

**South Carolina
Transportation Infrastructure Bank**



BOARD OF DIRECTORS

Vincent Graham
Chairman

Max Metcalf
Vice-Chairman

Ernest Duncan

Senator Hugh K. Leatherman, Sr.

Representative Chip Limehouse

Jim Rozier

Joe E. Taylor, Jr.

955 Park Street
Room 120 B
Columbia, SC 29201
P: (803) 737-2875
Fax: (803) 737-2014

SCTIB

Board Meeting

SCDOT Headquarters Building
5th Floor Auditorium
955 Park Street
Columbia, South Carolina
December 15, 2015
2:00 p.m.

AGENDA

- | | | |
|-------|--|-----------------------|
| I. | Call to Order | Chairman Vince Graham |
| II. | Consideration of Minutes of October 27, 2015 | |
| III. | Administrative Items
A. Appointment of Secretary
B. Appointment and Reauthorization of
Evaluation Committee | Chairman Vince Graham |
| IV. | Update on and Review of Mark Clark Project
A. Consideration of Action on Project | Jim Holly |
| V. | Executive Session (If required) | |
| VI. | Post Executive Session Actions (If required) | |
| VII. | Standard Conditions and Operating Guidelines | Jim Holly |
| VIII. | Project Evaluation Committee Update | Max Metcalf |
| IX. | Strategic Plan Committee Update | Joe Taylor |
| X. | Other Business | Chairman Vince Graham |
| XI. | Adjourn | |

MINUTES
South Carolina Transportation Infrastructure Bank
Board Meeting

SCDOT Headquarters Building
5th Floor Auditorium
955 Park Street
Columbia, SC 29201

December 15, 2015
2:00 p.m.

NOTE: Notification of the time, date, place and agenda of this meeting has been posted and sent, in accordance with the provisions of the South Carolina Freedom of Information Act, to all persons or organizations, local news media, and other news media that requested notification of the time, date, place and agenda of this meeting. Efforts to notify the requesting person or entity include, but are not limited to, the transmissions of notice by U. S. Mail, electronic mail, or facsimile.

Present: Vincent G. Graham, Chairman, Presiding
Max Metcalf, Vice-Chairman
Ernest Duncan
Senator Hugh K. Leatherman
Representative Chip Limehouse
Jim Rozier
Joe E. Taylor, Jr.

Others present: Tami Reed, representing the Bank; Jim Holly, Board Secretary and Bank Counsel; Bill Youngblood of the McNair Firm, Bond Counsel for the Bank; Christy Hall, Secretary of SCDOT; Wendy Nicholas, SCDOT Chief of Staff; Leland Colvin, SCDOT; and other representatives of SCDOT; members of the public; and media representatives.

The meeting was called to order by Chairman Graham.

Mr. Graham welcomed everyone to the meeting. He explained that Debra Rountree had announced her retirement, after being with the Bank since inception in 1997, effective November 30, 2015. Mr. Graham also explained that Max Metcalf, Vice Chairman, had also announced he would be leaving the Bank Board and that today's meeting would be his last.

In addition to these losses, the Chairman stated that in the near future the Board would be losing Mr. Rozier and Mr. Limehouse. Mr. Rozier's term as SCDOT Chairman, and SCTIB Board member, expires in January 2016. Mr. Mike Wooten will be replacing Mr. Rozier as Chairman of the SCDOT Commission in February, 2016. Mr. Limehouse is not seeking re-election to his House seat and will no longer be a Bank Board member when his current term expires in 2016.

Approve October 25, 2015 Minutes: Mr. Rozier made a motion, seconded by Mr. Limehouse to approve the minutes of the October 25, 2015, meeting as presented. The motion passed unanimously.

Administrative Items

Chairman Graham explained that the Board needed to vote to reappoint Jim Holly as Secretary for the Board. Mr. Rozier made a motion. The motion was seconded by pick a name. The motion passed unanimously.

After discussion of the departure of the Evaluation Committee Chairman, Mr. Metcalf, explained the need to reauthorize the Evaluation Committee and choose a new Chairman. Mr. Rozier made a motion to appoint Mr. Graham to be the new Evaluation Committee Chairman and authorize him to appoint Board members and Non-Board members to the Committee as needed. Mr. Leatherman seconded the motion. The motion passed unanimously.

Update on and Review of Mark Clark Project

Mr. Holly explained that the members had before them a Resolution based on the current 2007 Intergovernmental Agreement with Charleston County and SCDOT on the Mark Clark Extension Project. That Agreement provided \$420 million from the Bank for construction of the full project. He stated that the most recent estimate from SCDOT to complete the full project was \$725 to \$773 million so there was a funding shortfall of approximately \$305 to \$353 million. The proposed Resolution established a path forward consisting of several formal steps for the County to take determine if it will fund or secure funding to cover the shortfall to complete the full project. Mr. Metcalf made a motion to adopt the Resolution. Mr. Duncan seconded the motion. The members began discussion of the Resolution. Mr. Limehouse stated he could not support the Resolution because it did not allow for the project to be built in segments or phases as funding permitted. Mr. Rozier expressed his concerns on the legality of requiring the County Council to pass the binding resolution set forth as the first step in the timeline in the Resolution under consideration. He stated that a resolution could not be used to bind the current or future county councils. Mr. Holly commented that in his opinion the requirement in first step in the Resolution was proper. Mr. Leatherman stated that the project cannot be segmented or phased due to FHWA laws and regulations requiring the availability of funding to complete the full project for issuance of a permit for the project. He stated that the phased approach for the project would have to go back to the FHWA for more review causing even further delays in the project. Mr. Taylor stated that the changes from the full scope of the project would mean the project

would be different from the scope of the project originally approved and funded by the Bank. Discussion on the Resolution ended and a roll-call vote was taken. The motion to adopt the Resolution passed six votes to one, with Mr. Limehouse voting against the Resolution. A copy of the Resolution is attached to these minutes.

Bill Tuten, on behalf of Charleston County, was recognized and presented the Board with a letter from County Council Chairman Elliott Summey commenting on the Board's Resolution.

Executive Session: No Executive Session was needed.

Standard Conditions and Operating Guidelines: A draft copy of Standard Conditions prepared by Bank Counsel was discussed. A copy of Standard Conditions is on file with the Bank.

Strategic Plan Committee Update: Mr. Taylor explained the progress made on the setting up a Committee.

Other Business: No other business was discussed. There being no further business, the meeting was adjourned by acclamation at 3:00 pm.


Board Secretary

SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK
BOARD OF DIRECTORS
RESOLUTION
ON
CHARLESTON COUNTY MARK CLARK EXTENSION PROJECT

WHEREAS, on June 30, 2006, the Board of Directors of the South Carolina Transportation Infrastructure Bank (the Bank) approved initial financial assistance for the Charleston County Mark Clark Expressway Extension/Interstate 526 Project which then had an estimated total project cost of \$420 million (the Project);

WHEREAS, on August 1, 2006 and March 5, 2008, the Joint Bond Review Committee of the General Assembly approved the aforementioned financial assistance from the Bank for the Project not to exceed a total of \$420 million; and

WHEREAS, Charleston County, the South Carolina Department of Transportation (SCDOT) and the Bank entered into an Intergovernmental Agreement (the IGA) on the Project dated as of June 8, 2007, with total project costs not to exceed \$420 and with Charleston County having an obligation to obtain or provide additional funding to complete the original scope of the Project if the available funding of \$420 million was insufficient for that purpose;

WHEREAS, the IGA and Charleston County's application for financial assistance defined the original scope of the Project as extending the Mark Clark Expressway/Interstate 526 from U.S. Highway 17 (Savannah Highway) across John's Island to SC Highway 171 (Folly Road) on James Island at a total cost not to exceed \$420 million;

WHEREAS, since 2007, the County and SCDOT have been engaged, among other things, in work on preliminary design, redesign and environmental studies and analysis for the Project and in conferring with the Federal Highway Administration on the Project, and the Bank has reimbursed or paid SCDOT approximately \$26 million for such activities and costs, including approximately \$16.5 million in right-of-way acquisition costs and \$9.25 million in engineering fees and costs;

WHEREAS, since 2007, Charleston County and/or SCDOT have determined or have proposed, among other things, that the Project should be changed from an interstate project to a parkway project, and SCDOT determined twice that the total estimated costs of the parkway project have increased substantially with the most recent estimate being approximately \$725 million to \$773 million;

WHEREAS, the IGA requires that all material changes to the Project are subject to the approval of the Bank Board, a number of material changes to the Project have occurred or been proposed, and the Bank Board has not approved those changes; and

WHEREAS, the completion of the original full scope of the Project and the implementation of all of the public benefits from the completion of the Project was the essential purpose of the Bank's decision to commit \$420 million in financial assistance to the Project, and without Charleston County obtaining or providing funds to cover the aforementioned shortfall of \$305 to \$353 million, it will be impossible to complete the original full scope of the Project and implement all of those public benefits.

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

Section 1. The Board will reserve the balance of the \$420 million in financial assistance for the Project subject to the following conditions being met by Charleston County: (a) on or before March 30, 2016, the Charleston County Council adopts a binding resolution in which it sets forth the County's plan to fund, or secure funding for, the aforementioned shortfall for the Project from specified, dedicated revenue sources (other than the Bank) which plan is subject to review and approval by the Bank Board; (b) on or before April 30, 2016, Charleston County approves by a binding resolution or ordinance a new or amended Intergovernmental Agreement among the County, SCDOT and the Bank and any other related instruments requested by the Bank, all in a form and with contents the Bank determines are needed to implement the foregoing actions and protect the interests of the Bank; (c) before December 16, 2016, the

Charleston County Council adopts and implements a legally enforceable ordinance acceptable to the Bank Board putting the aforementioned plan into effect and making those funds available for the Project on a schedule acceptable to the Bank Board.

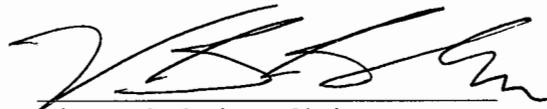
Section 2. All of the foregoing is subject to the Joint Bond Review Committee of the General Assembly (JBRC) granting the approvals required by the South Carolina Transportation Infrastructure Bank Act, if any, that are necessary to implement the foregoing actions.

Section 3. Until the Charleston County meets all of the foregoing conditions, the Bank in its discretion may delay or mitigate further expenditures of funds on the Project.

Section 4. If Charleston County fails to meet any of the foregoing conditions by the dates specified above and the Chairman of the Bank Board declares the same in writing, Charleston County, SCDOT and the Bank shall, within sixty (60) days of the date that the Chairman issues such declaration, develop, approve, and implement a plan to end the Project in a manner that allows the Bank the option to direct the sale of the rights-of-way or other property interests acquired for the Project and retain the proceeds of those sales, allows SCDOT and the Bank to apply any acquired environmental mitigation credits to other important transportation projects as determined by SCDOT and the Bank, and takes into account the funds spent by Charleston County on improving state highways. In the event such a plan is not approved and implemented by those three parties within that sixty (60) day period, the Bank shall implement the plan it determines is appropriate to end its participation in the Project. In either event, the aforementioned reserved financial assistance will be released to be used on other projects approved by the Bank and JBRC.

Section 5. The Chairman is hereby authorized, upon the advice of legal counsel for the Bank, to sign any documents and undertake any measures necessary to implement the foregoing actions.

Adopted December 15, 2015.



Vincent G. Graham, Chairman

ATTEST: 

James M. Holly, Secretary

J. Elliott Summey - Chairman
A. Victor Rawl - Vice Chairman
Colleen T. Condon
Henry E. Darby
Anna B. Johnson
Teddie E. Pryor
Joseph K. Qualey
Herbert R. Sass, III
Henry D. Schweers



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CHARLESTON COUNTY COUNCIL
LONNIE HAMILTON, III PUBLIC SERVICES BUILDING
4045 BRIDGE VIEW DRIVE
CHARLESTON, SOUTH CAROLINA
29405-7464

December 15, 2015

Vincent G. Graham, Chair
South Carolina Transportation Infrastructure Bank
995 Park Street
Columbia, SC 29201

Re: South Carolina Transportation Infrastructure Bank Board of Directors Resolution on
Charleston County Mark Clark Extension Project

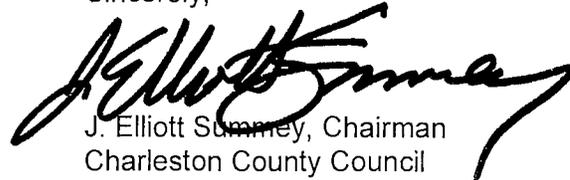
Dear Chairman Graham:

I am deeply troubled and concerned by the actions of the South Carolina Transportation Infrastructure Bank (SIB) Board today approving a Resolution on the Mark Clark Extension Project. The Resolution purports to direct the County to perform certain actions that it is without the legal authority to do, and it authorizes the Bank to impose a penalty on the County if the County does not comply with the Resolution's conditions. This action is in direct contravention with our Intergovernmental Agreement and a unilateral change to the contract. Moreover, the Resolution mandates that the County adopt binding resolutions and ordinances, which would ostensibly bind future Councils. My Council cannot accomplish this directive under our system of government.

In addition, the Resolution requires Council to approve undisclosed amendments to the Intergovernmental Agreement that would be irrevocable. Finally, the most egregious requirement calls for a "legally enforceable ordinance" putting a plan into effect by December 16, 2016, making funds available for the projected \$300 million shortfall for the project on a schedule acceptable to the SIB. If the County were to adopt such an "ordinance," it would be nothing more than an empty promise at best. Not even the SIB could do what it asks the County to do under State law. Although the County is considering submitting a referendum question to the Charleston County electorate for an additional ½-cent sales tax in November 2016, even if Council decides to submit a question to the voters and it were approved, State law would preclude collection of the sales tax until May 2017. It is interesting to note that even the SIB's \$420 million commitment for the project is not currently available, but it is subject to the SIB's future bonding capacity.

The SIB's actions today essentially require the County to fund its local match of \$117 million and provide a plan to fund an additional \$300 million by December 16, 2016, just to stay eligible for the SIB's funding commitment of \$420 million. These conditions are virtually impossible for a local government to accomplish. These actions, in effect, require the County to fund \$417 million for the project and to violate State law if the County were to comply with the Resolution that unilaterally alters the Intergovernmental Agreement. Therefore, I respectfully request that you reconsider today's actions within 30 days; otherwise, the County will be forced to pursue any and all recourse available to it.

Sincerely,



J. Elliott Summey, Chairman
Charleston County Council

JES/btc

MINUTES
South Carolina Transportation Infrastructure Bank
Board Meeting

SCDOT Headquarters Building
5th Floor Auditorium
955 Park Street
Columbia, SC 29201

October 27, 2015
2:00 p.m.

NOTE: Notification of the time, date, place and agenda of this meeting has been posted and sent, in accordance with the provisions of the South Carolina Freedom of Information Act, to all persons or organizations, local news media, and other news media that requested notification of the time, date, place and agenda of this meeting. Efforts to notify the requesting person or entity include, but are not limited to, the transmissions of notice by U. S. Mail, electronic mail, or facsimile.

Present: Vincent G. Graham, Chairman, Presiding
Max Metcalf, Vice-Chairman
Ernest Duncan
Senator Hugh K. Leatherman
Representative Chip Limehouse
Jim Rozier
Joe E. Taylor, Jr.

Others present: Tami Reed, representing the Bank; Jim Holly, Board Secretary and Bank Counsel; Bill Youngblood of the McNair Firm, Bond Counsel for the Bank; David Miller of Public Financial Management, the Bank's financial advisor; Christy Hall, Secretary of SCDOT; Wendy Nicholas, SCDOT Chief of Staff; Leland Colvin, SCDOT; and other representatives of SCDOT; a number of elected officials and local officials and representatives; members of the public; and media representatives.

The meeting was called to order by Chairman Graham.

Chairman Graham welcomed guests and gave a brief introduction of himself and his business experience with the design, finance, and building infrastructure, which included 20 miles of roads, 40 miles of sidewalks and paths, and ten bridges. Chairman Graham thanked the Governor for the opportunity to serve on the Board. Chairman Graham also thanked Mr. Don Leonard for his twelve years of service as Chairman for the Bank and his legacy, which included an outstanding staff, cohesive Board, and solid financial position. Chairman Graham said Don left big shoes, and pledged to do his best to fill them. The Chairman went on to thank the bank's staff members - Tami Reed and Debra Rountree; principle consultants - Jim Holly and David Miller; and Secretary Christy Hall and her Chief of Staff at the DOT, Wendy Nicholas.

The Chairman spoke of an interest in history as a useful guide for decision making. For context, he noted that in a little more than two months we'll be into 2016 – a year which marks the 100th anniversary of passage of the first federal highway bill. This 1916 act led to the establishment of most of the state DOTs in the country, which were then called state highway departments. The bill provided a mechanism to funnel money from the federal government to the states for building automotive infrastructure. This was unprecedented, as before that time most transportation infrastructure was funded either privately or at the local government level.

During the previous 100 year period, 1816-1915, numerous innovations had taken place – steam ships, trains, street cars, subways, bicycles, automobiles. In comparison, over the last 100 years since the federal and state governments had gotten into the infrastructure business, we have had relatively little innovation. Chairman Graham suggested that putting most of our transportation eggs in the automotive basket may have resulted in crowding out other forms of transportation choice, and possibly undermined the type of transportation innovation that might have otherwise occurred. He posed a question: over the next 100 years, do we wish to continue perpetuating the automotive vision or do we want to try to make room for other forms of transportation choice and encourage innovation?

Chairman Graham also said that the meeting was being live streamed so folks at home could watch.

Approve May 18, 2015 and June 18, 2015 Minutes: Mr. Metcalf made a motion, seconded by Mr. Limehouse to approve the minutes of the May 18, 2015 and June 18, 2015, meetings as presented. The motion passed unanimously.

Storm Recovery Update: Acting Secretary Christy Hall gave an update as to the status of the recovery efforts by SCDOT from the rain storms the first week of October 2015. Secretary Hall outlined the damage caused by the flooding as well the resulting road and bridge closures. Secretary Hall explained the different Federal Assistance programs (FEMA and FHWA Emergency Relief Program) and how the SCDOT is planning to maximize the reimbursements. A copy of Secretary Hall's presentation is attached to these minutes.

Financial Statement Presentation: Chairman Graham introduced Chris Halkowitz, CPA, CFE with Scott and Company to present the Bank's 2015 Audited Financial Statements. Mr. Halkowitz discussed the results of the audit of the 2015 Financial Statements performed by Scott and Company auditors. The Bank audited Financial Statements are located on the South Carolina State Auditor's Office website <http://osa.sc.gov>.

Project Status Updates: Prior to hearing project updates, Chairman Graham asked Max Metcalf, Chair of the Project Evaluation committee, to review the established project criterion used to evaluate each application to the SCTIB. Mr. Metcalf then provided a summary of the 6-page project criterion.

Leland Colvin of SCDOT presented an update of the active Bank projects managed by SCDOT. A copy of Mr. Colvin's presentation "State Infrastructure Bank Program Status Report 2015" is attached to these minutes. In his presentation, Mr. Colvin discussed the following projects: (1) Horry County Ride 2007 Projects - Carolina Bays Parkway Extension and SC Highway 707 Widening in Horry County and Georgetown Counties; (2) Florence County Projects - Pine Needles Road, Hwy 378, U.S. 76, TV Road/Irby Road, Alligator Road, and SC Highway 51; (3) Charleston County Mark Clark Extension Project ; (4) U.S. 17 Ace Basin Project; (5) Act 98 Projects- I-85/I-385 in Greenville County, I-20 in Lexington County, I-77 Widening in Richland County, I-26/I-126/I-20 in Richland and Lexington Counties, I-85 Widening in Spartanburg and Cherokee Counties, I-26 Widening (US 176 to SC 296) in Spartanburg County, I-20 Widening (GA line to US 25) in Aiken County, and I-26 Widening (SC 27 to US 17 Alternate) in Berkeley County.

Mr. Robert McFee, Director of Engineering for Beaufort County, provided an update on the SC 170 Project. His report is attached to these minutes. Mr. McFee thanked the Board for the funding on the project and stated that the project was complete and open to traffic.

Bank staff member, Tami Reed, gave a report on the Mount Pleasant Project. The project which is located at the intersection of Hungryneck Road and US Highway 17 is nearing completion and final billings are being processed.

Jason Ward, Dorchester County Administrator, provided an update on the Dorchester County Projects. Mr. Ward gave an update of the current projects: Orangeburg Road and Butternut Road, US Highway 78 Improvements, Berlin Myer Parkway, and SC Hwy 165 from Carolinian Drive to Ashley Ridge High School. Mr. Ward also requested the Board consider an additional \$91 million grant for: Bacons Bridge Road (\$4 million), US Hwy 78 Phase 3 (\$22 million), and Orangeburg Loop (\$65 million). His report is attached to these minutes.

City of Charleston's Director of Traffic and Transportation, Hernan Pena, gave an update of the Septima Clark Drainage Project. The project is now in the second phase of construction. Phase III, for which the Bank granted \$88 million, will be ready to go out for bid soon.

Bank Staff member, Tami Reed, gave a report on the City of Aiken projects. The projects include the University Parkway Widening and the Dougherty Road/Whiskey Road Intersection. University Parkway is in the preliminary engineering phase and Dougherty Road/Whiskey Road Intersection is nearing completion of the Right of Way phase.

Financial Plan Update: Mr. David Miller of Public Financial Management, the Bank's financial advisor, gave an update on the financial status and business plan of the Bank and the plans to issue revenue bonds in 2017. He also reported on the possible need to issue separate initial revenue bonds for the Act 98 projects in 2017. Mr. Miller explained the various assumptions on which the Bank's financial and business plan are based. He explained that the Bank separately accounts for Act 98 revenues and expenditures. A copy of the report as presented is attached to these minutes.

Debt Service Budget Resolution: Tami Reed presented the annual Debt Service Budget Resolution explaining that a budget showing the amount available to meet the debt service requirements of the Bank is required by the Master Revenue Bond Resolution to be approved by the Board. Representative Limehouse moved to approve the Resolution which was seconded by Mr. Metcalf. The Resolution was approved unanimously. A copy of the Resolution is on file in the records of the Bank and attached to these minutes.

Resolution Authorizing Execution of IGAs and Other Agreements: Mr. Jim Holly presented a Resolution explaining that due to the change a change in leadership at the Bank a resolution was needed to authorize the Chairman and Vice Chairman, when the Chairman is unavailable, to sign Intergovernmental Agreements and other agreements and documents on behalf of the Board. A copy of the Resolution is on file in the records of the Bank. Mr. Rozier made a motion to approve the Resolution. Mr. Metcalf seconded. The motion passed unanimously.

Ratification of Act 98 Project Agreement: Mr. Holly requested that the Board ratify Vice Chairman Metcalf's signature on the Intergovernmental Agreement between SCDOT and the Bank on the Act 98 I-85 Widening project. Mr. Rozier made the motion to that effect, and Mr. Taylor seconded the motion. The motion passed unanimously

FY2016-17 Budget: The proposed appropriations budget for the fiscal year 2016-2017 was presented by Mrs. Reed. Mr. Rozier made a motion to approve the budget as presented and Mr. Graham seconded the motion. The motion passed unanimously. A copy of the approved budget is included in the official records of the Bank and attached to these minutes.

Berkeley County Request: Berkeley County representative Bill Peagler requested the Board consider the County's request for additional financial assistance as outlined in Article III of the 2012 Intergovernmental Agreement between the Bank and Berkeley County. The relevant provisions allow the Bank to consider providing additional assistance if construction of certain warehouse space near I-26 is completed. The new request includes three components: Widen I-26 (Sheep Island Interchange to Jedburg Road) for \$15 million, Improve Jedburg Road Interchange for \$40.4 million, and Widen I-26 (Jedburg Road Interchange to SC 27 – Exit 287) for \$83.4 million. Senator Leatherman inquired whether any funding provided by the state for an economic development project in the area would be used on these highway projects. The

representative from the County responded they would not.

Jasper County Request: Mr. Marty Sauls representing Jasper County presented a request from Jasper County and the Town of Hardeeville for an additional \$68.3 million dollars for the construction of a phase of the Exit 3 Project on I-95 in Jasper County. Mr. Andy Fulghum, County Administrator, explained the current funding approved in 2012 by the Bank is \$3.9 million for the permitting phase. The proposed changes to the project are the new Exit 3 Interchange on I-95, a bridge over CSX rail line and a new 1.5 mile four lane parkway from Exit 3 north to SC Highway S-27-34. The local match proposed for the project would be a new four mile four lane parkway from Exit 3 south to US Hwy 17 (local match – 1,800 linear feet of parkway and intersection improvements completed October 2014) and a 122 acre Right of Way donation. The local match is estimated to be 43%. The project scope revisions since the first application have reduced the length of the Parkway and reduced the overall estimate to complete the project. A copy of the presentation is attached to these minutes.

Strategic Plan Discussion: Chairman Graham introduced the idea of the Board considering a strategic plan. Senator Leatherman suggested that Mr. Joe Taylor be appointed to head up a committee to address the path forward on such a plan. The Chairman agreed and asked Mr. Taylor's to meet and confer with him and any other Board members as appropriate and report back to the Board in 90 days on the results of the consideration of a strategic plan for the Bank.

Update and Review of Mark Clark Project: Mr. Holly explained the task assigned at the meeting of May 18, 2015, for him, the SCDOT legal staff, and the Charleston County legal staff to renew efforts to find a resolution to the differences between the three entities on changes to the Intergovernmental Agreement on the project and report back to the Board within 120 days. The proposed changes related to changes in the project. Mr. Holly reported that there had been no significant progress made after several meetings, conference calls and communications. Mr. Holly explained that recently SCDOT had produced new cost estimates for the project at the request of Charleston County. The updated costs estimates showed a significant increase in project costs to over \$700 million for a project that started out with an estimate of \$420 million. This development, in his opinion, needs to be addressed before the changes to the Intergovernmental Agreement may be resolved. SCDOT had provided details on the increased cost estimate and three possible proposals, including building the full project or starting construction on it in one of two optional initial phases. Copies of the proposals and information on the estimates from SCDOT are attached to these minutes. Mr. Holly explained there had been several material changes to the scope of the project and two significant increases in estimated costs since 2006. Building the project in phases would be another change. He further explained that the Board to date has only approved building the full scope of the project for \$420 million. He reported that no actions by the Bank had delayed work on the project planning and design which was ongoing or the expenditure of funds on the project requested by SCDOT.

Charleston County Council Chairman Elliot Summey spoke on behalf of the county, discussed what he considered delays, and asked for the project to proceed in some manner agreeable to the three parties. The County wishes for final decisions on proceeding with the project be made as soon as possible.

Representative Limehouse expressed his frustrations concerning the slow progress on the project and the need for the parties to agree on moving forward as quickly as possible. Several Board members expressed concerns on how the new shortfall in funding of \$300 million or more can be addressed. Some members asked the county to consider options to address the shortfall to build the full scope of the project. The Board suggested the staffs of the three parties review and confer on the status of the project and how to proceed and report back to the Board.

Mr. Taylor commented that with all due respect to the congestion Representative Limehouse discussed, Charleston did not have a monopoly on this problem.

Executive Session: No Executive Session was needed.

Other Business: The Chairman asked Mr. Metcalf and the Evaluation Committee to begin an initial review of the additional requests for financial assistance presented at the meeting. No other business was discussed. There being no further business, the meeting was adjourned by acclamation at 5:45 pm.

Board Secretary

DRAFT

Operating Procedures and Financial Assistance Conditions of South Carolina Transportation Infrastructure Bank

Purpose

The purpose of these Operating Procedures and Financial Assistance Conditions is to compile, summarize and expand upon the procedures and practices that have been used by the Bank to ensure the proper and effective use of its resources.

Terms

“Bank” means the South Carolina Transportation Bank.

“IGA” means the intergovernmental agreement required by the Bank as a condition of the Bank providing financial assistance to a project or the parties involved with the project.

“Project sponsor or owner” means the project applicant or other entity that is primarily responsible for the project as determined by the Bank.

“SCDOT” means the South Carolina Department of Transportation.

Project Budget

The application for a project shall include an estimated budget for the project that includes all sources of funds. An updated budget shall be prepared by the applicant and shall be attached to the IGA for the project if it is approved for financial assistance. The budget and expenditures shall be updated by the project sponsor or owner at least each quarter during the life of the project, or on such other schedule as the Bank shall direct. The budget shall include at a minimum the following itemized expense categories and shall be in a form and with contents acceptable to the Bank:

Preliminary Engineering and Design
Environmental Permitting
Other Permitting
Environmental Mitigation
Environmental or Permit Litigation or Proceedings (with attorneys' fees stated separately)
Final Engineering and Design
Right of Way Acquisition (with attorneys' fees stated separately)
Construction (with utility relocation and storm water costs stated separately)
Contingency (including all factors used and explanation of how calculated).

Cost Sharing and Pre-Construction Costs

1. The project sponsor or owner must share in the funding of project costs and expenses. At a minimum, a portion of planning, engineering, permitting, right of way acquisition, legal, litigation and other non-construction related costs and expenses as determined by the Bank will be the responsibility of the project sponsor or owner.
2. All or a significant portion of the pre-construction costs of the project, such as those for planning, design, engineering, right of way acquisition, environmental review, permitting, legal, and litigation activities, will be funded by the project sponsor or owner until all necessary permits for construction are obtained and a contract for construction is awarded. At that time, the Bank may reimburse the project sponsor or owner for the percentage or amount of financial assistance for eligible pre-construction costs to be provided by the Bank as stated in the ~~IGA~~Intergovernmental Agreement for the project (~~IGA~~) that has not been previously reimbursed by the Bank.
3. The foregoing paragraphs 1 and 2 of this policy do not apply to projects owned by SCDOT (a) for improvements to or on mainline interstates or

the exchanges for such interstates; (b) for rehabilitation or replacement of bridges; or (c) so designated for this exemption by the Bank.

4. The Bank may require that the other sources of funds for the project be spent before any financial assistance from the Bank is expended or that all such sources of funds be applied to project expenditures on the proportional or other basis established in the IGA.
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Certain Project Costs

1. The Bank will not pay for or reimburse the following costs, expenses and disbursements on a project:
 - Legal or litigation costs or expenses, settlements, awards or judgments for inverse condemnations or regulatory takings or for any other similar claims, proceedings or lawsuits of any kind that are not direct condemnations commenced by a condemnor under S.C Code Sections 28-2-10 to 28-2-510.
 - Legal or litigation costs or expenses, settlements, awards or judgments for claims, lawsuits or administrative proceedings concerning a permit required for a project, except to the extent, if any, allowed in the IGA on the project (see paragraph 2 below);
 - Legal or litigation costs or expenses, settlements, awards or judgments for claims, lawsuits, or proceedings on contract disputes concerning construction, design, services, materials or supplies for the project, except to the extent, if any, allowed in the IGA on the project (see paragraph 2 below);
 - Excessive or unreasonable condemnation or right of way acquisition costs, expenses, awards, judgments or settlements, including attorneys' fees, as determined by the Bank;

- Costs, expenses, awards, judgments, or settlements for acquisition of rights of way or real property not needed for or not used in the construction of the project as determined by the Bank;
- Excessive or unreasonable attorneys', engineering or other professional fees, charges or expenses as determined by the Bank;
- Expenses or costs for public relations or similar activities to increase public support for a project other than the costs of giving the required notices of mandatory public meetings concerning a project; and
- Landscaping and beautification on a project other than for required grassing or other erosion control measures or to replace landscaping removed for construction of the project with like materials.

If the Bank determines that it has paid or reimbursed any of the foregoing costs or expenses, it may require the project sponsor or owner to reimburse it for such costs.

2. In the IGA on the project, the Bank may in its discretion exclude or set ceilings, or require specific prior approvals from the Bank, for any type or kind of eligible costs, expenses, disbursements or financial assistance it will provide, pay or reimburse, including, but not limited to, those for lawsuits, litigation, right of way acquisitions, attorneys' fees, administrative proceedings, arbitration and mediation proceedings, permits required for the project, environmental mitigation, environmental proceedings and litigation, and contract or other disputes concerning the project.

Surplus Property

The Bank shall have the right to direct the sale or disposition of any real property interests or rights of way acquired by any entity for a project that are paid for, in whole or in part, with financial assistance provided by the Bank that are not needed for or used in constructing the project or that are declared surplus. The Bank shall be entitled to receive the proceeds from the sale or disposition of those real property interests or rights of way regardless in which entity's name they are held. In lieu of the foregoing, the Bank may require the project sponsor or owner to reimburse it for the amount of financial assistance paid or reimbursed by the Bank for acquiring such real property interests or rights of way.

Financial Assistance Approval Conditions

All motions and approvals by the Bank Board for financial assistance or additional financial assistance for a project shall include, without the necessity of any reference thereto being made, the Bank's established standard conditions for the receipt of financial assistance from the Bank and a copy of those conditions shall be attached to the minutes of the meeting at which such financial assistance was approved. The Board may add any additional conditions on such approvals as it deems appropriate.

These conditions shall be incorporated into the IGA for the project.

Intergovernmental Agreement- Execution

The project sponsor or owner and any other necessary parties as determined by the Bank must sign and enter into an IGA with the Bank to receive financial assistance for a project from the Bank within forty-five (45) days of being presented the final version of the IGA by counsel for the Bank. Upon request by the project sponsor or owner or other proposed party to the IGA, the Bank Chairman, in his or her discretion, may grant an extension of time in which the project sponsor or owner or other party may sign and enter into the IGA, but the extension may not exceed thirty (30) days. In the event, the IGA is not signed and entered into by the project sponsor or owner or other party within the aforesaid period of time, the application for the project will be deemed withdrawn by the applicant and the project will not be eligible for any financial assistance unless the applicant files a new application

with the Bank for consideration. Each IGA and amended IGA must be in a form and with contents and provisions acceptable to the Bank upon the advice of the Bank's counsel. An amended or new IGA is required for any additional financial assistance approved by the Bank for an existing project and is subject to the provisions of the this paragraph. Financial assistance or additional financial assistance for a project shall not be available until the IGA or amended or new IGA is signed by all parties.

Intergovernmental Agreement-Bank Protections

The Bank is a financing entity. It is not a project sponsor or owner. Accordingly, the IGA shall contain, to the maximum extent possible, contractual provisions that will protect the Bank and its Board members, officers, employees, funds and assets from any and all claims, actions, lawsuits, proceedings, awards, or judgments that may arise in any way from a project for which it has approved financial assistance of any kind and that will place the responsibility for those matters with the project sponsor or owner. The Bank's counsel is directed to address these requirements in preparing each IGA and shall consult with the Bank Chairman and Board as needed regarding them. These contractual provisions shall be uniform to the extent feasible.

Commencement of Work and Progress on Project

1. If the project sponsor or owner fails to commence work as specified in the IGA on the project by the date stated in the IGA or abandons the project or ceases work on the project for any reason at any stage, the project sponsor or owner shall reimburse the Bank for all financial assistance provided by it for the project and fully protect the Bank from all liabilities arising from such abandonment or cessation. The project sponsor or owner may submit a new application to the Bank for consideration if it wishes to continue the project.

2. If the project sponsor or owner fails to pursue the project with due diligence as specified in the IGA or complete the project as specified in the IGA, the Bank may cease providing financial assistance for the project and/or direct the project sponsor or owner to reimburse it for the financial assistance provided by the Bank for the project. In making its decision on whether to cease financial assistance, the Bank will take into consideration whether any delays are caused by matters beyond the control of project owner or sponsor or its contractors. The project sponsor or owner shall fully protect the Bank from all liabilities arising from such lack of due diligence or failure to complete the project. In lieu of requiring such reimbursement, the Bank in its discretion may resume providing financial assistance for the project if the project sponsor or owner satisfies all conditions established by the Bank.
3. If a federal or South Carolina court, regulatory authority or other governmental entity with appropriate jurisdiction and authority as determined by the Bank directs that work on the project be suspended or stopped, all financial assistance being provided by the Bank shall be suspended and the project sponsor or owner shall assume responsibility for paying all projects expenses and costs until work on the project resumes. If such work resumes, the Bank may in its discretion resume providing financial assistance for the project subject to such conditions as it shall require. If work is not allowed to resume, the project sponsor or owner shall reimburse the Bank for all financial assistance provided for the project by the Bank.

Project Maintenance

The application must contain a plan for maintenance of the completed project for a minimum of forty (40) years after completion, including an explanation of whether the project upon completion will become part of the State Highway System. If the completed project does not become part of the State Highway System, the applicant must have a viable and binding plan for such maintenance that is satisfactory to the Bank. If the project is approved for financial assistance, the IGA for the project must contain provisions that obligate the responsible party to perform such maintenance if the project will not, or may not be, accepted into the State Highway System. [Board asked for further review of this provision at the last meeting. Based on current circumstances, it should provide the needed flexibility. Further comments or revisions are encouraged.]

Interpretation and Application

The Bank will have the sole and exclusive authority to determine the interpretation and application of the provisions in these Operating Procedures and Financial Assistance Conditions. The Bank will consult with the project sponsor or owner and SCDOT as appropriate prior to making a determination on such an interpretation or application. The Bank may determine that certain projects owned by SCDOT are not subject to certain provisions of these Operating Procedures and Financial Assistance Conditions based on applicable laws of the United States of America or the State of South Carolina or the needs of SCDOT or the State of South Carolina.

In addition to the existing IGA's that already contain some or many of the foregoing provisions, these Operating Procedures and Financial Assistance Conditions are applicable to all new applications and pending applications awaiting approval by the Bank. Further, all or some of those provisions may be applied to additional financial assistance for a project approved by the Bank on which the new or amended IGA has not been accepted by the Bank or executed by the parties, if the Bank determines that such application is in the best interests of the use of the resources made available to it by the State.

DRAFT

4/15/15