

**INTERGOVERNMENTAL AGREEMENT BETWEEN
GREENVILLE COUNTY, SOUTH CAROLINA
AND THE SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION
FOR THE COMPLETION OF THE WOODRUFF CONGESTION
RELIEF PROJECT**

THIS AGREEMENT is made and entered into this ____ day of _____, 2021, by and between **Greenville County**, South Carolina (hereinafter referred to as “County”) and the **South Carolina Department of Transportation** (hereinafter referred to as “SCDOT”) (collectively “the Parties”).

Witnesseth, that:

Whereas, the Woodruff Road Congestion Relief Project (hereinafter referred to as the “Project”) includes a new, alternate parallel route to Woodruff Road that will extend from Verdae Boulevard to Smith Hines Road at the Woodruff Road intersection and numerous intersections and access points along Woodruff Road; and

Whereas, the Project is included in Greenville-Pickens Area Study (GPATS) FY2021-2026 Transportation Infrastructure Plan (TIP) as a Federal Guideshare project; and

Whereas, the SCDOT Commission approved the use of Federal Guideshare funds for the Project and has included the Project in the South Carolina FY2021-2027 Transportation Infrastructure Plan (STIP); and

Whereas, the Project has progressed through preliminary engineering, National Environmental Policy Act (NEPA) design, and has entered right-of-way planning, and is scheduled to be under construction between calendar years 2025-2028; and

Whereas, as a Federal Guideshare Project included in the STIP, SCDOT is managing the Project; and

Whereas, to supplement the Federal Guideshare funds the County submitted an application for financial assistance from the South Carolina State Infrastructure Bank (SIB) for the Project; and

Whereas, the SIB approved the County’s application and as a condition of receiving the SIB financial assistance, the County or the SCDOT on the County’s behalf must be responsible for managing the Project; and

Whereas, the Parties wish to set forth herein the terms of their relationship and the duties and obligations of each of them to as it relates to the Project.

Now, therefore, in consideration of the mutual benefits accruing to each of them and to the people of Greenville County and the State of South Carolina, the Parties agree as follows:

1. Term of the Agreement. This Agreement shall take effect upon its execution and shall terminate on the date the Project or the last part of the Project is accepted by SCDOT for inclusion in the State Highway System for purposes of or upon such earlier date that County shall notify SCDOT that further funding will not be available. However, County's obligation to make payments and reimbursements hereunder for costs incurred prior to termination or for claims or judgments received after termination relating to the Project shall survive the termination hereof.

2. Description of Project and Cost Estimate. The Project is described as follows:

Design and construction of a new, five-lane limited-access alternate parallel route to Woodruff Road that will extend from Verdae Boulevard to Smith Hines Road at the Woodruff Road intersection. This Project will improve numerous intersections and access points along Woodruff Road. The new roadway will consist of four travel lanes with a median, curb and gutter, sidewalk, multiuse path, and two new bridge crossings at I-85 and I-385. This is envisioned to be an extension of the new Piedmont Natural Gas (PNG) Connector, now known as the Woodruff Bypass. Additional Project details are in Exhibit A, attached hereto and incorporated herein.

The Project shall be constructed to all applicable federal and SCDOT standards and any other applicable legal standards.

3. Funding Commitment.

The Greenville – Pickens Area Transportation Study (“GPATS”) has committed \$42,000,000.00 in Guideshare funding towards the Project.

County has applied to the South Carolina Transportation Infrastructure Bank for a grant to partially fund the Project and has been awarded a grant in the amount of \$49,010,199.00.

County intends to pay Project costs from issuance of Special Source Revenue Bonds in the amount of \$30,336,733.00. This amount shall be deposited into its Project Account with the South Carolina Transportation Infrastructure Bank. This amount may be used as the local match required by Federal funding sources.

SCDOT will first use the County contribution towards Project costs. After the County contribution is exhausted, SCDOT will use the South Carolina Transportation Infrastructure Bank contribution towards Project costs.

SCDOT has made no financial commitment to the Project and shall not be required to advance any sums or incur any costs on its own account hereunder.

3.1 Project Planning, Budgets, Schedules. SCDOT shall be responsible for all work to be performed pursuant to this Agreement. SCDOT will prepare a scope of work, proposed budget, and schedule for the Project. SCDOT reserves the right to use outside consultants for any portion of any Project undertaken pursuant to this Agreement. Additionally, each phase of the Project funded pursuant to this Agreement shall proceed only if sufficient funds are on deposit with SCDOT to cover said phase.

3.2 Project Bidding and Award. SCDOT will bid and award the contracts pursuant to all applicable laws and regulations.

3.3 Project Management; Payments to SCDOT. SCDOT will administer the Project. County will designate a Project Manager to serve as the day-to-day contact for the Project. County's designee shall have appropriate authority granted by County to ensure that Project specific decisions are made in a timely manner. SCDOT shall be responsible for: all right-of-way acquisition, contract administration, inspections, sampling and testing of materials, the review and approval of payments and change orders, administration of construction for the Project, and any other related or necessary activities or functions. In general, the scope of services for which SCDOT shall be entitled to reimbursement hereunder shall be governed by the definition of "Eligible Cost" found in S.C. Code § 11-43-130. SCDOT shall perform all or any part of the work with its own forces or it may contract for any of the work or services to outside private or governmental consultants or contractors should it determine that such contracting would be more efficient or cost effective or would result in more expeditious completion of the Project. SCDOT shall be entitled to draw reimbursement based upon its normal and customary billing rate for services hereunder.

3.4 Contracts; Contract Provisions; Contractor Payments. All contracts with contractors for construction of the Project shall be made in the name of SCDOT.

SCDOT shall pay all Project invoices from consultants, contractors, or materialmen from the funds remitted by County or on County's behalf to SCDOT in accordance with the terms of Section 9 of this Agreement.

3.5 Construction Inspection, Sampling, and Testing. SCDOT shall provide field and laboratory services to include inspection, sampling, and testing in accordance with SCDOT and other applicable requirements, procedures, and guidelines. Field inspection services and sampling and testing services will be performed to determine compliance with the Project plans, specifications, and all applicable SCDOT and other applicable requirements, procedures, and guidelines.

3.6 Rights-of-Way. Rights-of-way shall be acquired by SCDOT and in the name of SCDOT. All costs of acquiring rights-of-way including, but not limited to: appraisal fees, recording fees, attorney fees, moving fees, relocation fees, fees of other right-of-way consultants, as well as just compensation paid to landowners shall be eligible for reimbursement from Project funds. SCDOT shall set just compensation based on its current processes as outlined under Federal and State laws and regulations, as applicable, and shall enter into administrative or legal settlement agreements as necessary. SCDOT shall make payments to compensate landowners and pay all invoices from appraisers, attorneys, and right-of-way consultants from the Project funds remitted to SCDOT by County or on County's behalf in accordance with Section 9 of this Agreement. Each compensation voucher and invoice submitted shall contain a certification by SCDOT's Director of Rights-of-Way, or designee, that, in the case of compensation vouchers, the value is reasonable and meets State and Federal guidelines and, in the case of invoices, the services for which payment is requested have in fact been performed or delivered, that such services meet SCDOT standards, and that payment is due under the terms of any applicable contract.

3.7 Utility Relocations. All utility coordination and relocation activities shall be in accordance with 23 C.F.R. 645 and SCDOT's "A Policy for Accommodating Utilities on Highway Rights of Way." Utility relocations will be paid based on prior rights and applicable laws and regulations, including Act 36 of 2019, codified as S.C. Code Section 57-5-880. Where a utility establishes a prior right of occupancy in its existing location, costs of that relocation, including all real and actual costs associated (engineering, easements, construction, inspections, etc.) shall be eligible Project expenses. Prior rights may be established by the following means:

- 3.7.1** The utility holds a fee, an easement, or other real property interest, the taking of which is compensable in eminent domain.
- 3.7.2** The utility occupies SCDOT or County right-of-way, and per an existing agreement with SCDOT or County, is not required to relocate at its own expense.
- 3.7.3** Where the utility cannot establish a prior right of occupancy, the utility will be required to relocate at its own expense. However, in some cases County may elect to use Project funds for all or part of such utility costs.
- 3.7.4** If Federal funds are used for utility relocations, Federal regulations found at 23 CFR 645 A and B will be followed.

Regardless of prior right status, all utility purveyors shall obtain encroachment permits prior to relocation and construction. Encroachment permits shall be acquired through SCDOT's Resident Maintenance Engineer for Greenville County.

4. Acceptance into System. In the event that additional centerline miles are created by the Project, the Project will be presented by SCDOT staff to the SCDOT Commission upon final completion. The Commission will determine if the additional mileage is to be accepted by SCDOT. In the event that additional miles of secondary roads are added to the State Highway System as a result of the Project, the Parties will agree upon an equal mileage of existing roads on the State Highway System in the unincorporated area of Greenville County to be turned over to County for maintenance. Upon receiving Commission approval, SCDOT will accept the Project into the State Highway System as defined by S.C. Code § 57-5-10 for all purposes including maintenance. County shall be responsible for the maintenance of any special features, enhancements, or nonstandard materials requested by the County and incorporated into the Project. In the event that any special features, enhancements, or nonstandard materials incorporated into the Project are located within the jurisdiction of a municipality, County shall assist SCDOT with obtaining maintenance agreements with those municipalities for the maintenance of those special features, enhancements, or nonstandard materials.

Work performed by SCDOT on roads owned by Greenville County or any municipality or otherwise not in the State Highway System incidental to work on the Project shall not be construed as requiring SCDOT to accept such roads into the State Highway System.

5. Municipal Agreements. SCDOT shall be responsible for securing from each municipality in which any portion of the Project is to be constructed a duly executed Municipal State Highway Project Agreement in the form attached hereto as “Exhibit B.” The Parties acknowledge that the refusal of a municipality to cooperate may delay the Project, increase the cost of the Project, or result in the elimination of the Project from the Program.

6. Project Delivery. SCDOT does not guarantee completion of the Project within the proposed construction budget for the Project. SCDOT shall obtain the authorization of County prior to awarding any consultant or construction contracts. Should the available funds be insufficient to complete the Project, County shall be responsible for obtaining and providing additional funding or for reducing the scope of the Project to conform to the funding available.

7. Scope of Projects; Change Orders. SCDOT may, in its sole discretion, authorize change orders and approve increases in contract amounts that it deems necessary to complete the Project so long as any such change order or increase in contract amount is within the scope and budget for that phase of the Project. SCDOT shall obtain the prior approval of County for any change order changing the scope of the Project or exceeding the Project budget. SCDOT shall promptly report such proposed change order to County.

8. Funding.

8.1. The Parties estimate the total cost of the Project to be \$121,200,000.00.

8.2. SCDOT is not contributing any funding towards the Project beyond that amount currently programmed by GPATS. SCDOT will not enter into any contract unless there are sufficient Project funds on deposit with SCDOT to cover the payment obligation of the contract.

8.3. County shall authorize SCDOT to draw from its Project Account with the South Carolina State Infrastructure Bank for all eligible construction expenses.

8.4. If it becomes apparent that the Project cost will exceed the funding available, SCDOT will provide County notice prior to total expenditure of available funding and will provide an estimate of funds needed to complete the Project. County shall remit to SCDOT the additional funding within 30 days of receipt of the notice, or the Parties shall meet and agree on a modified Project scope that can be accomplished with the available funds. No work will be completed beyond that covered by the available funds.

8.5. County is responsible for the total Project cost that exceeds the contributions made by GPATS and the South Carolina State Infrastructure Bank, including any overruns.

9. Communications; Project Reporting; Disputes.

9.1 Communications. The Parties agree that regular and thorough communication about the work is essential to successful Project completion. SCDOT's Project Manager and County's designated Project Manager shall hold coordination meetings as may be necessary to discuss the Project. Coordination meetings shall be held at the request of either Party.

9.2 Project Reporting. SCDOT will provide monthly reports to County indicating the spending to date for each of: right-of-way acquired, construction completed, and utility relocations. The report will also include milestone accomplishments and schedule updates.

9.3 Disputes. Disagreements under this Agreement shall be addressed utilizing the Issue Escalation and Dispute Resolution Process included in "Exhibit C" attached hereto. In the event that process does not produce a resolution, the Parties may seek redress from the Court of Common Pleas for Richland County. Any proceedings shall be non-jury.

10. Default.

10.1 Events of Default and Remedies as to SCDOT. In the event SCDOT 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 as to the Project, and such refusal or failure shall continue for a period of 30 days, County may declare SCDOT to be in default of this Agreement. In such event, County, in its sole

discretion may replace SCDOT and contract with or hire another private firm or governmental entity to provide the project management services hereunder or undertake such responsibilities on its own account. Provided, however, that County shall remain liable to SCDOT for payment for the services rendered prior to such termination that remain unpaid. In such event, to the extent allowable by law, SCDOT shall assign all licenses and permits obtained in its name necessary to complete the Project to County and County shall accept such assignments and become primarily obligated thereunder in the same manner and to the same extent as if County was the original permittee. To the extent allowed by law, County shall indemnify and hold SCDOT harmless against all third-party claims including contractor default claims or for costs of termination for convenience. In the event County replaces SCDOT for Project administration, SCDOT shall reserve the right to inspect and approve the completed work prior to accepting the Project back into the State Highway System at no additional cost to County.

10.2 Events of Default and Remedies as to County. In the event County shall violate or fail to comply with any provision or obligation of this Agreement including the failure to make payments when due to SCDOT and such failure shall continue for a period of 30 days, SCDOT may declare County to be in default of this Agreement. As to any event of default not involving non-payment, any obligation County failed to perform shall be deemed a ministerial act and subject to the remedies of mandamus and mandatory injunction requiring County to perform the obligation, and SCDOT shall be deemed to have no adequate remedy at law for such event of default.

In the event of default involving non-payment by County to SCDOT hereunder, the past due amount shall accrue interest at the rate set forth in S.C. Code Ann. §34-31-20(A). The County shall further pay SCDOT its reasonable attorneys' fees and expenses incurred by it in pursuing any remedy for an event of default. To the extent allowed by law, County shall defend, indemnify, and hold SCDOT harmless against any third-party claims arising from or connected to such failure or refusal to make payments.

In the event County fails to make any payment to SCDOT in full within 90 days of the due date, County acknowledges the authority of the State Treasurer under S.C. Code Ann. §11-9-75 to withhold the amount of the payment plus any interest thereon and any costs of collection incurred by SCDOT from the next distribution of any revenue due County and apply those funds against the payment due.

11. Further Assurances. SCDOT acknowledges that County has, or may intend to raise funds for its commitments to the Project herein through the issuance of general obligation bonds and/or revenue bonds or other indebtedness as permitted by law. Accordingly, SCDOT shall take such actions and enter into such other documents, including amendments to this Agreement or other agreements that are consistent with the substance hereof, as may be reasonably necessary to comply with South Carolina laws and regulations associated with such bonds or indebtedness and to satisfy requirements for documentation and information reasonably imposed by County, prospective purchasers of

such bonds, holders of such bonds, bond insurers, rating agencies, lenders or regulatory agencies and their attorneys, advisors, and representatives; provided, however, that no such action or document shall create any additional material obligation or increase any material obligation of SCDOT.

12. General Conditions.

12.1 Liability. Within the limitations of the South Carolina Tort Claims Act, SCDOT will be responsible for any loss resulting from bodily injuries (including death) or damages to property, arising out of any negligent act or negligent failure to act on SCDOT's part, or the part of any employee or agent of SCDOT in performance of the work undertaken pursuant to this Agreement.

Within the limitations of the South Carolina Tort Claims Act, County shall be responsible for any loss resulting from bodily injuries (including death) or damages to property, arising out of any negligent act or negligent failure to act on County's part, or the part of any employee or agent of County in performance of the work undertaken pursuant to this Agreement.

12.2 Waivers. No waiver of any event of default by County or SCDOT hereunder shall be implied from any delay or omission by the other Party to take action on account of such event of default, and no express waiver shall affect any event of default other than the event of default specified in the waiver and it shall be operative only for the time and to the extent therein stated. Waivers of any covenants, terms, or conditions contained herein must be in writing and shall not be construed as a waiver of any subsequent or other breach of the same covenant, term, or condition. The consent or approval by 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.

12.3 Benefit and Rights of Third Parties. This Agreement is made and entered into for the sole protection and benefit of Greenville County and SCDOT, and their respective successors and assigns. No other persons, firms, entities, or parties shall have any rights, or standing to assert any rights, under this Agreement in any manner, including, but not limited to: any right to any disbursements at any time, any right to require the Parties to apply any portion of the amounts committed herein that have not been disbursed by them to the payment of any such claim, or any right to require the Parties to exercise any of their rights or powers under this Agreement or arising from any event of default of any kind by County or SCDOT. No other persons, firms, entities, or parties shall, under any circumstances, be deemed to be a beneficiary of any conditions or obligations set forth in this Agreement, any or all of which may be freely waived in whole or in part by the parties at any time, if in their sole discretion, they deem it desirable to do so.

12.4 Notices. 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, registered mail, personal delivery, or courier delivery. All such notices shall be addressed to the Parties as follows:

As to Greenville County:

Greenville County
301 University Ridge, Suite 2400
Greenville, SC 29601
Attn: County Administrator

As to SCDOT:

South Carolina Department of Transportation
955 Park Street
Columbia, SC 29202-0191
Attn.: Deputy Secretary for Engineering

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

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

12.7 Authority to Execute. By executing this Agreement, the undersigned each affirm and certify that he or she has authority to bind his or her principal thereto and that all necessary acts have been taken to duly authorize this Agreement under applicable law.

12.8 Entire Agreement. This Agreement with any attachments constitutes the entire Agreement between the Parties. This Agreement is to be interpreted under the laws of the State of South Carolina.

[Signature blocks on next page]

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

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

GREENVILLE COUNTY

Witness

By: _____
(Signature)

Title: _____

Witness

By: _____
(Signature)

Title: _____

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION

Witness

By: _____
Secretary of Transportation

RECOMMENDED BY:

Deputy Secretary for Finance and Administration

Deputy Secretary for Engineering

REVIEWED BY:

By: _____

Title: _____

Exhibit A

Exhibit B

MUNICIPAL STATE HIGHWAY PROJECT AGREEMENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF) RESOLUTION

Road/Route
File
Item
Project
PIN

WHEREAS, the South Carolina Department of Transportation (“SCDOT”) proposes to construct, reconstruct, alter, or improve the certain segments of the highway(s) in the State Highway System referenced above which are located within the corporate limits of _____ (hereinafter, “the City”); and

WHEREAS, the City wishes to authorize the construction and improvements of the aforesaid highway(s) in accordance with plans prepared by the SCDOT (“the Project Plans”);

NOW THEREFORE, BE IT RESOLVED that, pursuant to S.C. Code §57-5-820 (1976, as amended), the City does hereby consent to the construction or improvements of the aforesaid highway(s) within its corporate limits in accordance with the Project Plans, and further, the City, having reviewed the plans for said construction, does hereby approve said plans as provided for in Code §57-5-830.

BE IT FURTHER RESOLVED, that the foregoing consent and approval represents the sole approval necessary from the City for SCDOT to complete the project under the Project Plans and constitutes a waiver of any and all other requirements with regard to construction within the City’s limits. The foregoing waiver and consent shall extend to the benefit of utility companies engaged in relocating utility lines on account of the project. Further, the City shall exempt all existing and new right-of-way and all other properties purchased in connection with right-of-way for the highway(s) from any general or special assessment against real property for municipal services.

BE IT FURTHER RESOLVED, that the City will assist SCDOT in causing all water, sewer and gas pipes, manholes, or fire hydrants, and all power or telephone lines or poles located within the existing right-of-way to be relocated under the plans at the utility company’s expense. To the extent that City-owned utilities are to be relocated in accordance with the project plans, those utility pipes, lines, or hydrants may be replaced upon the new highway right-of-way at such locations as may be approved by SCDOT’s project manager. The City agrees to indemnify and hold harmless SCDOT to the fullest extent allowed by law against any and all claims or actions brought against it arising out of the placing, maintenance, or removal of any utilities by the City or its contractors. Future utility installations by the City within the limits of the new right-of-way after project completion shall be pursuant to a standard utility encroachment permit obtained in the normal course and issued pursuant to SCDOT’s “A Policy for Accommodating Utilities on Highway Rights-of-Way”, August 2005, as revised.

BE IT FURTHER RESOLVED, that the City hereby signifies its intention to faithfully observe the provisions of Chapter 5, Title 56, Code of Laws of South Carolina, 1976, and all amendments thereto relating to the regulation of traffic on the street, or streets, to be constructed, reconstructed, altered or improved as hereinabove identified and further agrees to refrain from placing or maintaining any traffic control devices upon any section of said street, or streets, without having first obtained written approval of the South Carolina Department of Transportation as required in S.C. Code §56-5-930 (1976, as amended), nor enacting any traffic regulation ordinances inconsistent therewith.

IN WITNESS WHEREOF, This Resolution is adopted and made a part of the Municipal records this _____ day of _____, 20 , and the original of this Resolution will be filed with the South Carolina Department of Transportation at Columbia.

Dated: _____, South Carolina

Municipality



ATTEST: _____

By: _____
Mayor

Clerk

Exhibit C
Issue Escalation and Dispute Resolution Process

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

SCDOT (PLANNING,DESIGN, RIGHT OF WAY ISSUES)	SCDOT (CONSTRUCTION ISSUES)	COUNTY	WORK DAYS
Regional Production Group Engineer	District Engr. Administrator	Planning Director	2
			
Director of Preconstruction	Director of Construction	Planning Director	3
			
Dep. Secretary for Engineering	Dep. Secretary for Engineering	County Administrator	5

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