



Richland County Transportation Ad Hoc Committee

March 23, 2021 - 3:00 PM
Virtual Meeting
2020 Hampton Street, Columbia, SC 29201

1. **CALL TO ORDER** The Honorable Overture Walker

2. **APPROVAL OF MINUTES** The Honorable Overture Walker
 - a. Regular Session: February 23, 2021 [PAGES 2-7]

3. **ADOPTION OF AGENDA** The Honorable Overture Walker

4. **ITEMS FOR INFORMATION** [Pages 8-9] Mr. Michael Niermeier
 - a. Budget Transfers
 - b. Transportation Budget Process Update

5. **ITEMS FOR ACTION** The Honorable Overture Walker
 - a. Clemson Road Phase 1. Sidewalk [PAGES 10-16]
 - b. City of Columbia Bikeway IGA [PAGES 17-30]
 - c. Mitigation Bank Credit Sales [PAGES 31-45]

6. **ADJOURNMENT**



Richland County
Transportation Ad Hoc Committee
February 23, 2021 – 2:00 PM
Zoom Meeting
2020 Hampton Street, Columbia, SC 29201

COMMITTEE MEMBERS PRESENT: Bill Malinowski, Yvonne McBride, Paul Livingston, and Jesica Mackey

OTHERS PRESENT: Joe Walker, Gretchen Barron, Cheryl English, Michelle Onley, Angela Weathersby, Kyle Holsclaw, Tamar Black, Ashiya Myers, John Thompson, Elizabeth McLean, Leonardo Brown, Jennifer Wladischkin, Lauren Hogan, Lori Thomas, Nathaniel Miller, Mohammed Al-Tofan, Alexander Burton, Jeff McNesby, Michael Niermeier, Aimee Saito, Virginia Goodson, Allison Steele, Kimberly Toney, Rasheed Muwwakkil, Alicia Pearson, Jeff McNesby, Michael Maloney, Dante Roberts, Elizabeth McLean, and Tanner Threatt.

1. **CALL TO ORDER** – Mr. Livingston called the meeting to order at approximately 2:00 PM.

2. **APPROVAL OF MINUTES**
 - a. **Regular Session: December 15, 2020** – Ms. McBride moved, seconded by Mr. Malinowski, to approve the minutes as distributed.

In Favor: Malinowski, McBride, Livingston, and Mackey

Not Present: O. Walker

The vote in favor was unanimous.

3. **ADOPTION OF AGENDA** – Ms. McBride moved, seconded by Mr. Malinowski to approve the agenda as published.

In Favor: Malinowski, McBride, Livingston, and Mackey

Not Present: O. Walker

The vote in favor was unanimous.

4. **ELECTION OF THE CHAIR** – Ms. McBride moved, seconded by Mr. Malinowski, to nominate Mr. O. Walker as Chair.

Mr. Malinowski moved, seconded by Ms. McBride, to close nominations.

In Favor: Malinowski, McBride, Livingston and Mackey

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Not Present: O. Walker

The vote in favor of closing nominations was unanimous.

In Favor: Malinowski, McBride, Livingston, and Mackey

Not Present: O. Walker

The vote in favor was unanimous

Mr. Livingston noted Mr. O Walker was in Federal Court today and unable to attend today's meeting.

5. **ITEMS FOR INFORMATION**

- a. **Gills Creek Greenway Public Meeting** – Mr. Niermeier stated this meeting came up within the last couple weeks. It was spurred by some concerned citizens in the Gills Creek area after a meeting with the City of Columbia, County and the design team. Based on the discussion with the Administrator, Mr. J. Walker and Ms. Terracio, they believe it is in the best interest to hold a public information meeting within the next month. It will coordinated extensively with The City of Columbia, Columbia Police Department, and stakeholders groups such as River Alliance. It would be a very inclusive presentation, not only Gills Creek Greenway information, but also primary addressing the City of Columbia's promise through the agreement for security and maintenance of the greenway, as well as providing the benefits of greenways. Since the first public meeting was held there has overwhelming support for this greenway. Since it has been a while the intent is to provide more information of what is being looked at now. We already have designs for two of the primary segments of the greenway and the final one is being worked on now. We are working to get the City and Ms. Terracio to assist with getting information together. They are also looking to include Planning and Development due to their reforestation project in that area.

Ms. McBride noted there has been a lot of work done on this greenway. She inquired if this meeting will impact the work that has already be done, or are we looking to develop a new plan.

Mr. Niermeier responded the County has a mandate and made promises to the residents to build this greenway. This project will move forward and are making sure that people are aware of what we are doing and where we are doing it. It is our job to understand their concerns and try to address them.

Ms. McBride inquired is there will be a change in the amount budgeted.

Mr. Niermeier responded there will not be a change.

- b. **Transportation Signage and Mailings** – Mr. Niermeier credited Ms. McBride for being a constant advocate for highlighting the good work the Penny has done. Mr. Niermeier worked with Operational Services, PIO and Administration to develop some signage. Currently we have placed some smaller (18 x 24) signage on a few of the projects. He has also spoken with staff about producing some larger signs to put on the projects to let the taxpayers and residents know this is your Penny at work. He noted they are not using Penny funds since they are not allowed to do so. Since he came to the program, there has been concern with not pushing information out. It is easy in today's digital age to miss a large part of the population. We have the urban/rural mix within this area, so a simple way going back to basics is a postcard.

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Ms. McBride thanked Mr. Niermeier and staff for working to keep the citizens informed about what is going on with the resources that we have and their tax dollars, and for them to have the opportunity to have input.

Mr. Malinowski noted when the Penny Projects started, there were signs. He inquired why they stopped posting those signs.

Mr. Livingston responded a previous Administrator suggested that it would not be a good idea and Council stopped posting the signs.

Ms. Mackey suggested staff consider having a separate logo for Penny Projects to differentiate projects. This will help citizens understand what is a Penny Project, a Transportation Project or a SCDOT Project.

Mr. Livingston responded, in the past, the signage had a penny to indicate it was a Penny Project.

Ms. McBride noted she wanted the signage to stress the projects are Richland County projects.

Mr. Niermeier responded he would work with PIO to improve the graphics.

Ms. Mackey stated it would be good if the citizens could easily find the Penny website because it is difficult for the average user to get to. She suggested adding a shortened URL that take the user directly to the Penny page, it would be easier than using the generic website page.

Mr. Niermeier agreed with Ms. Mackey. This has been a discussion point because the Penny URL is too long.

5. **ITEMS FOR ACTION**

- a. **Resurfacing Package R** – Mr. Niermeier stated that staff requests Council approve the award of the Resurfacing Package R Project to Palmetto Corp. of Conway in the amount of \$3,390,951.94 and a 10% construction contingency of \$339,095.19, for a total budget of \$3,730,047.13.

Mr. McBride moved, seconded by Mr. Malinowski, to approve staff's recommendation.

Mr. Livingston inquired if the company is from Conway.

Mr. Niermeier responded their headquarters is in Conway, but they have a lot of work in the Midlands.

Mr. Livingston noted one of the concerns when the Penny was passed was to work with SBLEs as much as possible. He noted CR Jackson and Sloan are both local firms. He inquired, when we do the bidding, is there anything in the bid that gives an advantage to a SLBE.

Ms. Wladischkin responded, when they are soliciting for these projects, we submit the information to the Office of Small Business Opportunities. They examine the list of registered SLBE for Richland County and they determine a goal for the project, which is included in the solicitation documents. For this project, there was not a SLBE goal, so we did not include any information relation to that. She noted they do have a local preference, but there are certain limitations to when it may be used and the dollar amount of a project is one of the considerations. This project would have been higher

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than dollar amount allowed, as called for in the Local Preference Ordinance.

Ms. McBride inquired if the limitation is a Richland County or State policy.

Ms. Wladischkin responded it is a Richland County policy.

Ms. McBride inquired why the SLBE was not a part of the bidding package.

Ms. Wladischkin responded the standard practice would be that there were not enough SLBEs that could perform work. If there are enough SLBEs to perform the work that section or work is segregated for SLBEs.

Ms. McBride stated, based on the information, we do not have the SLBEs that could perform that type of work.

Ms. Wladischkin responded that would be her assumption, but she did not come up the goal, that would be the Office of Small Business Opportunity.

Ms. McBride inquired if any of these companies are minority-owned.

Ms. Wladischkin responded CR Jackson is a woman-owned business.

In Favor: Malinowski, McBride, Livingston, and Mackey.

Not Present: O. Walker

The vote in favor was unanimous.

- b. **Garner's Ferry\Harmon Intersection** – Ms. Steele stated this project was part of the de-scoping plan last year when we reviewed and re-evaluated all the projects that had not moved to construction. This one was currently under its referendum amount of \$2.6M. The rough estimate last year was \$1.5M. Based on the criteria, to look at capacity, safety issues, the same criteria we used across the board, we evaluated this intersection and noticed the design did not improve the intersection a whole lot. It improved the Garner's Ferry road traffic, but it did not do a lot for Harmon Road, especially the southbound traffic. What we presented and approved by Council was to take a step back until we had a chance to meet with the OETs and go over the design to see if there is something we can add to it to address and improve it. Unfortunately, when we meet with the OET, we went through all of the traffic data, and there is not a whole lot that can be done at this intersection and keep it an intersection project. To get a bigger improvement it would need to be widening Harmon to two (2) through traffic lanes, which would require more right-of-way, going to the south side of the intersection. Harmon Road to the north and south would have to be widened for a certain portion of the roadways. When you look at what would need to be done to improve this intersection, we are talking about tripling or quadrupling the original cost estimate of this project. The cost estimate we had from the PDT is a couple years old, so it is likely in the \$2M range due to inflation. At this time, we recommend taking this project back to the original design.

Ms. McBride moved, seconded by Mr. Livingston, to approve staff's recommendation.

Mr. Malinowski inquired if tables 3A and 3B projects were listed in priority order.

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Ms. Steele responded they are not.

Mr. Malinowski inquired if tables 4A and 4B were the only ones listed in priority order.

Ms. Steele responded in the affirmative.

Mr. Malinowski inquired if there is going to be any public hearings for this project, since there has not been any to-date.

Ms. Steele responded they would want to have a public input meeting to let them know what the proposal is. For an intersection improvement, we are not adding bikeways, sidewalks, or anything like that. We would rely on the design by the OET, and not take suggestions from the public on how to make the intersection better.

Mr. Malinowski noted, it states the right-of-ways obtained to-date and the amount, and then it says expended to-date. He inquired what the expenses are for because when the Penny Tax items were started we were told we were not going to spend money to obtain right-of-ways.

Ms. Steele responded it was only on the dirt roads. Those have to be voluntarily given.

Mr. Livingston inquired if the dollar amount increase would affect the other de-scoped projects.

Ms. Steele responded the funds will come from the amount approved in the referendum.

In Favor: McBride, Livingston, and Mackey

Opposed: Malinowski

Not Present: O. Walker

The vote was in favor.

- c. **Transportation Budget Submission and Approval Process** – Mr. Niermeier stated this stems from the arduous budget process last year. Transportation staff is requesting Council to only require new budget money to be presented to Council, which would align with all the other departments in the County. During the approval in June, you were presented with our three general ledgers, which we intend to continue to do. We are also required to present all of our estimated funding that is already encumbered on purchase orders, as well as our unencumbered funding that was aligned against projects. We did that simply because we knew we were going to BAN/Bond again this year. We are in a position where we would have achieved a plateau for work and our ability to manage said work. This was the rebase line going into FY22 for budgets where we will be moving forward with what we know we need, as opposed to what we think we need. This request comes from a place looking for economy, better alignment with the rest of the County, and how their budgets are presented. We cannot spend any more money than we will get in revenue.

Mr. Malinowski noted he had a hard time understanding the information for this item. He is not sure what they are trying to do. He noted Mr. Niermeier ended his comments by saying they cannot ask for any more money than what is anticipated they will get in revenue. That being said, on p. 46, it states, "The anticipated revenue is \$69M." From the vote that was taken, that \$69M, along with the rollover, to give a total of \$85M, so he does not know how you could get more, if you cannot ask for

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more than anticipated revenue.

Mr. Niermeier responded the \$85M projected for FY21 was based off of an anticipated revenue stream of \$69M and the additional \$16M from savings. This is similar to what we are doing with the bond funding.

Ms. McBride stated she also did not understand the reason for the request or the full implications.

Mr. Livingston stated, for clarification, they are requesting to be treated the same way as other departments by submitting new funds to Council for an annual budget.

Mr. Niermeier responded in the affirmative.

Mr. Malinowski requested Mr. Hayes to be present at the next Transportation Ad Hoc Committee and to include language that would be easily understood by Council and the constituents.

Ms. McBride moved, seconded by Mr. Malinowski, to defer this until the next Transportation Ad Hoc Committee meeting.

In Favor: Malinowski, McBride, Livingston, Mackey

Not Present: O. Walker

The vote in favor was unanimous.

6. **ADJOURNMENT** – The meeting adjourned at approximately 2:44 PM.

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February 23, 2021**

Transportation Ad Hoc

March 23, 2021 @ 2:00PM

4: Items for Information

Item 4a: Budget Transfers

The following budget transfers were performed by the Department from January to March 2021:

From:	To:	Amount:
SCDOT S. Main Pedestrian Improvement		
13330307 (Pendleton/Lincoln/Marion)	13330388 (Main/Whaley)	<u>\$ 48,814.00</u>
	Total	\$ 48,814.00
City of Columbia Main Street Intersection Improvement		
13330112 (Columbia Mall Greenway)	13330020 (Main/Blanding)	\$ 95,536.00
13330232 (Royster St/ Capers)	13330021 (Main and Laurel)	<u>\$ 95,536.00</u>
	Total	\$ 191,072.00
City of Columbia Bikeway IGA		
13330307 (Pendleton/Lincoln/Marion)	13330313 (Catawba/Tryon/Whaley)	\$ 5,547
13330307 (Pendleton/Lincoln/Marion)	13330315 (Chester/Elmwood/Wayne)	\$ 12,094
13330307 (Pendleton/ Lincoln/ Marion)	13330317 (College/Laurens/Oak)	\$ 16,331
13330307 (Pendleton St Lincoln St Marion)	13330318 (Edgefield/Park/Calhoun)	\$ 16,454
13330301 (Broad River Rd Gr Blvd)	13330325 (Saluda/ Wheat/ Greene)	\$ 3,934
13330309 (Sumter St/ Washington/Senate)	13330352 (Elmwood/Wayne)	\$ 3,893
13330308 (Pickens/Washington/Wayne)	13330369 (Greene/Bull/Saluda)	\$ 100,000
13330364 (Pickens/Washington/Rosew)	13330369 (Greene/Bull/Saluda)	\$ 100,000
13330306 (Hampton/Pickens/Harden)	13330369 (Greene/Bull/Saluda)	\$ 100,000
13330309 (Sumter/Washington/ Senate)	13330369 (Greene/Bull/Saluda)	\$ 59,251
13330308 (Pickens/Washington/Wayne)	13330370 (Catawba/Sumter/Lincoln)	\$ 100,000
13330334 (Calhoun/Wayne/Harden)	13330370 (Catawba/Sumter/Lincoln)	\$ 100,000
13330301 (Broad River Rd Gr Blvd)	13330370 (Catawba/Sumter/Lincoln)	<u>\$ 50, 145</u>
	Total	\$ 667,649

Item 4b: Budget Process

On February 23, the Transportation Department met with the County Administrator, ACA Thompson, ACA Thomas, Director Hayes and Director Hamm for a Budget preparation meeting. During this meeting, the budget challenges the Department experienced for FY21 were discussed. After further investigation, it was determined that any adjustment to how the transportation budget gets presented and approved is just procedural. Therefore, this does not require any Council action. This request is withdrawn.



Agenda Briefing

Prepared by:	Michael Niermeier	Title:	Director
Department:	Transportation	Division:	
Date Prepared:	February 17, 2021	Meeting Date:	February 23, 2021
Legal Review	Elizabeth McLean via email	Date:	February 18, 2021
Budget Review	James Hayes via email	Date:	February 18, 2021
Finance Review	Stacey Hamm via email	Date:	February 18, 2021
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM	
Committee	Transportation Ad Hoc		
Subject:	Clemson Rd. Ph. 1 Sidewalk Project		

STAFF'S RECOMMENDED ACTION:

Staff requests Council to approve the award of the Clemson Rd. Ph. 1 Sidewalk Project to Tolleson Limited Company in the amount of \$269,900.00 and to approve a 10% construction contingency of \$26,990.00, for a total budget of \$296,890.00.

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department's current fiscal year budget?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
If no, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

This funding will come from the \$350,000.00 currently available in the FY21 Budget for this project. A portion of this funding, \$263,485.04, has already been encumbered for this project based on the Engineer's Estimate. Once this award is approved, the remainder of funds needed will be encumbered from the available funds.

For Budget Use: JL 13330219

COUNTY ATTORNEY'S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

None.

REGULATORY COMPLIANCE:

None applicable.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

The Clemson Rd. Ph. 1 Sidewalk Project consists of the installation of a 5'-wide sidewalk and associated ADA ramps, curb/gutter, and guardrail from Clemson Frontage Rd. to Percival Rd. This is approximately 0.5 miles of sidewalk.

ADDITIONAL COMMENTS FOR CONSIDERATION:

The Engineer's Cost Estimate for this project was \$263,485.04. Tolleson Limited Company was the only bidder for this project, and their bid amount is only \$6,414.96 over the estimate.

ATTACHMENTS:

1. Procurement Recommendation Package

**RICHLAND COUNTY FINANCE DEPARTMENT
PROCUREMENT DIVISION**

2020 Hampton Street, Suite 3064
Columbia, SC 29201
803-576-2130

Attachment 1



February 17, 2021

Re: Richland County Sidewalk Package S-10 (Clemson Rd Sidewalk) RC-400-B-2021

Dear Mr. Niermeier:

A virtual bid opening was held at 3:00 p.m. EST on Monday, February 15, 2021 via the Richland County's online bidding system (Bonfire) for the project referenced above. The Richland County Procurement and Contracting Office has reviewed the bid received, which was submitted via Bonfire and found no discrepancies. The bid received was as follows:

Tolleson Limited \$ 269,900.00

Further review shows that Tolleson Limited is duly licensed in South Carolina to perform this work. A copy of their license is attached.

A non-mandatory pre-bid conference was held at 10:00 a.m. on December 2, 2020 to allow attendees to gain information and bidding directives for the project. The meeting ended at 10:05 a.m. after no contractors logged in.

Attached is the final bid tab sheet for your reference, which indicates Tolleson Limited is 2.4% higher than the engineer's estimate of \$ 263,485.04. The bid is considered to be fair and reason. This project was advertised with a SLBE goal of 100% limiting the bidders to SCBE firms only. Tolleson is a certified SLBE firm (certificate attached).

I recommend that a contract be awarded to the lowest responsive and responsible bidder, Tolleson Limited.

Sincerely,

Virginia Goodson

Contract Specialist

CC: Jennifer Wladischkin, Procurement Manager

Erica Wade, OSBO Manager

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CITY OF COLUMBIA, SOUTH CAROLINA
BUSINESS AND PROFESSIONAL LICENSE

20

TOLLESON LIMITED COMPANY
305 STONERIDGE DR SUITE A
COLUMBIA, SC 29210

305 STONERIDGE DR STE A
COLUMBIA, SC 29210

*Location of Business
Notify this office of any change in location or ownership*

LICENSE EXPIRES: December 31, 2020



DATE ISSUED: 04-24-20

TYPE OF BUSINESS: Civil Engineering Consulting

BUSINESS CODE: W99

LICENSE NUMBER: BL005543-03-2014

The issuance of this business license shall serve as a Zoning permit by the Zoning Administrator as required by § 17-83 of the Zoning Ordinance. In accordance with §17-85, a change in use, arrangement, location or construction may be deemed a violation of the Zoning ordinance.

The above named concern has been licensed to do business in Columbia, subject to the provisions of all ordinances of the city.

Zoning Administrator

Business License Administrator

**RICHLAND COUNTY GOVERNMENT OFFICE OF PROCUREMENT AND CONTRACTING
2020 HAMPTON STREET, SUITE 3064, COLUMBIA, SC 29204-1002**

Project #: RC-400-B-2021	Project Name: Sidewalk Package S-10 (Clemson Road Sidewalk)	Date: February 3, 2021	
		Time: 10:00 a.m.	
COMPANY NAME	REPRESENTATIVE	EMAIL ADDRESS	TELEPHONE/FAX
Richland County Government	Jennifer Wladischkin		
Richland County Government	Virginia Goodson		
Richland County Government	Michael Niermeier		
Richland County Government	Ali Eliadorani		
Richland County Government	Allison Steele		

Meeting held virtually

***** PLEASE PRINT CLEARLY! IF THE INFORMATION IS NOT LEGIBLE YOUR ATTENDANCE MAY NOT BE CONSIDERED! *****

Tolleson Limited Company

Total Cost \$ 269,900.00

The Tolleson Limited Company

Richland County Government Small Local Business Enterprise Certificate

Certification Number: 20335892

Valid Until: April 2, 2022

NAICS: 237310, 541330

Certified for: Highways, Streets, and Bridges Construction, Engineering Services




Small Local Business Enterprise Program

Issued: September 29, 2020

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050



Agenda Briefing

Prepared by:	Michael Niermeier	Title:	Director
Department:	Transportation	Division:	
Date Prepared:	March 08, 2021	Meeting Date:	March 23, 2021
Legal Review	Elizabeth McLean via email	Date:	March 09, 2021
Budget Review	James Hayes via email	Date:	March 18, 2021
Finance Review	Stacey Hamm via email	Date:	March 09, 2021
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM	
Committee	Transportation Ad Hoc		
Subject:	City of Columbia Bikeway Intergovernmental Agreement (IGA) ("CoC Bikeway IGA")		

STAFF'S RECOMMENDED ACTION:

Staff recommends approval of the City of Columbia Bikeway IGA. (Attachment 01)

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department's current fiscal year budget?	<input checked="" type="checkbox"/>	Yes		No
If no, is a budget amendment necessary?		Yes		No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

All funding is available in the FY21 Budget in the amount of \$824,332.00 (Attachment 2 for JLS and referendum amounts).

COUNTY ATTORNEY'S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

None.

REGULATORY COMPLIANCE:

Non-applicable

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

This City of Columbia Bikeway Intergovernmental Agreement represents another partnership between Richland County and the City of Columbia for development of the Bikeway, Pedestrian and Greenways Program (Penny B/P/G Program). This IGA supports the City's Comprehensive Plan, Columbia Compass: Envision 2036, Appendix M: Walk Bike Columbia. The Walk Bike Columbia Pedestrian & Bicycle Master Plan, adopted in 2015, is the result of a comprehensive public planning effort, and was initially adopted as an addendum to the transportation section of The Columbia Plan: 2018. As the Walk Bike Columbia Plan envisions closer to a 20- to 30-year build-out of infrastructure, the entirety of the plan is carried forward as an appendix to Columbia Compass.

The County has entered into similar agreements with the South Carolina Department of Transportation for several projects (e.g. Hardscrabble Road Widening and Leesburg Road) and the City of Columbia for Innovista Greene Street Phase 2, North Main Street and with Greenway Service and Maintenance Agreements. Attachment 3 shows a previous IGA with the City of Columbia for North Main Widening.

ADDITIONAL COMMENTS FOR CONSIDERATION:

The City assumes all maintenance for the useful life of the project and will provide quarterly expenditure reports to the County for accountability of expended funds. This allows the County to ensure compliance with appropriate use of the Penny Funds.

ATTACHMENTS:

1. City of Columbia Bikeway Intergovernmental Agreement
2. Referendum Project Breakdown
3. Executed IGA—County—City—N Main St Widening (5-20-16)

Draft Project Exhibits available on request

INTERGOVERNMENTAL AGREEMENT RELATING TO BIKE INFRASTRUCTURE

This INTERGOVERNMENTAL AGREEMENT RELATING TO BIKE INFRASTRUCTURE (“Agreement”) is made and entered into, by and between Richland County, South Carolina, a body politic and corporate in the State of South Carolina (“County”) and the City of Columbia, a perpetual body, politic and corporate, a municipal corporation in the State of South Carolina (“City”).

RECITALS:

WHEREAS, County and City are authorized by the constitution and general law of the State of South Carolina (“State”) to enter into agreements with other governmental bodies; and,

WHEREAS, the County, proposed and voters approved a referendum for the Transportation Penny Tax Program in 2012, which imposed a 1% sales tax; and,

WHEREAS, the County Transportation Penny Tax Program focused on three areas including Roadways, The Comet, and Bikeway, Pedestrian and Greenways; and,

WHEREAS, the Bikeway, Pedestrian, and Greenways program has a total budgeted amount of \$80,888,356 to be utilized to enhance the pedestrian and bicyclist experience through bike paths, sidewalks, and greenways; and

WHEREAS, the County intends to construct bikeways through out the community in the form of Bike Boulevards, Bike Lanes, Cycle Tracks, Multi Use Paths and similar (collectively “bike infrastructure”); and

WHEREAS, the parties desire to enter into this maintenance and installation agreement regarding bike infrastructure in order to allocate the installation responsibilities and the respective long-term maintenance for the designated items and areas between the County and the City in this agreement;

NOW, THEREFORE, in consideration of the mutual covenants provided herein, and other good and valuable consideration, the receipt of which is hereby acknowledged.

Section 1. Bike Infrastructure.

The City shall design, or have designed, detailed plans for construction/installation of herein described bike infrastructure. These plans shall comply with the City’s Engineering Regulations for bike infrastructure and with SCDOT standards. The City shall secure all approvals from SCDOT with regard to installation of bike infrastructure within SCDOT right-of-way. The project will comply with all applicable City codes and state and federal regulations.

During the construction/installation of the project, the City, in consultation with the County, may propose modifications to construction plans to address unique or unknown issues in the field. Such modifications will adhere to the within delineated budget. The County may, in its sole discretion, authorize change orders, modifications, or alterations to the Project Plans that it deems necessary to complete the Project so long as such change orders, modifications, or alterations are within the scope of the project. The City may propose revisions or additions to the Project Plans that are outside of the scope of work for the Project, which the County may accept or reject in its sole discretion. If the County

accepts a proposed revision or addition, the City shall be solely responsible for paying all additional costs incurred, as determined by the County, to construct and complete the Project as a result of the revision or addition.

Section 2. The City's Responsibilities.

- (a.) City agrees to operate and maintain those portions of bike infrastructure which are located within the City municipal boundaries. Such operation and maintenance shall be performed in a nondiscriminatory manner with regard to race, color, religion, ancestry or national origin, sex, age marital status, sexual orientation, gender identity, or on the basis of disability. The City further agrees to operate and maintain those portions of the bike infrastructure within the city limits in a safe and usable manner, and for their intended purpose, throughout the term of this agreement, or any extension thereof. The City further agrees to provide sufficient and appropriate police patrol of bike infrastructure as a part of its normal police functions on streets located within the City, so long as the bike infrastructure exist and are within the municipal limits of the City.

- (b.) The City agrees to the following specific installation responsibilities for those locations within the City Limits for the bike infrastructure as described below, insofar as the funds provided by the County will cover the installation, and in order of priority as to be determined by the City.
 - i. Bike Boulevard: Richland County Transportation Penny Program Bike Projects NO. 224, 240, and 259 otherwise known as College, Laurens, Oak, Greene, and Saluda. A designated bike boulevard that begins at Oak and Elmwood to Oak and College, then to College and Lauren, then Laurens and Greene, then to Green and Pickens. In addition, from Greene and Laurens to Green and Saluda, then to Saluda and Wheat.
 - ii. Bike Boulevard: Richland County Transportation Penny Program Bike Projects No. 216 otherwise known as Williams, Tryon, Heyward, Lincoln, and Catawba. A designated bike boulevard that begins at Blossom and Williams, then to Williams and Catawba, then to Catawba and Tyron, then to Tryon and Heyward, then to Heyward and Lincoln, then to Lincoln and Catawba, then ending at Catawba and Sumter.
 - iii. Bike Boulevard: Richland County Transportation Penny Program Bike Projects No. 218, 230, 231 otherwise known as Chester, Elmwood, Wayne, Edgefield, and Park. A designated bike route that begins at Edgefield and River, then to Edgewood and Park, then to Park and Chester, then to Chester and Wayne, then to Wayne and Elmwood, then to Wayne and Hampton, in addition a connection from Wayne and Elmwood to the Vista Greenway and Elmwood, as well as a connection from Park and Chester to Park and Calhoun. The connection from Elmwood and the vista greenway to the dead end of Elmwood shall not be constructed as there is no connecting element at this time.
 - iv. Bike Lane and Sharrow Markings- Calhoun Street: Richland County Transportation Penny Program project otherwise known as Calhoun Street Road Diet Project. A designated sharrow lane markings from Wayne to Park, bike lanes and road diet from Park to Pickens, and designated sharrow lane markings from Pickens to Harden.

- v. Bike Lane and Buffered Bike Lane –Washington Street: Richland County Transportation Penny Program project otherwise known as Pickens St/Washington St/Wayne St. Bikeways project. A designated bike lane from Lincoln Street to Park Street, buffered bike lanes from Park Street to Pickens Street.
- (c.) The City agrees to the following specific bike infrastructure maintenance responsibilities for the locations in Section 2(b.), which are within the City municipal boundaries, throughout the term of the agreement, or any extension thereof:
- i. Bike Boulevards: The City will maintain all sharrows, share the road signs, and bike boulevard directional signage that may be a part of the Bike Boulevard system. This responsibility includes maintaining the appearance and integrity of the bike boulevard infrastructure.
 - ii. Bike Lanes: The City will maintain all bike lanes striping, markings, share the road signs, bike lane begins/bike lane ends signs, and other associated elements of bike lanes. This responsibility includes maintaining the appearance and integrity of the bike lane infrastructure.
 - iii. Buffered Bike Lanes: The City will maintain all buffered bike lanes striping, markings, bike lane begins/bike lane ends, share the road signs, and other associated elements of buffered bike lanes. This responsibility includes maintaining the appearance and integrity of the buffered bike lane infrastructure.
 - iv. Cycle Tracks: The City will maintain all cycle track striping, markings, share the road signs, vertical separation devices, bike lane begins/bike lane ends, and other associated elements of bike lanes. This responsibility includes maintaining the appearance and integrity of the cycle track infrastructure.
 - v. Multi Use Paths: The City will maintain all Multi Use Path striping, markings, signs, and other associated elements of a multi-use path. This responsibility includes maintaining the appearance and integrity of the multi-use path infrastructure.
 - vi. Road Diet: The City will maintain a road diet which often includes the reduction of lanes or the changing of lane configuration while also possibly providing bike boulevard elements, Bike Lane elements, buffered bike lane elements, and cycle track elements and all associated components such as painted lines and symbols, signage, vertical separation elements, etc. This responsibility includes maintaining the appearance and integrity of the road diet infrastructure.

Section 3. Miscellaneous Provisions

- (a) The City’s design and installation obligations shall commence upon receipt of funding and from the County. The City’s maintenance obligations shall commence upon completion of the bike infrastructure. It is intended that the parties to his agreement recognize and acknowledge that as governmental entities, their authority, and capacity to perform the maintenance obligations identified herein is subject to each maintaining the respective legal authority to do so. In addition, the allocation of the maintenance obligations for the items identified will terminate with the end of the useful life of the project or the removal of a particular item being maintained by the City due to road reconstruction or other roadway modification.

- (b) The County's funding obligations shall commence upon execution of this agreement. These funding obligations shall be limited to and not exceed the amounts approved by County Council for the projects herein, or any extension thereof. The County's funding obligations shall cease at the time of project completion, and the County shall have no obligation to operate or maintain the bike infrastructure once fully installed.
- (c) The spending of the funds will be pursuant to the SCDOR Guidelines, and any funds that are determined by an audit to have been spent outside of such guidelines, the City will be held liable for.
- (d) Subsequent to this agreement, the County and City shall develop and agree upon a timeline for the development and completion of each of the projects herein.
- (e) FUTURE USE or Remove
- (f) This agreement will not create any duty or responsibility to anyone other than the Parties to the Agreement, nor does it create any rights enforceable by anyone other than a party (third party beneficiary) to the agreement.
- (g) This Agreement is to be governed, construed, and interpreted by the laws of the State of South Carolina. The parties do not waive sovereign immunity except to the extent that litigation may be commenced in the Circuit Court of Richland County, South Carolina as may be necessary. The Parties to the Agreement will agree that litigation will not be commenced until notice is given and the parties have attempted through discussion and mediation to resolve any disputes.
- (h) The official executing this Agreement on behalf of the City of Columbia will represent and assert actual authority to bind the City to the obligations and commitments made in this Agreement. Similarly, the official executing this Agreement on behalf of Richland County will represent and assert actual authority to bind Richland County to the obligations and commitments made in this Agreement.
- (i) Waiver: The failure of either party to insist upon the strict performance of any provision of this Agreement shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of this Agreement at any time. Waiver of any breach of this Agreement by either party shall not constitute waiver of subsequent breach.
- (j) Notice: Written notice to the City shall be made by placing such notice in the United States Mail, Certified, Return Receipt Requested, postage prepaid and Addressed to:

Section 4. Cooperation. The County and the City recognize the need for cooperation among the parties for the continued development of Bike Infrastructure. The County and City agree to cooperate and take any additional actions or to execute additional documents necessary to cause this Agreement to be effectuated.

Section 5. Default. In the event of a breach of this Agreement or failure by the County or City to meet the commitments set forth herein, the County and City each have the right to pursue such remedies and damages as may be available at law or in equity.

Section 6. Jurisdiction. This Agreement is governed by and interpreted in accordance with laws of the State of South Carolina, exclusive of the conflicts of law provisions that would refer the governance of this Agreement to the laws of another jurisdiction.

Section 7. Severability. In case any one or more of the provisions contained in this Agreement is determined to be invalid, illegal or unenforceable in any respect for any reason whatsoever, the validity, legality, enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 8. Termination. The allocation of the maintenance obligations for the items identified will terminate with the end of the useful life of the project or the removal of a particular item being maintained, whichever shall first occur.

Section 9. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures hereto and thereto were upon the same instrument.

Section 10. Amendments to Agreement. The County and the City recognize the need for cooperation among the parties for the continued development of Bike Infrastructure. The County and City agree to cooperate and take any additional actions or to amend this agreement to allow for more intergovernmental infrastructure projects.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their authorized officials and is effective as of the date of the last signature hereinbelow.

RICHLAND COUNTY, SOUTH CAROLINA

CITY OF COLUMBIA, SOUTH CAROLINA

By: _____
Chair, County Council

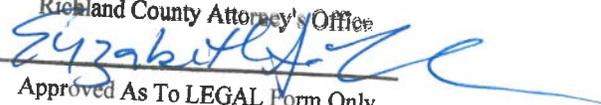
By: _____
Teresa B. Wilson, City Manager

Attest
: _____
Clerk, County Council

Attest
: _____
Clerk, City Council

Date:

Date:

Richland County Attorney's Office

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

EXHIBITA

Related Penny Projects per Richland County Ordinance 039-12HR:

A: College, Laurens, Oak, Greene, and Saluda Bike Boulevard: \$379,516

Bikeway Name

1. College St/Laurens St/Oak St/Taylor St:
2. Saluda Ave
3. Greene St. (Bull St to Saluda Ave)

B: Williams, Tryon, Heyward, Lincoln, and Catawba Bike Boulevard: \$255,692

Bikeway Name

1. Catawba St
2. Catawba St/Tryon St/Whaley St/Williams St

C: Chester, Elmwood, Wayne, Edgefield, and Park Bike Boulevard: \$32,441

Bikeway Name

1. Chester St/Elmwood Ave/Wayne St
2. Elmwood Ave
3. Edgefield St/Park St

D: Calhoun Street Road Diet, Bike Lane and Sharrow Markings- Calhoun Street: \$88,292

E: Washington Street Bike Lane and Buffered Bike Lane –Washington Street: \$68,391

Bikeway Name

1. Pickens St/Washington St/Wayne St

Note: Bikeway Name is the corresponding project in Richland County Ordinance 039-12HR Appendix A. The dollar figure is the Not to Exceed (NTE) amount allowed in 039-12HR Appendix A.

Project	CoC Project Name	JL	Object	Amount
A	College, Laurens, Oak, Greene, and Saluda Bike Boulevard			
1	College St/Laurens St/ Oak St/ Taylor St	13330317	532200	\$ 16,331.00
2	Saluda Ave	13330325	532200	\$ 3,934.00
3	Greene St. (Bull St to Saluda Ave)	13330369	532200	\$ 359,251.00
	Total			\$ 379,516.00

Project	CoC Project Name	JL	Object	Amount
B	Williams, Tryon, Heyward, Lincoln and CatawbaBike Blvd			
1	Catawba St	13330313	532200	\$ 5,547.00
2	Catawba St/Tryon St/ Whaley St/Williams St	13330370	532200	\$ 250,145.00
	Total			\$ 255,692.00

Project	CoC Project Name	JL	Object	Amount
C	Chester, Elmwood, Wayne, Edgefield and Part Bike Blvd			
1	Chester st/Elmwood Ave/Wayne St	13330315	532200	\$ 12,094.00
2	Elmwood Ave	13330352	532200	\$ 3,893.00
3	Edgefield St/Park St	13330318	532200	\$ 16,454.00
	Total			\$ 32,441.00

Project	CoC Project Name	JL	Object	Amount
D	Calhoun Street Road Diet, Bike Lane and Sharrow Markings- Calhoun St			
1	Calhoun Street (Wayne to Harden)	13330334	532200	\$ 88,292.00
	Total			\$ 88,292.00

Project	CoC Project Name	JL	Object	Amount
E	Washington St Bike Lane and Buffered Bike lane- Washington Street			
1	Pickens St/Washinton St/Wayne St	13330308	532200	\$ 68,391.00
	Total			\$ 68,391.00

Grand Total	\$ 824,332.00
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**INTERGOVERNMENTAL AGREEMENT BETWEEN
RICHLAND COUNTY, SOUTH CAROLINA, AND COLUMBIA, SOUTH CAROLINA
RELATING TO THE WIDENING AND IMPROVEMENT OF
NORTH MAIN STREET BETWEEN ANTHONY AVENUE AND FULLER AVENUE**

This agreement (this "Agreement") is made and entered into as of May 20, 2015, by and between Richland County, South Carolina (the "County"), a body politic and corporate with such government rights, privileges, and liabilities as other counties possess under the provisions of the general laws of the State of South Carolina (the "State"); and the City of Columbia (the "City"), a body politic and corporate with such government rights, privileges, and liabilities as other municipalities possess under the provisions of the general laws of the State.

WITNESSETH:

WHEREAS, a one percent (1%) special sales and use tax (the "Penny Tax") was imposed by and throughout the County pursuant to a successful referendum held in the County on November 6, 2012. One of the projects identified to be completed with a portion of the proceeds of the Penny Tax is the widening of North Main Street between Anthony Avenue and Fuller Avenue, as approved by County Council in the Richland County Transportation Improvement Program as approved on March 17, 2015 (the "Penny Project"); and

WHEREAS, the City has received a grant from the United States Department of Transportation ("Tiger Grant") for the project entitled Seamless City Revitalization Project relating to improvement of North Main Street between Anthony Avenue and Fuller Avenue (the "Tiger Grant Project"); and

WHEREAS, the Penny Project and the Tiger Grant Project are inextricably linked in terms of planning, design, right of way acquisition, bidding and construction and shall collectively be known as the "North Main Project"; and

WHEREAS, the parties have determined that the most efficient and cost effective way to complete the North Main Project is for the County to be responsible for administering certain aspects of the North Main Project including the management of all funds provided through the Tiger Grant; and

WHEREAS, the County will execute a supplemental intergovernmental agreement (the "Supplemental IGA") with the South Carolina Department of Transportation (SCDOT) setting forth the terms and conditions upon which the County will manage the funds provided through the Tiger Grant and other Federal earmarked funds; and

WHEREAS, the City wishes to authorize the County to construct the North Main Project on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements between the parties as set forth herein and other good and valuable consideration, the parties hereto do agree as follows:

1. **Term of Agreement.** This Agreement shall take effect upon its execution and shall terminate upon the occurrence of (a) the acceptance of the completed North Main Project by the SCDOT, and (b) the payment to the County of all amounts owed by the City.

2. Description of Project. The North Main Project shall consist of widening and improving North Main Street between Anthony Avenue and Fuller Avenue and will include detailed design services, right-of-way acquisition, mobilization, traffic control, clearing and grubbing, drainage and erosion control, utility service conversions and undergrounding, roadway widening and paving, street lighting, traffic signalization, water and sewer improvements, and appropriate construction engineering inspection services. The City shall provide to the County approved, signed right-of-way plans. Pursuant to the right-of-way plans, the County shall acquire the rights-of-way as needed and produce final construction plans (the "Project Plans"). Such Project Plans shall be consistent with the requirements of the Tiger Grant Agreement.

3. City Consent; Exemption from Assessments. The City hereby consents to the construction of or improvements to the aforesaid North Main Project within its corporate limits in accordance with the Project Plans and within the Project Budget. The foregoing consent shall be the sole approval necessary from the City for the County to complete the North Main Project under the Project Plans and within the Project Budget, provided, however, contractors, subcontractors and utility companies shall not be relieved of responsibility to obtain required permits and approvals with regard to construction and improvements within the City's limits. The City shall exempt all existing rights-of-way, any new right-of-way, and all other properties purchased in connection with the right-of-way for the North Main Project from any general or special assessment against real property for municipal services.

4. Requirements of Tiger Grant. The City is a party to the Tiger Grant Agreement, a copy of which is attached hereto (Exhibit A), and shall have sole responsibility for compliance with the terms and conditions of the Tiger Grant Agreement. The County will assist the City in meeting the City's Reporting Requirements as set out in Section 3 of the Tiger Grant Agreement. The County shall have no obligation to comply with the terms and conditions of the Tiger Grant Agreement, and in no event will the County become or be considered a party to the Tiger Grant Agreement; provided, however, the County will comply with the terms and conditions of the Supplemental IGA.

5. Funding. The total cost of the North Main Project shall be funded from several sources including the Tiger Grant, other Federal earmarked funds, Penny Tax, water and sewer capital improvement program funds from the City, as shown on the budget attached hereto (Exhibit B) (the "Project Budget").

6. Project Budget. The parties have each reviewed the Project Budget and agree that it is reasonable, accurate and sufficient to complete the North Main Project; however, the County does not guarantee completion of the North Main Project within the Project Budget. If actual construction costs as reflected in the low bid are over budget, the County will work with the City to revise the Project Plans as necessary to bring the cost within the Project Budget. Until the Project Plans have been revised such that the bid for the North Main Project is within the Project Budget, a Notice to Proceed will not be issued. If the actual costs of the North Main Project with the exception of water and sewer improvements are less than the Project Budget, the County's financial participation shall be lowered to cover actual costs.

If, during construction, circumstances arise or conditions are discovered which cause the Project Budget to be insufficient to complete the North Main Project, the County shall not be responsible for obtaining and providing additional funding. In such case, the County will cooperate with the City in revising the Project Plans as necessary to complete the North Main Project within the Project Budget. If the parties cannot agree on revisions to the Project Plans, the County may, in its sole discretion, approve revisions to the Project Plans as necessary to complete the North Main Project within the Project Budget. In no event will the County provide more than the \$30,000,000 reflected in the Project Budget; however, the City may provide additional legally-available funds to be used as directed by the City.

7. **Payments to the County.** Payments to the County from funds other than the Penny Tax shall be made pursuant to the Project Budget. Prior to the commencement of construction, the City will transfer the water and sewer funds to the County. The County shall hold such funds in a separate account and use those funds only for the purposes intended as reflected in the Project Budget.

8. **Procurement.** The County shall conduct the procurement process for all aspects of the North Main Project in a manner consistent with its procurement requirements and any Federal or State procurement requirements.

9. **Managing Construction of North Main Project.** The County shall be responsible for managing all aspects of the construction in the North Main Project in a manner consistent with the Project Plans and Project Budget, in accordance with applicable State and Federal standards. The County may, in its sole discretion, authorize change orders that it deems necessary to complete the North Main Project so long as such change orders are within the scope of the Project Plans and the Project Budget.

10. **Utility Relocation.** The North Main Project includes the relocation of City-owned water and sewer utilities as shown on the Project Plans and will be funded as shown on the Project Budget. All privately-owned utilities other than power lines or poles including, but not limited to, gas pipes, manholes, cables and fiber optics, located within the existing right-of-way shall be relocated at the utility's expense. Payment for the relocation of privately-owned utilities will only be made if the private utility can demonstrate a prior right of occupancy. With the cooperation of the City, the County's Utility Coordinator will coordinate the relocation of all utilities. The County shall not be liable for damages to property or injuries to persons as a consequence of placing, maintaining, or removing any utility by the City or its contractors.

In connection with the North Main Project, the City shall, using the existing Franchise Agreement with South Carolina Electric and Gas (SCE&G), relocate overhead electrical lines into an underground duct bank based upon plans approved by the County. Reimbursement for the relocation of overhead electrical lines and underground duct bank shall be coordinated and managed by the City and SCE&G and such reimbursement by the County shall be only for relocations pre-approved by the County. If costs for the installation of the underground duct bank or any of the privately-owned utilities which are eligible for reimbursement result in the Project Budget being insufficient to complete the North Main Project, the County shall not be responsible for obtaining and providing additional funding.

11. **Disagreements or Disputes.** Any disagreement or dispute under this Agreement shall be addressed by the County Administrator and City Manager who shall each make a good faith effort to resolve the disagreement or dispute. In the event this process is unsuccessful, either party may seek redress from the Court of Common Pleas for Richland County. Such proceedings shall be non-jury.

12. **Defaults and Remedies.** In the event either party shall violate or fail to comply with any provision or obligation of this Agreement or shall fail or refuse to perform or deliver the services required hereunder, and such refusal or failure shall continue for a period of 30 days after written notice, that party may be declared to be in default of this Agreement. As to any such default not involving non-payment, any obligation which has not been performed shall be deemed a ministerial act and subject to remedies of mandamus and mandatory injunction requiring the defaulting party to perform the obligation. The non-defaulting party shall be deemed to have had no adequate remedy at law for such default.

13. **Default Involving Non-Payment by the City to the County and Remedies.** In the event of a default involving non-payment by the City to the County under this Agreement, the past due amount shall accrue interest at the rate set forth in S.C. Code of Laws Section 34-31-20(A).

14. Waiver. No waiver of any default by the County or the City hereunder shall be implied from any delay or omission by the other party to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver and it shall be operative only for the time and to the extent therein stated. Waiver of any 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 term or condition. The consent or approval by a party of any act by the other requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of a party hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy.

15. Notices and Consent. All notices required to be given hereunder, except as otherwise provided in this Agreement, shall be deemed effective when received by the other party, through certified mail, personal delivery, or courier delivery. All such notices shall be addressed to the parties as follows:

Richland County
Post Office Box 192
Columbia, SC 29202
Attn: County Administrator

City of Columbia
Post Office Box 147
Columbia, SC 29217
Attn: City Manager

Any consent required in this Agreement shall be in writing signed by the City Manager or her designee or the County Administrator or his designee, as applicable.

16. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State, and by their signatures herein below, the parties consent to the exclusive jurisdiction of the courts of the County for resolution of any dispute arising hereunder.

17. No Construction Against Drafter. The parties hereby acknowledge that they have reviewed this Agreement and concur that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of any provision of this Agreement.

18. Severability. If any provision of this Agreement or any obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, that determination shall not affect any other provision, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, obligation, or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

19. Counterparts. This Agreement may be executed in several counterparts, all or any of such shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

20. Entire Agreement. This Agreement represents the entire and integrated agreement between the County and the City and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to the North Main Project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

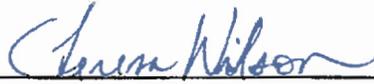
RICHLAND COUNTY, SOUTH CAROLINA

By: 

Printed Name: Torrey Rush

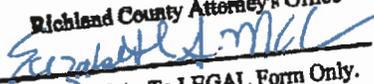
Title: Chair, County Council

CITY OF COLUMBIA, SOUTH CAROLINA

By: 

Printed Name: Teresa Wilson

Title: City Manager

Richland County Attorney's Office

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

APPROVED AS TO FORM

City Manager Department City of Columbia, SC



Agenda Briefing

Prepared by:	Michael Niermeier		Title:	Director
Department:	Transportation Department	Division:		
Date Prepared:	March 4, 2021	Meeting Date:	March 23, 2021	
Legal Review	Elizabeth McLean via email		Date:	March 05, 2021
Budget Review	James Hayes via email		Date:	March 05, 2021
Finance Review	Stacey Hamm via email		Date:	March 05, 2021
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM		
Committee	Transportation Ad Hoc Committee			
Subject:	Mitigation Credit Sales – SCDOT US 601 Bridge Replacement			

STAFF’S RECOMMENDED ACTION:

Staff respectfully requests the Committee concur with these credit sales and forward to full Council for consideration.

Request for Council Reconsideration: Yes

This approval is time sensitive as the buyer has requested notice of approval as soon as possible due to Army Corps of Engineers permitting constraints.

FIDUCIARY:

Are funds allocated in the department’s current fiscal year budget?		Yes	<input checked="" type="checkbox"/>	No
If no, is a budget amendment necessary?		Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

This mitigation credit sale will generate \$376,834.30 which will be credited to the Transportation Penny Program.

COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

None.

REGULATORY COMPLIANCE:

Non-applicable.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

Staff requests approval for the sale of mitigation bank credits from the Mill Creek Mitigation Bank to South Carolina Department of Transportation (SCDOT) for an Army Corps of Engineers (ACE) 404 Permit for the replacement of the US 601 McCord's Ferry Road Bridge across Colonels Creek. The applicant is requesting 18.87 wetland and 507.5 stream mitigation credits to fulfill the permitting requirements.

The mitigation bank was established with Transportation Program funding in order to provide mitigation credits necessary to acquire construction permits for transportation and other projects. Construction for transportation projects requires permitting and many projects need mitigation credits to get permitted. It is more cost effective when mitigation credits are available. As surplus mitigation credits are sold, the price for credits utilized for County projects is reduced. The requested mitigation credit sales provide for the acquisition of construction permits required for transportation and other projects as well as to replenish funds spent on the creation of the mitigation credits.

The mitigation bankers were notified by email of the County's desire to participate in this sale subject to final approval by County Council at the 100% level on January 22, 2021 after receiving notification on the same day. When the sales are completed, if approved by County Council, the funds will be added to the Transportation Program account.

If the County Council does not approve the requested sales of its surplus mitigation credits, the County portion of the mitigation credit sales will drop from \$376,834.30 to \$81,920.50 for a difference of \$294,913.80 to the Transportation Program. The County Council has approved surplus mitigation credit sales on many occasions. The last two (2) mitigation credit sales approvals were completed by County Council at the Special Called County Council Meeting on December 8, 2020 and the Regular Session County Council meeting on October 6, 2020. All related County Council actions since 2014 are not included in the attachments for brevity.

ADDITIONAL COMMENTS FOR CONSIDERATION:

None

ATTACHMENTS:

1. MCMB Credit Sale Checklist_SCDOT_US 601 Bridge replacement_02_18_21.pdf
2. MCMB_SCDOT_Sales Agr_SCDOT_US 601 Bridge Replacement_02_18_21_Signed.pdf
3. County Council Special Called Session, December 8, 2020 – Minutes SCM_12_08_20 Weyerhaeuser2.pdf
4. County Council Regular Session, October 6, 2020 – Minutes Reg_10_06_20 Weyerhaeuser.pdf

MITIGATION CREDIT SALES AGREEMENT SUMMARY

<u>Project:</u>	US 601 (McCord's Ferry Road) Bridge Replacement across Colonels Creek
<u>Location:</u>	Richland County, SC
<u>8-Digit HUC Watershed Code</u>	03050104 (Wateree)
<u>Buyer:</u>	South Carolina Department of Transportation
<u>Buyer's USACE 404 Permit #:</u>	SAC 2015-01282
<u>Price Per Wetland Credit:</u>	\$17,000.00
<u>Price Per Stream Credit:</u>	\$175.00
<u>Wetland Credits:</u>	18.87 credits (9.44 wetland restoration/enhancement & 9.43 wetland preservation)
<u>Stream Credits:</u>	507.5 credits (253.75 stream restoration/enhancement & 253.75 stream preservation)
<u>Credit Proceeds:</u>	\$409,602.50
<u>Richland County Credit Share:</u>	\$376,834.30 (92% of \$409,602.50)
<u>MCMH Credit Share:</u>	\$32,768.20 (8% of \$409,602.50)
<u>Fee for Out of Primary Service Area Sale:</u>	\$0.00
<u>Richland County Fee Share:</u>	\$0.00
<u>MCMH Fee Share:</u>	\$0.00
<u>Gross Proceeds (Inclusive of Fee for Out of Primary Service Area Sale:</u>	\$409,602.50
<u>Richland County Proceeds Share:</u>	\$376,834.30
<u>MCMH Proceeds Share:</u>	\$32,768.20

AGREEMENT FOR PURCHASE AND SALE OF STREAM
AND/OR WETLAND MITIGATION CREDITS

THIS AGREEMENT FOR PURCHASE AND SALE OF STREAM AND/OR WETLAND CREDITS (this "Agreement") is dated this ____ day of _____, 2021 by and between MILL CREEK MITIGATION HOLDINGS LLC, a Delaware limited liability company, and the owner and operator of a stream and wetland mitigation bank commonly known as the Mill Creek Mitigation Bank ("Seller"), and SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION ("Purchaser").

RECITALS

A. The Mill Creek Mitigation Bank (the "Bank") was approved and is being operated pursuant to that certain Final Mitigation Banking Instrument: Mill Creek Mitigation Bank, dated December 22, 2015, United States Army Corps of Engineers - Charleston District (the "Corps") permit number SAC-2014-00222 (the "MBI");

B. Pursuant to the MBI, the Bank may offer wetland and stream credits for sale as compensation for unavoidable adverse impacts to, or for the loss of, among other things, jurisdictional waters of the United States, including wetlands and streams, and other natural habitats and ecosystems, located within that certain geographical service area more particularly depicted on the attached **Exhibit A** (the "Service Area");

C. Purchaser desires to procure compensatory mitigation in connection with the project known as "US 601 (McCord's Ferry Road) Bridge Replacement across Colonels Creek" pursuant to USACE Charleston District permit SAC 2015-01282; and,

D. Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, wetland and/or stream mitigation credits pursuant to the terms and conditions set forth herein.

AGREEMENT

In consideration of the foregoing and the mutual promises, covenants, agreements and obligations of the parties contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Purchaser agree as follows:

1. Recitals. The recitals to this Agreement are herein incorporated by reference and made an integral part hereof.

2. Sale of Credits. Seller hereby sells to Purchaser, and Purchaser hereby purchases from Seller (a) TWO HUNDRED FIFTY-THREE and 75/100 (253.75) stream restoration/non-buffer enhancement credits and TWO HUNDRED FIFTY-THREE and 75/100 (253.75) stream preservation credits (collectively, the "Stream Credits") and (b) NINE and 44/100 (9.44) wetland restoration/non-buffer enhancement credits and NINE and 43/100 (9.43) wetland preservation credits (collectively, the "Wetland Credits," and together with the Stream Credits, the "Credits") from the Bank based on the terms and conditions contained herein.

Upon execution of this Agreement, Seller shall provide Purchaser with an invoice for the Purchase Price (as defined in Section 3 below) and Purchaser shall remit payment within 14 days of receipt of such invoice. Upon receipt of such payment, Seller will file the documentation with the Corps necessary to transfer the Credits to Purchaser in accordance with Corps policies and procedures and the terms of this Agreement.

3. Purchase Price. The purchase price for the (a) Stream Credits shall be ONE HUNDRED SEVENTY-FIVE and 00/100 Dollars (\$175.00) for each Stream Credit, for a total purchase price for the Stream Credits of EIGHTY-EIGHT THOUSAND EIGHT HUNDRED TWELVE and 50/100 (\$88,812.50); and (b) Wetland Credits shall be SEVENTEEN THOUSAND and 00/100 Dollars (\$17,000.00) for each Wetland Credit, for a total purchase price for the Wetland Credits of THREE HUNDRED TWENTY THOUSAND SEVEN HUNDRED NINETY and 00/100 (\$320,790.00), for a grand total purchase price for the Stream Credits and the Wetland Credits of FOUR HUNDRED NINE THOUSAND SIX HUNDRED TWO and 50/100 (\$409,602.50) (the "Purchase Price"). Upon payment of the Purchase Price in full, neither Purchaser, nor its successors, assignees or designees shall be liable for the payment to Seller of any other consideration or fee in connection with the sale of the Credits.

4. Delivery of Credits. Upon receipt of the Purchase Price, Seller shall:

- (a) notify the Corps of the completion of the sale using such documentation as required by the Corps, with a copy delivered to Purchaser; and
- (b) deliver to Purchaser a bill of sale for the Credits in substantially the same form as Exhibit B attached hereto.

5. Representations, Warranties and Covenants. Seller hereby warrants and represents to, and covenants with, Purchaser as follows:

- (a) Seller expressly represents, warrants, and covenants the matters set forth as Recitals A and B.

(b) Seller has a sufficient number of credits in the Bank to consummate the transactions contemplated herein.

(c) Seller has full power and authority to convey the Credits to Purchaser and to consummate the transactions contemplated herein.

(d) Seller shall deliver the Credits to Purchaser free and clear of any liens, security interests or other encumbrances.

(e) There is no pending or threatened action or proceeding affecting Seller before any court, governmental agency, or arbitrator that would adversely affect Seller's ability to comply with its obligations hereunder.

(f) Seller hereby covenants and agrees with Purchaser that Seller shall not sell any number of credits in the Bank that would prevent the consummation of the transactions contemplated herein.

(g) Seller shall be solely responsible, at its sole cost and expense, for compliance with the requirements of this Agreement and with all statutes, regulations, and other requirements applicable to the operation, management, and maintenance of the Bank.

(h) That the execution and delivery of this Agreement on behalf of Seller has been duly authorized and such execution and delivery shall constitute the valid and binding agreement of Seller and is enforceable in accordance with its terms.

(i) All of Seller's representations, warranties, and covenants herein shall survive the termination of this Agreement and the delivery of the bill or bills of sale pursuant to this Agreement.

6. Miscellaneous

(a) Notices. Any notice, demand or request which is required or permitted hereunder shall be deemed effective when hand delivered, sent by a receipted overnight delivery service, or mailed, via certified mail, to the following addresses:

Seller: Mill Creek Mitigation Holdings LLC
3414 Peachtree Road NE, STE 990
Atlanta, Georgia 30326

With a copy to:

The Lyme Timber Company LP
General Counsel
23 South Main Street, 3rd Floor
Hanover, NH 03755

Purchaser: South Carolina Department of Transportation

Environmental Services Office
955 Park St. Room 507
Columbia, SC 29201

With a copy to:

Vince McLucas
Jackie Galloway

The parties may change the address for notices by delivery of a change of address to the other party in accordance with the requirements set forth above.

(b) Brokerage Commission. Seller and Purchaser each warrant to the other that no broker, agent, salesman or similar person is entitled to a commission or other fee in connection with this transaction.

(c) Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and neither Party shall be bound by representations except as set forth in this Agreement. There are no other agreements or understandings, written or oral, between the parties with regard to the subject matter of this Agreement. This Agreement shall not be modified or amended except by a written document executed by both parties.

(d) Governing Law. The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, with the proper venue being Richland County, except to the extent that any applicable federal law or regulation shall supersede South Carolina law in relation to the matters set forth in this Agreement.

(e) Compliance with Applicable Laws. Both parties shall comply with all applicable federal, state, and local laws, rules, regulations, and orders in the conduct of their obligations hereunder.

(f) Severability. The provisions of this Agreement shall be deemed severable and, if any term herein shall be held invalid, illegal, or unenforceable, the remainder of this Agreement shall continue to be effective and binding on the parties.

(g) Additional Assurances. Both of the parties agree to execute and deliver any other document or documents that may be requested from time to time by the other party necessary to perform such party's obligations under this Agreement.

(h) Attorney's Fees. If legal action is commenced by either party to enforce its rights under this Agreement, the substantially prevailing party in such action shall be entitled to recover reasonable costs incurred by it, including, but not limited to, reasonable attorneys' fees and costs, in addition to any other relief granted.

(i) Nature of Credits. The sale and conveyance of the Credits pursuant to this Agreement shall not constitute the conveyance or transfer of any right, interest, or ownership of real property or the Bank, nor shall such conveyance impose upon Purchaser any obligation, duty, or liability arising from or incident to ownership of an interest in real property.

(j) Assignability. Neither party hereto may assign its rights and obligations hereunder to any third-party entity without the prior written consent of the other, which may be withheld in the other party's sole discretion.

(k) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall together constitute one and the same Agreement. Signed signature pages may be transmitted by facsimile or email and any such signature or electronic signature shall have the same legal effect as an original.

WITNESS the following authorized signatures:

SELLER: MILL CREEK MITIGATION HOLDINGS LLC

By: _____

Printed:

Its:

PURCHASER: SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

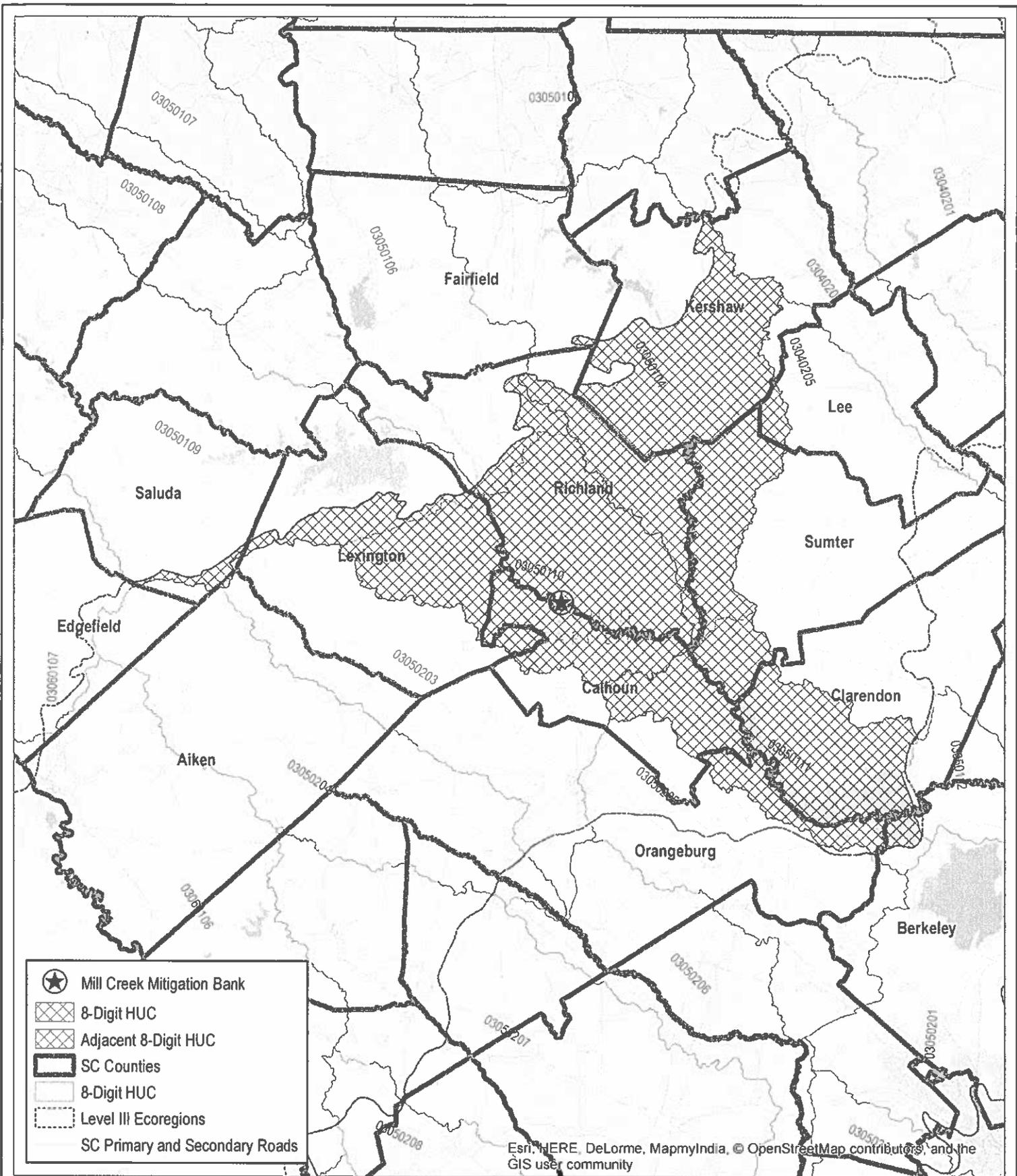
By: 

Printed: Vincent J. McLerran^{IV}

Its:

EXHIBIT A

[Attach map of Service Area]



Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community

-  Mill Creek Mitigation Bank
-  8-Digit HUC
-  Adjacent 8-Digit HUC
-  SC Counties
-  8-Digit HUC
-  Level III Ecoregions
-  SC Primary and Secondary Roads

TIDEWATER
 A **JMT** Division
 952 Houston Northcutt Blvd., Suite 100
 Mount Pleasant, SC 29464
 Ph: (843) 558-2624 Fx: (843) 558-4329
 www.JMT.com

Figure 16: Service Area Map
 Mill Creek Mitigation Bank
 Richland County, South Carolina
 Source: ESRI, USGS, EPA
 Date: July 2016

1 inch = 15 miles

0 7.5 15 30 Miles



EXHIBIT B

BILL OF SALE

THIS BILL OF SALE is made as of the ____ day of _____, 2021, by MILL CREEK MITIGATION HOLDINGS LLC, a Delaware limited liability company ("Seller"), and SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION ("Purchaser").

Seller and Purchaser have entered into that certain Agreement for Purchase and Sale of Stream and Wetland Mitigation Credits dated _____, 2021 (the "Agreement"), the terms of which are incorporated herein by reference and made a part hereof, with respect to the sale by Seller and the purchase by Purchaser of Stream Credits and Wetland Credits (each as defined in the Agreement) held in Seller's Mill Creek Mitigation Bank, Richland County, South Carolina.

In consideration of the Purchase Price (as defined in the Agreement) and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Seller hereby sells, transfers, assigns, conveys, delivers, and sets over to Purchaser, its successors, or assigns, _____ and ___/100 Stream Credits and _____ and ___/100 Wetland Credits, to have and hold all such Stream Credits and Wetland Credits, forever. Witness the following authorized signature:

Mill Creek Mitigation Holdings LLC

By: _____

Printed:

Its:

Present But Not Voting: Dickerson

Not present: Kennedy

The vote was in favor.

- b. Mitigation Credit Sales - Weyerhaeuser NR Company, I-26 Interchange Widening II - Mr. Manning stated the committee unanimously recommended the sale of these credits sales to Weyerhaeuser NR Company in the amount of \$189,520.94.

In Favor: Malinowski, McBride, Livingston, Terracio, Manning,

Opposed: Walker, Myers, Newton

Not Present: Kennedy

Present Not Voting: Dickerson

The vote was in favor.

Ms. Myers noted she wanted the record to reflect that she was not present at the committee meeting, but would have voted in opposition had she been present.

Mr. Manning moved, seconded by Ms. McBride, to reconsider Items 19(a) and (b).

In favor: Malinowski, Walker, Myers, Newton

Opposed: McBride, Livingston, Terracio, Manning,

Not Present: Kennedy

Present But Not Voting: Dickerson

The motion for reconsideration failed.

- c. FY21 Transportation BAN/BOND - Mr. Manning stated the committee recommended for approval of the resolution, to bond for \$100M, pay down \$25M of outstanding debt from the last Transportation BAN due in February 2021.

Mr. Malinowski noted, on p. 503, we have a staff recommended action that gives us two choices, but there is no real recommendation.

Mr. Manning responded, when it went to committee, we asked for clarification. The clarification they gave us is in the motion he reported out of committee.

Mr. Malinowski stated, on p. 504, it says the original ordinance does not require a resolution, but staff is proposing that we draft a resolution. What is the reason?

Mr. Jones responded, when discussing the requirement of a resolution, the conclusion of Administration, and the Chair, was that it would be best for Council to see all this again and go ahead

**Special Called Meeting
December 8, 2020**

Mr. Malinowski moved, seconded by Ms. Dickerson, to reconsider this item.

Opposed: Malinowski, Dickerson, McBride, Livingston, Terracio, Walker, Manning, Myers and Newton

Not Present: Kennedy

The motion for reconsideration failed.

19. REPORT OF THE TRANSPORTATION AD HOC COMMITTEE

- a. Polo Rd. Widening Service Order – Mr. Manning stated the committee recommended approval of Service Order #11 to Cox & Dinkins for the design of Polo Road Widening, as described in the scope of work.

In Favor: Malinowski, Dickerson, McBride, Livingston, Terracio, Manning and Newton

Opposed: Walker and Myers

Not Present: Kennedy

Mr. Manning moved, seconded by Ms. McBride, to reconsider this item.

In Favor: Walker and Myers

Opposed: Malinowski, Dickerson, McBride, Livingston, Terracio, Manning and Newton

Not Present: Kennedy

The motion for reconsideration failed.

- b. I-26 Widening Mitigation Credit Sales – Mr. Manning stated the committee is approve the sale of 6.76 wetlands credits to Weyerhaeuser NR Company for the SCDOT I-26 Interchange Widening Project for \$125,974.40.

Ms. Myers noted the entirety of this mitigation bank is on Old Bluff Road, which is in a blighted portion of Richland County. There has not been any proposed improvements to Old Bluff Road, yet there is a multimillion dollar mitigation bank, with mitigation bank credit sales, to be used to improve other parts of Richland County. Therefore, she will be voting against this item.

In Favor: Malinowski, McBride, Livingston, Terracio and Manning

Oppose: Walker, Myers and Newton

Abstain: Dickerson

Not Present: Kennedy

The vote was in favor.

Mr. Manning moved, seconded by Ms. McBride, to reconsider this item.

In Favor: Walker, Myers and Newton

Opposed: Malinowski, McBride, Livingston, Terracio and Manning

Abstain: Dickerson

Not Present: Kennedy

The motion for reconsideration failed.

- c. Petition for Annexation of Richland County property- Three Rivers Greenway/Saluda Riverwalk – Mr. Manning stated the committee is for First Reading approval of the petition.

In Favor: Malinowski, Dickerson, McBride, Livingston, Terracio, Manning, Myers and Newton

Opposed: Walker

Not Present: Kennedy

The vote was in favor.

- d. Transportation Department Organization – Mr. Manning stated the committee recommended approval to create the Transportation Department Finance Manager position. The funding has already been approved for the position. At the committee's October meeting, they will take up the organization chart.

Mr. Livingston inquired if this was staff's recommendation.

Mr. Manning responded in the affirmative.

Ms. Newton inquired if the current organizational chart does not represent where this new position will be, and we will be provided an updated organizational chart at the next committee meeting. In addition, where does the new position fit into the organizational chart?

Mr. Manning responded that the new organizational chart will be presented at the next committee meeting. The position will report to the Transportation Director.

In Favor: Malinowski, Dickerson, McBride, Livingston, Terracio, Walker, Manning, Myers and Newton

Not Present: Kennedy

The vote in favor was unanimous.

Mr. Manning moved, seconded by Ms. Dickerson, to reconsider this item.

Opposed: Malinowski, Dickerson, McBride, Livingston, Terracio, Walker, Manning, Myers and Newton

Not Present: Kennedy

Regular Session
October 6, 2020