffs have not pled a valid basis for standing to initiate these claims or sufficient facts to constitute a cause of action, and in the alternative, the South Carolina Administrative Law Court maintains jurisdiction over actions involving the collection of taxes. Therefore, this Court should dismiss this case.

ARGUMENT

I. PLAINTIFFS LACK STANDING TO BRING THIS ACTION AGAINST CHARLESTON COUNTY.

The Plaintiffs as non-profit corporations and citizens of South Carolina fail to present a justiciable case or controversy to challenge the validity and enforceability of the 2019 Amended IGA; and therefore, they cannot invoke the judicial power of this Court to adjudicate their claims. "[A] private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom." ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 198, 669 S.E.2d 337, 340-41 (2008). Before the Plaintiffs can initiate a lawsuit against the County, they must demonstrate that they have standing to do so. "A threshold inquiry for any court is a determination of justiciability, *i.e.*, whether the litigation presents an active case or controversy." Lennon v. S.C. Coastal Council, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct.App.1998). "Standing to sue is a fundamental requirement in instituting any action." Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). "No justiciable controversy is presented unless the plaintiff has standing to maintain the action." Lennon, 330 at 415, 498 S.E.2d at 906.

To have standing, "one must generally have a personal stake in the subject matter of the lawsuit, i.e., one must be a real party in interest. A real party in interest is one with a real, material, or substantial interest." Baird v. Charleston Cnty., 333 S.C. 519, 530 511 S.E.2d 69, 75 (1999); see, Baird supra, n.7 ("The right of a plaintiff to maintain a suit, while frequently treated as going to the question of jurisdiction, goes, in reality, to the right of the plaintiff to relief rather than to the jurisdiction of the court to afford it.") (citation omitted). Under South Carolina law, a party can acquire standing: "(1) by statute; (2) through the rubric of 'constitutional standing'; or (3) under the 'public importance' exception." ATC S., 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). Plaintiffs do not plead standing based on a statute; however, they assert they have constitutional, public importance, taxpayer, and associational standing. Second Am. Compl. ¶¶ 53-76. None of the Plaintiffs' claims satisfy the standing requirements.

A. Constitutional Standing.

The Plaintiffs mistakenly believe they meet the common law test for constitutional standing because they "*voted on*" the 2004 and 2016 Transportation Sales Tax referendums, based on the understanding and representations of County Council (and the ordinances) that 2004 and 2016 Transportation Sales Tax revenues would not be used to fund the MCE. See, Second Am. Compl. ¶¶ 59 and 63. Plaintiffs cite to comments made by individual Council members during public debates over the adoption of the 2016 Transportation Sales Tax Ordinance. However, there were no debates by Council in 2004 regarding the use of Transportation Sales Tax revenues for the MCE because the Project was initiated in 2006. See, Ex. C, 2019 Amended IGA. Equally, the Plaintiffs claim that the expenditure of sales tax ". . . revenue[s] for the Project directly, materially, and substantially *undermines the goals* of improved connectivity of existing roadways, safety improvements, public transit, drainage facilities and flood control, bicycle lanes, and as a result

Greenbelt funded conservation initiatives will all suffer and not be *completed as pledged* and promised by the County," and that they "*pay First Half Cent and Second Half-Cent sales Tax on a regular basis.*" See, Second Am. Compl. ¶ 58; see also, Second Am. Compl. ¶ 60 (emphasis added).

At the outset, Plaintiffs alleged comments from individual Council members, if accurate, are not binding on Council as a legislative body in 2004, 2016, or today. The South Carolina Court of Appeals *in dicta* rejected a similar attempt to attack individual council member's comments stating:

> We are aware of no authority allowing someone challenging action by Council to interrogate members individually to impeach Council's decision. The governing body of a municipality acts as a collective body, not as individuals, and decisions made in this fashion are the product of debate and compromise. If individuals are not satisfied with decisions made by members of a municipal government within the limits of the law, their remedy is at the polls, not the courts.

Bear Enters. v. Cnty. of Greenville, 319 S.C. 137, 139 n.1, 459 S.E.2d 883, 885 (Ct.App.1995)

Moreover, Plaintiffs' reliance on aspirational goals like "improved connectivity of existing roadways, safety improvements, public transit, drainage facilities and flood control, bicycle lanes" are insufficient facts to support, let alone prove, standing. See, Second Am. Compl. ¶ 58. The United States Supreme Court in Lujan v. Defenders of Wildlife provided a three-part test to establish constitutional standing:

> **First**, the plaintiff must have suffered an "injury in fact"- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ""actual or imminent, not 'conjectural' or 'hypothetical,'" **Second**, there must be a causal connection between the injury and the conduct complained of - the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." **Third**, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)(emphasis added).

The South Carolina Supreme Court in ATC S., citing Lujan, held that "[t]he principle of standing under the United States Constitution is 'an essential and unchanging part of the case-or-controversy requirement of Article III.'" ATC S., at 195, 669 S.E.2d at 339. Moreover, "[t]he party seeking to establish standing carries the burden of demonstrating each of the three elements. Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res., 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001). The Plaintiffs fail to meet these immutable principles in this case. For instance, Plaintiffs' claim and status as taxpayers do not meet the standing threshold under South Carolina law. The South Carolina Supreme Court in ATC.S, rejected a similar claim holding that:

> The injury to ATC, however, as a taxpayer is common to all property owners in Charleston County. This feature of commonality defeats the constitutional requirement of a concrete and particularized injury. As the United States Supreme Court observed, a taxpayer lacks standing when he 'suffers in some indefinite way in common with people generally.' Frothingham v. Mellon, 262 U.S. 447, 488, 43 S. Ct. 597, 67 L. Ed. 1078 (1923).

ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 198, 669 S.E.2d 337, 340-41 (2008)

The South Carolina Supreme Court has reaffirmed this principle in Bodman v. State, holding that "[h]ere, to the extent Bodman has suffered or will suffer any harm as a result of this tax scheme, this harm is shared by all taxpayers in the State. In ATC S., we unanimously closed the door to a litigant asserting standing simply by virtue of his status as a taxpayer for this reason." Bodman v. State, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013).

Similarly, the Plaintiffs' status as voters[4] and members of associations with common interests do not meet the common law test for constitutional standing. As a threshold matter, CCL

[4] The Plaintiffs do not allege that they or their memberships voted to support (let alone were even eligible to vote on) the imposition of the 2004 and 2016 Transportation Sales Tax. In fact, the CCL indicated that it "withdrew support for the ordinance after County Council amended the project list without public support and later made the project list non-binding . . ." See, CCL Motion for Leave to File Amicus Curiae Brief, Case No. 2017-001606. Therefore, the Plaintiffs have not established a factual basis to support standing to challenge the alleged promise they claim was made to induce their support.

and SCPIF mention the phrase "associational standing" only once in their complaint. Moreover, CCL does not claim it is bringing this action in its individual capacity, rather it only makes passing references to acting on behalf of its organizational members. Equally, SCPIF only claims that it is bringing this action individually and on behalf of all others similarly situated, as a representative of taxpayers. See, Second Am. Compl. ¶ 56. The nonprofit corporations' claims fail to meet the common law test for associational standing. South Carolina law provides that:

> An organization has associational standing 'if one or more of its members will suffer an individual injury by virtue of the contested act.' (citation omitted). 'The three part test for associational standing requires that an association's members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'

Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 76, 753 S.E.2d 846, 851 (2014).[5]

Under South Carolina law, the nonprofit corporations' associational standing claims do not create a safe harbor for their generalized and aspirational injuries *vis a vis* a concrete and particularized injury. As concluded above, the taxpayers and individual association members have not suffered a concrete, particularized injury because they fail to show a personal interest other than that shared in common by all members of the public. Plaintiffs' members of the nonprofit corporations have asserted that the County's expenditures of the Transportation Sales Tax revenues on the MCE

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[5] The plaintiffs in the Carnival Corp. case consisted of four citizens' groups, which included the South Carolina Coastal Conservation League, Inc., one of the Plaintiffs in this case. In the Carnival Corp. case, the Historic Ansonborough Neighborhood Association made numerous allegations to the effect that they suffer harm that would adversely affect their quality of life because of noise, pollution emissions, traffic congestion, particulate soot emissions from ships burning diesel fuel, and the visual disruption of Charleston's historic integrity and aesthetic beauty. Carnival Corp., 407 S.C. at 76-77, 753 S.E.2d at 851. The Supreme Court decided that the plaintiffs in Carnival Corp. failed to establish the first element of associational standing. The Court stated, "We hold these injuries, even if actually suffered by individual complainants, are 'only generalized grievances suffered by the public as a whole which are insufficient to establish standing.'" Id.; see also, supra Lujan, 504 U.S. at 560, n.1 ("By particularized, we mean that the injury must affect the plaintiff in a personal and individual way."). Carnival Corp. 407 S.C. at 72, 753 S.E.2d at 849.

"directly threaten the CCL's and its supporters' interests" because the expenditures "will inevitably come at the expense of the specific projects identified in Charleston County Ordinance Numbers 1324, 1454, and 1907," and ". . . undermines the goals of improved connectivity of existing roadways, safety improvements, public transit, drainage facilities and flood control, bicycle lanes, and as a result Greenbelt funded conservation initiatives will all suffer and not be completed as pledged and promised by the County." Second Am. Compl. ¶¶ 57-58. To the extent the above-referenced claims are injuries, these injuries are suffered by the public at large. The South Carolina Supreme Court has already determined that generalized, and aspirational allegations of injury are insufficient to establish standing.

Assuming *arguendo* that the nonprofit corporation Plaintiffs survive the first prong of the constitutional standing test, they fail to satisfy the third prong of the three-part associational standing test in Carnival Corp – that neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

> In my view, in order to satisfy this prong, the organization must show that the right it seeks to vindicate is common to the membership and the interests of the harmed members in the proceeding derives from their membership. (citation omitted). '[T]he association may assert the rights of its members, at least so long as the challenged infractions adversely affect its members' associational ties.

Georgetown Cnty League of Women Voters v. Smith Land Co., 393 S.C. 350, 360, 713 S.E.2d 287, 293 (2011) (Hearn, K., dissenting).

As stated above, the nonprofit Plaintiffs are not voters and there are not facts to support a claim that their members are Charleston County residents. In short, the factual basis raised by the Plaintiffs are simply complaints about inconveniences suffered broadly by all persons residing in or passing through Charleston County, and therefore, Plaintiffs fail to establish the first element of standing. See, Carnival Corp., 407 S.C. at 77, 753 S.E.2d at 851. Plaintiffs' allegations regarding associational standing lack any claims that Plaintiffs themselves or their members have suffered a particularized harm.

B. Public Importance Exception.

Notwithstanding Plaintiffs' lack of constitutional standing, they mistakenly contend that they have standing to bring this action through the public importance exception to the general standing requirement.[6] Second Am. Compl. ¶ 65. "This Court has long recognized the 'public importance' exception to the general standing requirements. '[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.'" ATC S., 380 at 198, 669 S.E.2d at 341. Application of the doctrine requires a "cautious balancing of the competing interests presented." Id. The South Carolina Supreme Court in ATC S. explained:

> An appropriate balance between the competing policy concerns underlying the issue of standing must be realized. Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.

Id. 380 S.C. at 199, 669 S.E.2d at 341 (citing Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004)).

"The key to public importance analysis is whether a resolution is needed for future guidance." Id.

In this case, the Plaintiffs lack a sufficient basis to establish standing by the public importance exception because by their own admission "[n]ot every dispute that is in some way related to an expensive transportation project merits consideration[.]" See, Brief of Proposed

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[6] The CCL took a different stance regarding the public importance of the MCE when it filed a brief in response to the County Petition for Original Jurisdiction regarding the 2007 IGA. The CCL stated:

> This may be a project of significance to Charleston County Council, but that does not mean that the public supports it or that public interest considerations necessarily favor resolving this case in the Supreme Court. Not every dispute that is in some way related to an expensive transportation project merits consideration by the Supreme Court.

See, Brief of Proposed Amicus Curiae South Carolina Coastal Conservation League at 12, Case No. 2017-001606.

Amicus Curiae South Carolina Coastal Conservation League at 12, Case No. 2017-001606; see also, Def.'s Mem. p.11 n.6. Notwithstanding the Plaintiffs' specious view of the project's public importance, future guidance is not needed through this Court, because the South Carolina Department of Revenue ("SCDOR") has statutory oversight of the Transportation Act. South Carolina law provides that the SCDOR has a statutory duty to administer and enforce the Act. See, Richland Cnty. v. S.C. Dep't of Revenue, 422 S.C. 292, 306, 811 S.E.2d 758, 765 (2018) ("Based on these authorities, the circuit court properly found that DOR's extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code confer upon DOR a duty in ensuring the County's expenditures of Penny Tax revenues comply with the revenue laws DOR is charged with enforcing.").

The South Carolina Supreme Court in Richland County opined regarding Transportation Act's expenditures that, "[a] proper expenditure of Penny Tax funds must be tethered to a specific transportation-related capital project or the administration of a specific transportation project." Richland Cnty., 422 S.C. at 311, 811 S.E.2d at 768. To the extent the Plaintiffs believe the MCE is not a specific transportation project eligible under the Transportation Act or the County's enabling ordinances, that is a matter for the SCDOR to review and enforce, not the Plaintiffs. Therefore, a resolution is not needed for future guidance. As demonstrated above, the South Supreme Court has already provided guidance – it is the DOR's duty and responsibility to determine whether the County's 2004 and 2016 Transportation Act expenditures are properly allocable to a specific transportation project, such as the MCE, just as the DOR did for the Richland County penny sales tax.

II. PLAINTIFFS FAIL TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION.

Even if the Plaintiffs have standing to bring this action, the Plaintiffs fail to state facts sufficient to constitute a cause of action regarding the requirements pursuant to the Infrastructure Bank Act for the County to fulfill its financing agreement obligations under the 2019 Amended IGA, to include votes taken by Charleston County Council to appropriate funding. A party may move to dismiss a complaint under Rule 12(b)(6), SCRCP, based on failure to state facts sufficient to constitute a cause of action. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). In considering motions to dismiss, trial courts must base their rulings "solely upon the allegations set forth on the face of the complaint." Charleston Cnty. Sch. Dist. v. Harrell, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011); see supra, Def.'s Mem. p.2. n.1 ("In reviewing the dismissal of a complaint under Rule 12(b)(6), we may properly take judicial notice of matters of public record."). On a motion to dismiss, the Court must accept "well pled facts" as true, but it need not accept "unsupported conclusions" of law. Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 426, 559 S.E.2d 362, 364–65 (Ct.App.2001). A motion to dismiss under Rule 12(b)(6), SCRCP "must be granted if the facts and inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case." Gray v. State Farm Auto. Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (Ct.App.1997).

To state a claim under the Declaratory Judgment Act, the plaintiff must establish a justiciable controversy. Brown v. Wingard, 285 S.C. 478, 479, 330 S.E.2d 301, 302 (1985). A justiciable controversy exists when a concrete issue is present, meaning there is a definite assertion of legal rights and a positive legal duty that is denied by the adverse party. Power v. McNair, 255 S.C. 150, 153–54, 177 S.E.2d 551, 553 (1970). The test for sufficiency of a declaratory judgment action "is not whether the complaint shows that the plaintiff is entitled to a declaration of rights

according to his theory, but whether he is entitled to a declaration of rights at all." Dimukes v. Carletta, 269 S.C. 110, 112, 236 S.E.2d 421, 422 (1977). The Plaintiffs fail to show where they are entitled to a declaration of a right. Instead, they are nothing more than disgruntled citizens and taxpayers who philosophically prefer their tax dollars be spent on other initiatives.

In evaluating a motion to dismiss under Rule 12(b)(6), the United States Supreme Court in Ashcroft v. Iqbal laid out two principles that lie beneath its two-pronged approach in its decision in Bell, to consider a motion to dismiss. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)(citing Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955 (2007)). The Supreme Court stated that the rule of accepting all well-pled facts as true and construing them in the light most favorable to the plaintiff does not apply to legal conclusions; therefore, pleadings that are no more than conclusions are not entitled to the assumption of truth. Second, only a complaint that states a plausible claim survives a motion to dismiss – where well-pled facts do not permit an inference of more than the possibility of misconduct, is nothing more than an allegation, not a showing that the pleader is entitled to relief. Id. 556 U.S. at 678-79.

In the case at bar, the Plaintiffs espouse *inter alia* the following legal theories to support this contention: 1) the "contract with voters" doctrine prohibits the expenditure of Transportation Act revenues for the MCE, 2) the 2004 and 2016 Transportation Sales Tax ballot questions and ordinances do not authorize the expenditure of Transportation Sales Tax revenues for the MCE, 3) the County's appropriation pledge unlawfully binds future councils, and 4) the County's Fiscal Year 2019 appropriations of Transportation Sales Tax revenues were unlawful. See, Second Am. Compl. ¶ 46; see also, supra Def.'s Mem. p.4 n.3 (where the County rescinded its action making the initial appropriation and simultaneously approved funding from its approved Fiscal Year 2019

Transportation Sales Tax operating budget which moots the Plaintiffs' claim. See, Ex. D, Council Action 19-243).

A. Contract with Voters Doctrine and Use of Transportation Sales Tax Revenues for the MCE.

Plaintiffs fail to cite any South Carolina authority for their proposition that the "contract with voters" doctrine prohibits the expenditure of Sales Tax revenues for the MCE. In fact, there is no South Carolina authority establishing a "contract with voters." Plaintiffs cite 16 MCQUILLIN MUN. CORP. § 44:238 (3d ed.) for the doctrine which states,

> Funds raised by taxation may legally be spent only for public purposes. If there is no specific provision relating to the disposition of revenues they may be applied in any manner not inconsistent with the governing statute or charter provision. . . A city violates its' 'contract' with voters only if it uses tax proceeds approved by voters in a way that the voters did not approve.

Id. at § 44:238 (3d ed.)

However, this common law principle does not create a "contract with voters" under South Carolina law. Even if it did, all the Plaintiffs are not voters (i.e., CCL and SCPIF) or eligible to vote in Charleston County, let alone voted to support the imposition of the Transportation Sales Tax. Furthermore, if the ballot question created a "contract with voters," the referendum ballot question did not preclude the expenditure of revenues on the MCE. For instance, the 2004 Transportation Sales Tax Referendum ballot question stated:

CHARLESTON COUNTY SPECIAL SALES AND USE TAX

QUESTION 1

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

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

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

YES

NO

See, Ex. E, 2004 Transportation Sales Tax Referendum Ballot Question; see also, Ex. F, 2016 Transportation Sales Tax Referendum Ballot Question (seeking substantially similar sales tax approval).

The above-referenced language is what the voters considered in approving the imposition of the transportation sales tax. The ballot questions do not itemize lists of individual roads, greenbelts, or mass transit system projects to legitimize the Plaintiffs' claims that the MCE is *not* an authorized project. Therefore, the ballot questions do not limit the County's discretion to finance unspecified roads over the twenty-five-year collection period of the transportation sales tax.[7] Moreover, under South Carolina's Election laws, the deadline to challenge the imposition of the 2004[8] or 2016 Transportation Sales Tax referendums or its enabling question has expired; and therefore, the Transportation Sales Tax referendum ballot questions are lawful and valid. See, S.C. Code Ann. § 7-17-30; see also, Sims v. Ham, 275 S.C. 369, 371, 271 S.E.2d 316, 318 (1980) ("Generally, a protest must be lodged within the statutory time period *or it is barred.*") (emphasis added). Accordingly, the ballot questions do not preclude the use of Transportation Sales Tax revenues to

[7] It is interesting to note that the Plaintiffs do not challenge the expenditure of Transportation Sales Tax revenues on greenbelts or mass transit systems. The ballot questions do not delineate exhaustive lists of greenbelt projects or mass transit projects which can be lawfully purchased or developed. Rather, they challenge the roads component of the program which was equally presented to the voters in more exact terms (i.e., highways, roads, streets, bridges and other transportation-related projects facilities).

[8] A group of taxpayers challenged the sufficiency of the 2004 Transportation Sales Tax Referendum Question contending that the passage of the tax should be nullified, because the ballot question did not delineate each project and the specific dollar amount per project. The Charleston County Board of Elections and Voter Registration ("BEVR") and the South Carolina Election Commission rejected the taxpayers' contention and upheld the election results. The South Carolina Supreme Court denied the taxpayers' petition for certiorari to review the State Election Commission's affirmation of Charleston County BEVR's decision.

fund the MCE project. Therefore, the Plaintiffs fail to show how they are entitled to a declaration of a right under State law.

Moreover, Plaintiffs' contention that the 2004 and 2016 Transportation Sales Tax ordinances do not authorize the expenditure of Transportation Sales Tax revenues for the MCE is misplaced. The 2004 Transportation Sales Tax ordinance provides in pertinent part that:

> 2.4 The Sales and Use Tax shall be expended for the costs of the following projects, including payment of any sums as may be required for the issuance of and debt service for bonds, the proceeds of which are applied to such projects, for the following purposes:
>
> (i) For financing the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities. The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than $1,081,788,800.
>
> (ii) For financing the costs of greenbelts. The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than $221,571,200.

Ex. A, County Ordinance Number 1324 – 2004 Transportation Sales Tax [9]

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Charleston Cnty. Assessor v. LMP Props., 403 S.C. 194, 198-99, 743 S.E.2d 88, 90 (Ct.App.2013). "If a statute's language is plain, unambiguous, and conveys a clear meaning 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). Since Council's legislative intent is clear from the plain words of the ordinances, the Plaintiffs have no right to impose another meaning. It is clear from the language of the ordinance that Council intended to

[9] The 2016 Sales Tax Ordinance description of projects differs from the 2004 Sales Tax Ordinance description in that the 2016 ordinance projects provides a non-exhaustive list of roads prefaced by the phrase "which may include but not limited to . . . ." See, Ex. B, County Ordinance Number 1907 – 2016 Transportation Sales Tax.

finance the costs of "highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto." State law expressly authorizes this intent.

The Transportation Act permits counties to impose a sales and use tax not to exceed one percent to fund transportation projects to include: highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities in Charleston County. See, S.C. Code Ann. § 4-37-10 et seq.; see also, Richland Cnty., 422 S.C. at 298, 811 S.E.2d at 761 ("The types of projects permitted to be funded with such a tax are 'highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects.'"). Therefore, it is not enough for the Plaintiffs to say the expenditure of sales tax revenues on the MCE is not permissible, and it does not pass muster in a motion to dismiss pursuant to Rule 12(b)(6). See, Gray v. State Farm Auto. Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (Ct.App.1997) (A motion to dismiss under Rule 12(b)(6), SCRCP "must be granted if the facts and inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case."); see also, Def.'s Mem. p.16 n.7 (Plaintiffs do not challenge the sufficiency of the greenbelt and mass transit components of the Transportation Sales Tax ordinances).

B. Binding Future Councils and Authority to Execute the 2019 Amended IGA.

The Plaintiffs mistakenly believe it is an *ultra vires* act for Council to agree by contract to appropriate funding every year to meet the terms of a financing agreement with the Infrastructure Bank, ostensibly because the financing agreement extends beyond the terms of the members who approved the agreement. The Plaintiffs reason that neither the 2019 Amended IGA, nor the MCE project implicates the County's business or proprietary powers, rather they involve the County's legislative or governmental powers.[10] Second Am. Compl. ¶39. The Plaintiffs cite City of

[10] Plaintiffs also contend that Council's approval of the 2019 Amended IGA was a legislative act which required a public hearing and the adoption of an ordinance to execute the agreement. Plaintiffs cite S.C.

Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth. as authority for this proposition. The South Carolina Supreme Court in City of Beaufort held that:

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

City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth., 325 S.C. 174, 178-79, 480 S.E.2d 728, 731 (1997).

The Plaintiffs' reliance on City of Beaufort is misplaced. The County is not building the MCE; and therefore, it is not exercising its governmental functions. Instead, the County has entered a financing agreement with the Bank, a political subdivision of the State, to obtain $420 million as matching funds for a project that the SCDOT is contractually obligated to construct and accept into the State Highway system. The County is empowered pursuant to Home Rule "to make and execute contracts," which is a business power. See, S.C. Code Ann.§ 4-9-30(3). Furthermore, the legislature adopted the Infrastructure Bank Act so the Infrastructure Bank could "select and assist in financing major qualified projects by providing loans and other financial assistance to government units . . . for constructing and improving highway and transportation facilities necessary for public purposes." S.C. Code Ann.§ 11-43-120(C). The legislature also promulgated the maximum term for financial assistance. S.C. Code Ann.§ 11-43-180(A) ("The term of the loan or other financial assistance must not exceed the useful life of the project.").

Code Ann. § 4-9-120 and 130 for this proposition. First, S.C. Code Ann. § 4-9-130 provides an exhaustive list of actions which require a public hearing before final council action. Authorizing and executing intergovernmental agreements and contracts are not enumerated in the list. See, S.C. Code Ann. § 4-9-130. Secondly, S.C. Code Ann. § 4-9-120 does not specify contracts as legislative acts which require an ordinance to approve. See also, S.C. Code Ann. § 4-9-30(3). In fact, S.C. Code Ann. § 4-9-110 specifically authorizes Council to determine its own rules and order of business, for which Charleston County Council approves contracts (other than the selling of land) by a single Council action, after committee recommendation.

To that end, the legislature enumerated two provisions authorizing both the County and the Infrastructure Bank to exercise their business powers. First, the Act provides that:

> *The bank may require the government unit* or private entity *to enter into a financing agreement* in connection with its loan obligation or other financial assistance. The board shall determine the form and content of loan applications, financing agreements, and loan obligations including the term and rate or rates of interest on a financing agreement. The terms and conditions of a loan or other financial assistance from federal accounts shall comply with applicable federal requirements.

S.C. Code Ann.§ 11-43-180(A) (emphasis added).

Second, the Act authorizes local governments to perform the obligations of the financing agreement, which provides:

> Qualified borrowers entering into financing agreements and issuing loan obligations to the bank *may perform any acts, take any action, adopt any proceedings, and make and carry out any contracts or agreements with the bank as may be agreed to by the bank and any qualified borrower for the carrying out of the purposes contemplated by this chapter.*

S.C. Code Ann.§ 11-43-190(A) (emphasis added); see also, S.C. Code Ann.§ 11-43-190(C) ("A qualified borrower may . . . pledge, assign, and grant security interest in project revenues . . . to secure its obligations as provided in this chapter . . . to meet its obligations under a financing agreement . . . .).

The Infrastructure Bank required the County to execute the 2019 Amended IGA to secure and maintain its $420 million funding for the MCE project. The Act clearly authorizes the Bank to require a financing agreement without regard to County Council member's terms. Conversely, the CCL conceded in its Amicus Curie brief that:

> The Bank has clear authority in Section 4.1 of the Intergovernmental Agreement to request that the County provide documentation that the Bank determines is 'reasonably necessary to evidence or establish the County's . . . obligations to the Bank," including the County's obligation in Section 5.5 to cover any project funding deficit.

See, Brief of Proposed Amicus Curiae South Carolina Coastal Conservation League at 6, Case No. 2017-001606.[11]

"The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. (citation omitted) (where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason)." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). "The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd." Charleston Cnty. Assessor v. Univ. Ventures, LLC, 427 S.C. 273, 285, 831 S.E.2d 412, 418 (2019). The Plaintiffs' reliance on City of Beaufort to support their claim that the County is without authority to secure its payment obligation with a promise to appropriate funds in the future is misplaced. To assume the County cannot promise to appropriate tax dollars to pay its bills in the future through an appropriation clause would eviscerate a local government's ability to obtain financial assistance from the Infrastructure Bank because the terms of any agreement would be capped at two years. The Plaintiffs' application of the City of Beaufort decision to the Act cannot be reconciled with the legislature's clear meaning and intent regarding financing agreements.[12] Equally, the Plaintiffs' assertion that any act that transcends a sitting council's tenure would lead to an absurd result; and therefore, this Court should reject the same. This Court should find that

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[11] See also, Brief of Proposed Amicus Curiae South Carolina Coastal Conservation League at 15 ("The Bank is within its rights to demand that the County and SCDOT execute 'any other documents' that are 'reasonably necessary to evidence or establish [their] obligations set forth in th[e] Agreement").

[12] South Carolina courts have opined that there is no bright line test to determine the difference between a proprietary power and a governmental function. "Thus, when determining whether a contract is binding on successor boards, it appears that 'the true test is whether the contract itself deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired.'" Piedmont Pub. Serv. Dist. v. Cowart, 319 S.C. 124, 132-33, 459 S.E.2d 876, 881 (Ct. App. 1995). The South Carolina General Assembly has decided that financing agreements under the Act do not deprive local governments of that discretion.

the County's contractual obligations under the 2019 Amended IGA do not violate State law, rather, they are consistent therewith.

C. S.C. Freedom of Information Act ("FOIA").

Plaintiffs suggest that the County violated FOIA's closed meetings authorization, because the County's August 20, 2019, Special Finance Committee ("Special Finance Committee") meeting's agenda listed "Transportation Sales Tax Budget" as an agenda item which Plaintiffs allege is not an enumerated reason for going into executive session. See, Second Am. Compl. ¶ 91; see also, S.C. Code Ann. § 30-4-70(a)-(b) (2007). Furthermore, Plaintiffs contend that the County violated FOIA when it returned to open session and took action on the Transportation Sales Tax Budget item listed on the Special Finance Committee meeting's agenda and discussed in executive session. See, Second Am. Compl. ¶¶ 93-95. Plaintiffs' contention is inconsistent with South Carolina's open records laws. South Carolina law provides in pertinent part:

> (a) A public body may hold a meeting closed to the public for one or more of the following reasons: . . .
>
> (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, *the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege,* settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

S.C. Code Ann. § 30-4-70(a)(2) (emphasis added)

By way of background, on August 2, 2019, the Plaintiffs filed a First Amended Complaint alleging *inter alia* that the County's Fiscal Year 2019 appropriations of Transportation Sales Tax revenues were unlawful. See, First Am. Compl. ¶ 45. The County publicly noticed (twenty-four hours before the meeting) a Special Finance Committee to occur before County Council's regularly scheduled August 20, 2019, County Council meeting. The County posted an agenda that stated in pertinent part: "2. Transportation Sales Tax Budget" "Executive Session". See, Ex. G, August

20, 2019, Special Finance Committee Agenda. Equally, the County publicly noticed its regularly scheduled County Council meeting with an agenda that listed in pertinent part: "19. Items From Special Finance Committee of August 20, 2019, if needed" "*Recommendations*". (emphasis added). See, Ex. H, August 20, 2019, County Council Agenda; see also, Brock v. Town of Mount Pleasant, 415 S.C. 625, 632, 785 S.E.2d 198, 202 (2016) ("Thus, our holding does not require the Town to list with specificity the actions it plans to take following an executive session; it only requires the Town give notice that some action may be taken. This gives Town Council the flexibility to act as may be discovered appropriate during executive sessions while ensuring the public receives notice Town Council may take such action.).[13]

Notwithstanding the Plaintiffs' notice that the Transportation Sales Tax Budget was on the agenda for consideration and the fact that Council would consider recommendations from the Finance Committee at its regularly scheduled County Council meeting, Plaintiffs believe FOIA bars the County from discussing a pending/threatened claim regarding the Transportation Sales Tax Budget agenda item and taking action on the same, despite public notice that recommendations would be considered.

As a threshold matter, Plaintiffs concede in their Second Amended Complaint that the stated reason for going into executive session was:

> There is a need for an Executive Session to talk about *this agenda item associated with a lawsuit that was filed by the Coastal Conservation League against Charleston County* and I would ask that you entertain an Executive Session to discuss that matter and to receive legal advice. And I also believe you said there is a need to address a personnel matter.

[13] Although the facts in Brock are dissimilar to this case because it involved unnoticed amendments to an agenda after the meeting started, the Brock Court acknowledged the need for flexibility and public notice that action may be taken. See, Id. In this case, the County clearly provided notice in its County Council meeting agenda that it may take actions on recommendations coming out of the Special Finance Committee meeting. See, Ex. H, August 20, 2019, County Council Agenda .

Second Am. Compl. ¶ 88 (emphasis added).

Pursuant to FOIA, "[b]efore going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session." S.C. Code Ann. § 30-4-70(b). As stated publicly, the reason for going into executive session was to discuss a pending/threatened claim by CCL regarding the Transportation Sales Tax Budget, which is a lawful purpose under FOIA. See, S.C. Code Ann. § 30-4-70(a)(2) (the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege). Moreover, unlike in Brock, no item was added to the Special Finance Committee agenda during the meeting. Brock v. Town of Mount Pleasant, 415 S.C. 625, 632, 785 S.E.2d 198, 202 (2016). Therefore, no additional notice requirements were triggered under FOIA. Accordingly, Plaintiffs fail to state facts sufficient to constitute a FOIA cause of action; and therefore, this cause of action should be dismissed.

III. THE RICHLAND COUNTY COURT OF COMMON PLEAS LACKS JURISDICTION OVER THE SUBJECT MATTER.

The Plaintiffs allege the County has spent, and cannot spend, the Sales Tax revenues for the Mark Clark Completion Project, a transportation-related project in the County. This case involves the collection and spending of taxes for which the County is responsible for the collection, administration, allocation, and appropriation. The intent of the General Assembly in adopting the South Carolina Revenue Procedures Act, S.C. Code Ann. §§ 12-60-10 to -3390 (2014 & Supp. 2018) (the "RPA"), is to provide the people of this State with a straightforward procedure to determine a dispute concerning property taxes. "While the Act contains many specific procedures for taxpayers challenging their PTAs, relief under the Act is not limited to these types of protests." Brackenbrook N. Charleston, LP v. Cnty. of Charleston, 360 S.C. 390, 398, 602 S.E.2d 39, 44

(2004). "[T]he Court in Brackenbrook rejected the idea that the [Revenue Procedures Act] covers only valuation issues." B&A Dev., Inc. v. Georgetown Cnty., 372 S.C. 261, 270, 641 S.E.2d 888, 893 (2007). Based on the above, this Court lacks jurisdiction over the subject matter. See, S.C. Code Ann. § 12-60-30(9) (2014) ("'Department' means the South Carolina Department of Revenue."); S.C. Code Ann. § 12-60-30(27) (2014) ("'Tax' or 'taxes' means taxes, licenses, permits, fees, or other amounts including interest, regulatory and other penalties, and civil fines, imposed by this title, or subject to assessment or collection by the department."); and S.C. Code Ann. § 12-60-3390 (2014) ("[i]f a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice.").

The United States Supreme Court has ruled that "[t]o satisfy the requirements of the Due Process Clause . . . the State must provide taxpayers with . . . a 'clear and certain remedy,' for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one." McKesson Corp. v. Div. of Alcoholic Bevs. & Tobacco, 496 U.S. 18, 39, 110 S.Ct. 2238, 2251, 110 L.Ed.2d 17, 37 (1990). The South Carolina Legislature has provided the taxpayers with the Revenue Procedures Act as the specified remedy to determine a dispute concerning property taxes; therefore, Plaintiffs are required to exhaust the remedy for their claims in the South Carolina Administrative Law Court.

CONCLUSION

For the reasons discussed in the above arguments, this Court should dismiss the complaint in its entirety.

Respectfully submitted,

CHARLESTON COUNTY ATTORNEY'S OFFICE

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January 2, 2020
North Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND South Carolina Coastal Conservation League, Inc., Elizabeth M. Smith, Abraham B. Jenkins, Jr. and the South Carolina Public Interest Foundation, Plaintiffs, v. Charleston County, South Carolina, South Carolina Transportation Infrastructure Bank, and South Carolina Department of Transportation, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CASE NO: 2019-CP-40-03032 MOTION TO ALTER OR AMEND THE ORDER AND JUDGMENT

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, INC., ELIZABETH B. SMITH AND ABRAHAM B. JENKINS, JR.'S RULE 59(E) MOTION TO ALTER OR AMEND THE ORDER AND JUDGMENT ENTERED FEBRUARY 24, 2020

Plaintiffs the South Carolina Coastal Conservation League, Inc. (the "CCL"), Elizabeth M. Smith, and Abraham B. Jenkins Jr., pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, respectfully move the Court to Alter or Amend the Order entered February 24, 2020. CCL and the individual Plaintiffs respectfully suggest that the Court did not directly address the claim in the Second Amended Complaint alleging that Charleston County passed a supplemental appropriation ordinance on February 12, 2019, appropriating Half-Cent revenue, without providing the required fifteen day public notice and the three ordinance readings, in violation of S.C. Code Ann. §§ 4-9-120 and -130. Second Amended Complaint ¶¶ 42-46, 82(g). Accordingly, CCL and the individual Plaintiffs respectfully ask the Court to alter or amend its Order and Judgment entered on February 24, 2020 to address this claim.

Respectfully submitted this 5th day of March, 2020.

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ATTORNEYS FOR PLAINTIFF CCL

March 5, 2020
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2020-001189

South Carolina Coastal Conservation League, Inc., Elizabeth M. Smith, and Abraham B. Jenkins, Jr, and

Plaintiffs/ Appellants,

South Carolina Public Interest Foundation,

Plaintiff,

v.

Charleston County, South Carolina, South Carolina Transportation Infrastructure Bank, and South Carolina Department of Transportation,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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