

# **RICHLAND COUNTY**

## **TRANSPORTATION AD HOC COMMITTEE AGENDA**



**Tuesday, MAY 24, 2022**

**4:00 PM**

**COUNCIL CHAMBERS**



# Richland County Council 2022



Derrek Pugh  
District 2



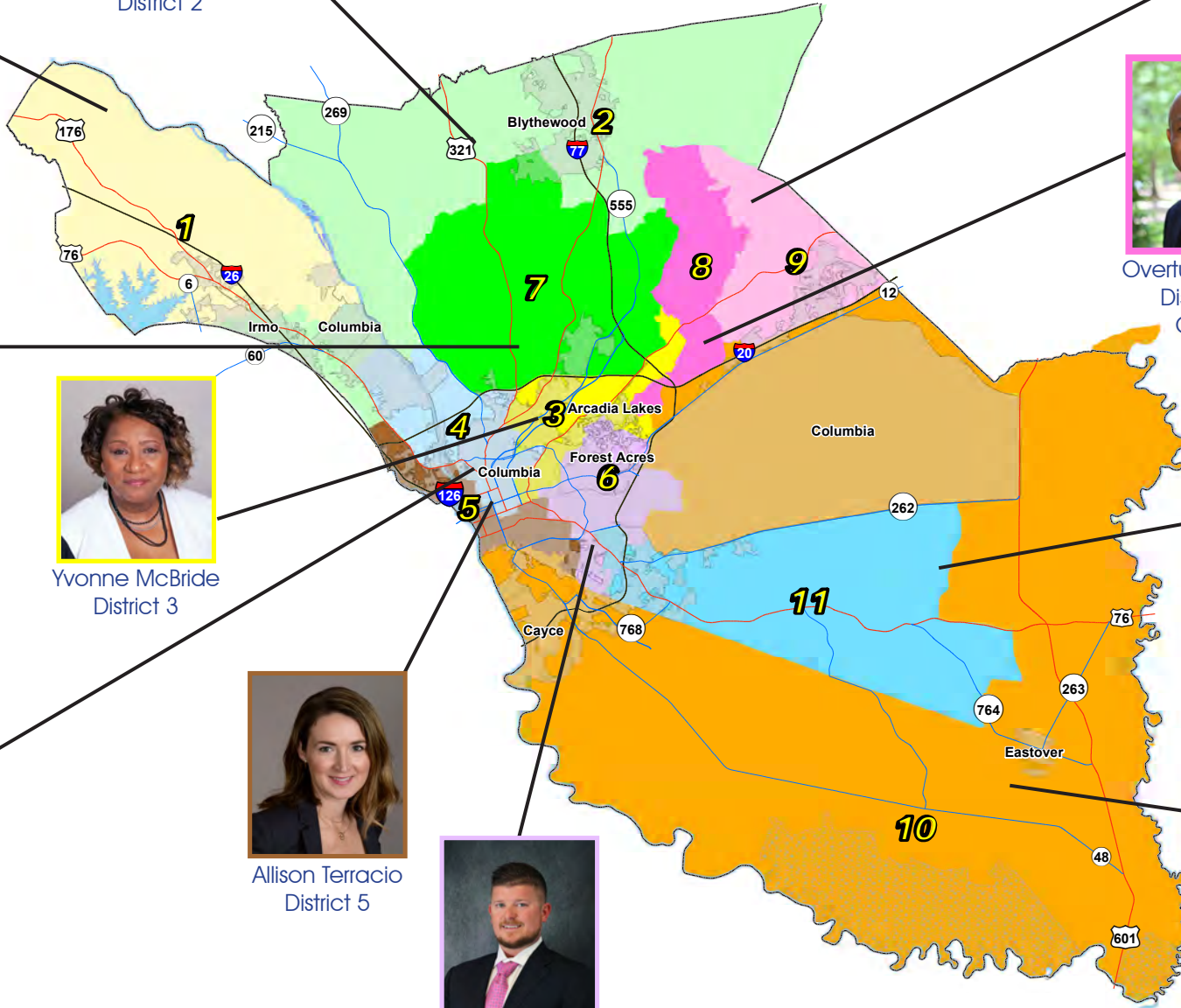
Jessica Mackey  
District 9  
Vice Chair



Bill Malinowski  
District 1



Overture Walker  
District 8  
Chair



Gretchen Barron  
District 7



Yvonne McBride  
District 3



Chakisse Newton  
District 11



Paul Livingston  
District 4



Allison Terracio  
District 5



Joe Walker, III  
District 6



Cheryl English  
District 10



Richland County Transportation Ad Hoc Committee

**AGENDA**

May 24, 2022 - 4:00 PM

Council Chambers

2020 Hampton Street, Columbia, SC 29204

The Honorable Overture Walker	The Honorable Bill Malinowski	The Honorable Derrek Pugh	The Honorable Paul Livingston	The Honorable Jessica Mackey, Chair
County Council District 8	County Council District 1	County Council District 2	County Council District 4	County Council District 9

1. **CALL TO ORDER** The Honorable Jessica Mackey
  
2. **APPROVAL OF MINUTES** The Honorable Jessica Mackey
  - a. April 26, 2022 [PAGES 5-7]
  
3. **ADOPTION OF AGENDA** The Honorable Jessica Mackey
  
4. **ITEMS FOR ACTION** The Honorable Jessica Mackey
  - a. Garners Ferry/Harmon Intersection Project [PAGES 8-16]
  - b. Mitigation Bank Credit Transaction - SCDOT US 76 Bridge Replacement and I-26 Improvements [PAGES 17-20]
  - c. Penny Program Administrative Fund Deprogramming [PAGES 21-37]
  
5. **ADJOURNMENT**



Special Accommodations and Interpreter Services Citizens may be present during any of the County's meetings. If requested, the agenda and backup materials will be made available in alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), as amended and the federal rules and regulations adopted in implementation thereof. Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such modification, accommodation, aid or service by contacting the Clerk of Council's office either in person at 2020 Hampton Street, Columbia, SC, by telephone at (803) 576-2061, or TDD at 803-576-2045 no later than 24 hours prior to the scheduled meeting.



Richland County  
Transportation Ad Hoc Committee  
April 26, 2022  
**MINUTES**  
Council Chambers  
2020 Hampton Street, Columbia, SC 29204

COMMITTEE MEMBERS PRESENT: Jessica Mackey, Chair, Bill Malinowski, Derrek Pugh, Paul Livingston, Overture Walker

OTHERS PRESENT: Michelle Onley, Anette Kirylo, Leonardo Brown, Patrick Wright, John Thompson, Ashiya Myers, Abhi Despande, Tamar Black, Stacey Hamm, Michael Maloney, Kyle Holsclaw, Justin Landy, Quinton Epps, Randy Pruitt, Dwight Hanna, Allison Steele, Nathaniel Miller, Angela Weathersby, Jeff McNesby, Lori Thomas, Kimberly Toney and Melissa Hughey

1. **CALL TO ORDER** – Chairwoman Jessica Mackey called the meeting to order at approximately 4:00PM.

2. **APPROVAL OF MINUTES**

a. **Regular Session: February 22, 2022** – Mr. O. Walker moved, seconded by Mr. Malinowski, to approve the minutes as distributed.

In Favor: Malinowski, Pugh, Livingston, O. Walker and Mackey.

The vote in favor was unanimous.

3. **ADOPTION OF AGENDA** – Mr. Livingston moved, seconded by O. Walker, to adopt the agenda as published.

In Favor: Malinowski, Pugh, Livingston, O. Walker and Mackey.

The vote in favor was unanimous.

4. **ITEMS FOR ACTION**

a. **I-20/Broad River Rd. Interchange** – Mr. Maloney stated we have \$52.5M programmed to an interchange project. On p. 7 of the agenda package, there is a letter from the County indicating there would be a move to re-program the funds. The Cooperative Agreement's Scope of Work, on p. 9 of the agenda, states, "The scope of the Program has been described in Attachment A. Nothing contained in this Agreement shall be construed to require the County to undertake or complete any particular Project in the Program. Those obligations shall be solely governed by the actions of Richland County Council and applicable State law." Attachment "A" is located on p. 31 of the agenda packet. The recommendation is to the project be de-programmed. It would remain in reserve, and be planned and approved by Council for future action.

Transportation Ad Hoc Committee  
April 26, 2022

Mr. Livingston moved, seconded by Mr. O. Walker, to forward to Council with a recommendation to approve de-programming the I-20/Broad River Rd. Interchange Project in the amount of \$52,500,000.

In Favor: Malinowski, Pugh, Livingston, O. Walker and Mackey

The vote in favor was unanimous.

- b. **Mill Creek Mitigation Credit Sales** – Mr. Maloney stated the request is to approve the sale of 2.544 wetland credits to South Fork Ventures, LLC to facilitate the construction of Fergus Crossroads Development in York County. The total proceeds will be \$40,280.

Mr. Livingston inquired if the County has enough mitigation credits to take care of our needs, as it related to the Transportation Penny Program.

Mr. Maloney responded in the affirmative.

Mr. Malinowski requested to see a balance sheet on what the County has paid, the balance owed, and the number of acres remaining in the mitigation bank.

Mr. Livingston moved, seconded by Mr. O. Walker, to forward to Council with a recommendation to approve the sale of 2.544 wetland credits to South Fork Ventures, LLC to facilitate the construction of Fergus Crossroads Development in York County.

In Favor: Malinowski, Pugh, Livingston, O. Walker and Mackey

The vote in favor was unanimous

5. **ITEMS FOR INFORMATION**

- a. **Transportation Penny Advisory Committee Updates** – Mr. Maloney stated the documentation in the agenda is provided to the Transportation Penny Advisory Committee.

Ms. Mackey noted, on p. 42 – Upcoming Solicitations, only one solicitation says Summer, all the others are Spring 2022. For clarification, are the solicitations out now, or are we anticipating them being out in the next month.

Mr. Maloney responded Spring is optimistic. Bull and Elmwood, Atlas Road Widening, Sunset Drive, Percival and Alpine Sidewalks are ready to go.

Mr. Livingston noted, at one point, the Penny Program had a robust public information/engagement program so people knew what was going on in their neighborhood. He inquired how we can get some of that back so we can keep citizens informed.

Mr. Maloney responded they continue to have public engagement meetings. He does recognize with N. Main Street another public meetings may need to be schedule. He noted a change order is under review with SCDOT, which then has to be approved by the Federal Highway Administration.

- b. **Correspondence from Rep. Nathan Ballentine** – Mr. Brown stated the correspondence from Rep. Ballentine came to staff. The request is for Richland County to consider turning over the Broad River Project to SCDOT. He and Rep. Ballentine had a conversation about the process that would

undertake, which would include a committee/Council process because this involves decisions that have already been made. Rep. Ballentine understood the process, and requested the items be listed for consideration.

Mr. Malinowski suggested sending questions, in writing, to either the Chairwoman Mackey and/or Allison Steele, so that all of the answers can be obtained at the same time.

6. **ADJOURNMENT** – Mr. O. Walker moved, seconded by Mr. Malinowski, to adjourn.

In Favor: Malinowski, Pugh, Livingston, O. Walker and Mackey

The vote in favor was unanimous

The meeting adjourned at approximately 2:18PM.



**Agenda Briefing**

<b>Prepared by:</b>	Michael Maloney, PE	<b>Title:</b>	Interim Director
<b>Department:</b>	Transportation	<b>Division:</b>	Click or tap here to enter text.
<b>Date Prepared:</b>	April 5, 2022	<b>Meeting Date:</b>	April 26, 2022
<b>Legal Review</b>	Patrick Wright via email	<b>Date:</b>	April 12, 2022
<b>Budget Review</b>	Abhijit Deshpande via email	<b>Date:</b>	April 20, 2022
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	April 11, 2022
<b>Approved for consideration:</b>	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCCEM	
<b>Committee</b>	Transportation Ad Hoc		
<b>Subject:</b>	Garners Ferry/Harmon Intersection Project		

**RECOMMENDED/REQUESTED ACTION:**

Staff requests approval to award the Garners Ferry/Harmon Intersection Project to Cherokee, Inc. in the amount of \$1,841,866.65 with a 15% contingency of \$276,279.99 for a total amount of \$2,118,146.64.

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 \$1,134,287.83 currently available in the FY22 budget, and the remaining funds will come from the upcoming FY23 budget (JL 13320206).

**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.

<b>Council Member</b>	Click or tap here to enter text.
<b>Meeting</b>	Click or tap here to enter text.
<b>Date</b>	Click or tap here to enter text.



#### STRATEGIC & GENERATIVE DISCUSSION:

This project includes the following work:

1. The installation of a new right turn lane from Garners Ferry Rd. onto Harmon Rd.
2. The installation of a new left and right turn lane from Harmon Rd. onto Garners Ferry Rd.
3. The installation of a new traffic signal to accommodate the new traffic patterns and road layout.

#### ADDITIONAL COMMENTS FOR CONSIDERATION:

The Engineer's Cost Estimate for this project was \$1,031,170.75.

The total estimated cost for this project (i.e. design, construction, inspection, etc.) is \$2.9M, and the total amount approved by Council is \$2.6M. This shortfall would be covered by the reserve funds created through the descoping plan approved by Council in 2020.

Over the last several months, the County has received bids on several projects that have been much higher than the Engineer's Estimates. This is the current trend across the state due to several factors such as an abundance of work, a shortage of contractor staffing, and increasing prices on materials.

#### ATTACHMENTS:

1. Recommendation Memo
2. Bid Tabulation

**RICHLAND COUNTY FINANCE DEPARTMENT  
PROCUREMENT DIVISION**

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

Attachment 1



April 20, 2022

To: Mr. Michael Maloney, Interim Director of Transportation

From: Jennifer Wladischkin, Procurement Manager

CC: Erica Wade, OSBO Manager

Allison Steele, Ast. Director- Transportation

Re: RC-503-B-2022 Garners Ferry/Harmon Intersection Improvements

A bid opening was conducted at 3:00 PM on Wednesday, April 13, 2022 via the County's online procurement portal. Procurement has reviewed the two (2) submitted bids for Garners Ferry/Harmon Intersection Improvements which were submitted via Bonfire and found no discrepancies. The bids received were as follows.

<b>GREENE STREET PHASE 2 IMPROVEMENTS - BID RESULTS SUMMARY</b>	
<b>BIDDER</b>	<b>SUBMITTED BID</b>
<b>Cherokee Inc.</b>	<b>\$1,841,866.65</b>
McClam and Associates Inc	\$1,893,377.90

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

A Mandatory Pre-Bid Conference was held at 2:00 PM on March 24, 2022 during which attendees gained information and bidding directives for the project. Sign-In Sheets for the Pre-Bid Meeting are attached indicating interested firms that were in attendance.

Attached is a final bid tab sheet for your reference which indicates Cherokee Inc's bid is approximately 78% higher than the Engineer's Estimate of \$1,031,170.75 for the project. Both bids were compared to each other and the engineer's estimate and the bids are consistent in price, yet vary greatly from the estimate. The estimate was provided in November of 2021 and it is believed that the current market conditions have caused this large variance, as has been observed with other recent construction projects. A review of the low bid also shows a commitment of 30% utilization of Small Local Business Enterprise (SLBE) companies which exceeds the goal of 15% established for this project.

Provided that Transportation can provide the additional funding, it is Procurement's recommendation that a contract be awarded to the lowest responsive and responsible bidder, Cherokee Inc. to include a 15 % construction contingency of \$272,680.00.

Print this page

### Board: Commercial Contractors

**CHEROKEE INC**  
6928 CHEVAL STREET  
COLUMBIA, SC 29209  
(803) 776-4870

**License number:** 12263  
**License type:** GENERAL CONTRACTOR  
**Status:** ACTIVE  
**Expiration:** 10/31/2022  
**First Issuance Date:** 01/01/1992  
**Classification:**  
Grading-GD5  
Highway Incidental-HI5  
Water & Sewer Lines-WL5

**Qualified By:** Financial Statement  
**President / Owner:** JOHN R JORDAN JR

[Click here for Classification definitions and licensee's contract dollar limit](#)

**Supervised By**  
**JORDAN JOHN (CQG)**

[File a Complaint against this licensee](#)

### Board Public Action History:

View Orders

View Other License for this Person

No Orders Found

**RICHLAND COUNTY TRANSPORTATION PENNY PROGRAM  
 GARNERS FERRY RD (US 378) AND HARMON ROAD (S-86) INTERSECTION IMPROVEMENT  
 RC-503-B-2022**

	<b>Cherokee, Inc.</b>	<b>McClam and Associates Inc</b>
<b>Total Cost</b>	\$ 1,841,866.65	\$ 1,893,377.9000000004

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

<b>Project #:RC-503-B-2022</b>	<b>Project Name: Garners Ferry/Harmon Roads Intersection Improvements</b>		<b>Date: 3/24/2022</b>
			<b>Time: 2:00 PM</b>
COMPANY NAME	REPRESENTATIVE	EMAIL ADDRESS	TELEPHONE/FAX
Richland County	Angela Seymour	<a href="mailto:seymour.angela@richlandcounty.gov">seymour.angela@richlandcounty.gov</a>	2428
Richland County - Transportation	Allison Steele		
Richland County - Utilities Coordinator	Rebecca Connelly		
Richland County - OSBO	Pamela Green		
Richland County - OSBO	Erica Wade		
SCDOT	Bart McCarter		
Cox & Dinkins	Mac Atkins		
City of Columbia	John Hilbert		
City of Columbia	Stephen Nabholz		
Cherokee, Inc.	John Jordan		
McClam & Associates	Katherine Fellers		
Taylor Brothers Construction Company, Inc.	Collier Taylor		
Blythe Development	Stephen Schoolhill		

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



## RICHLAND COUNTY PROCUREMENT AND CONTRACTING

### Pre-Bid Meeting Minutes

RC-503-B-2022 Garners Ferry/Harmon Roads Intersection Improvements  
Thursday March 24, 2022, 2:00 PM Eastern Time via Zoom

#### A. INTRODUCTIONS

Angela M. Seymour, Contract Analyst for Richland County  
Allison Steele, Richland County Transportation

#### B. SIGN-IN SHEET- Non-Mandatory Pre-Bid

Please use the chat feature to state your name and the Company you represent.

#### C. DATES TO REMEMBER

1. Advertised March 14, 2022
2. Mandatory pre-bid (virtually) March 24, 2022 at 2:00 PM
3. Questions- April 6, 2022, Submit via Bonfire
4. Close date, submissions due by April 13, 2022 at 3:00 PM (unless changed by addendum)

#### D. SOLICITATION DOCUMENTS

1. Bid Manual with Bonds
2. Construction Plans – To be reviewed by Transportation
3. Project Manual – To be reviewed by Transportation
4. Manual Appendices (Special Provisions) – To be reviewed by Transportation
5. Water Relocation Plans – To be reviewed by Transportation
6. Good Faith Efforts
  - a) Either this form indicating the SLBE participants or the Good Faith Efforts must be provided.
7. Pre Bid Information
8. SLBE Participation Form
9. Subcontractor Participation Form
  - a) Any subcontractors being used on this project shall be listed on the subcontractor form and uploaded in the Requested Information section.

#### E. REQUESTED INFORMATION

1. Certification Acknowledgements
2. Forms
  - a) Subcontractor Participation Form
  - b) SLBE Participation/Good Faith Efforts Forms
    - a) Either this form indicating the SLBE participants or the Good Faith Efforts must be provided.
  - c) Electronic Bond Options

#### F. MESSAGES

#### G. QUESTIONS

All questions and comments will be addressed in writing via Addendum 1 to be released after this meeting. Verbal comments during the pre-bid meeting are NOT binding, and shall not be considered unless included in the written Addendum.

#### H. SPECIFICATIONS

I. Representatives Spoke:

1. Mac Atkins (Cox & Dinkins)  
Signalized intersection
2. Rebecca Connelly  
Utilities Coordinator
3. Bart McCarter  
SCDOT
4. Pamela Green  
Richland County OSBO

J. QUESTIONS

1. Will clearing have to be done for AT&T and Segra?
  - a) No.
2. Will Rebecca Connelly coordinate utilities during relocation?
  - a) Yes
3. Is there any work in the median?
  - a) Yes, but only a little amount in the left lane.
4. These will be constructed to SCDOT standards.
5. As builts will need to be in accordance with SCDOT as-built manual.
6. Contract will be two hundred seventy-four (274) days.
7. City of Columbia water relocation quantity zero (85)?
  - a) Delete this line item.
8. Abandonment unit quantity (98-100) bid on lump sum. Bid in CY?
  - a) Defer to amendment Quantity should be:
    - a) Item 98 Harmon Rd – 20 CY
    - b) Item 99 Garners Ferry – 12 CY
    - c) Item 100 – Horrell Hill – 2 CY
9. Asphaltic Replacement (101) in linear feet? In SY? Full depth patch?

There is one driveway on Harmon Road which will be affected, and it measures approximately 10 feet. Contractor would be expected to repair it per detail for driveway repair.

10. Sediment and erosion control in lump sum (102)? How are they paid?
  - a) Remove this line item.
11. OSBO reviewed SLBE goals and instructions.
12. Will OSBO make site visits?
  - a) Yes.

**RICHLAND COUNTY TRANSPORTATION PENNY PROGRAM  
GARNERS FERRY RD (US 378) AND HARMON ROAD (S-86) INTERSECTION IMPROVEMENT  
RC-503-B-2022**

	Cherokee, Inc.	McClam and Associates Inc
<b>Total Cost</b>	\$ 1,841,866.65	\$ 1,893,377.9000000004



**RICHLAND COUNTY  
ADMINISTRATION**

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



**Agenda Briefing**

<b>Prepared by:</b>	Quinton Epps	<b>Title:</b>	Division Manager
<b>Department:</b>	Community Planning & Development	<b>Division:</b>	Conservation
<b>Date Prepared:</b>	May 11, 2022	<b>Meeting Date:</b>	May 24, 2022
<b>Legal Review</b>	Patrick Wright via email	<b>Date:</b>	May 12, 2022
<b>Budget Review</b>	Abhijit Deshpande via email	<b>Date:</b>	May 11, 2022
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	May 17, 2022
<b>Approved for consideration:</b>	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCEM	
<b>Meeting/Committee</b>	Transportation Ad Hoc		
<b>Subject</b>	Mitigation Bank Credit Transaction - SCDOT US 76 Bridge Replacement and I-26 Improvements		

**RECOMMENDED/REQUESTED ACTION:**

Staff requests approval of two requests from the South Carolina Department of Transportation (SCDOT) to purchase a combined total of 41.16 excess wetland and 2,962.40 excess stream credits, at a rate of \$12,500.00 and \$125.00 per credit respectively.

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 type="checkbox"/>	No

**ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:**

This mitigation credit sale will generate \$814,016.00 which will be credited to the Transportation Penny Program.

**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.

<b>Council Member</b>	Click or tap here to enter text.
<b>Meeting</b>	Choose an item.
<b>Date</b>	Click or tap to enter a date.

**STRATEGIC & GENERATIVE DISCUSSION:**

Staff requests approval for the sale of mitigation bank credits from the Mill Creek Mitigation Bank to the South Carolina Department of Transportation (SCDOT) for two (2) Army Corps of Engineers (ACE) 404 Permits: (1) for the US 76 westbound bridge replacement Project across the Wateree River (see attached Checklist) and (2) for I-26/US Highway 21 Interchange Project (see attached Checklist). The applicant is requesting a total of 41.16 wetland and 2,962.40 stream mitigation credits to fulfill the permitting requirements of these permits.

The total combined transaction value is \$884,800.00 of which \$814,016.00 would be returned to the Penny Program, and \$70,784.00 would go to the Mill Creek Mitigation Bank owners/investors. The County's current credit ledger balance is as follows:

Credit Type	Released County Credits	County Credits Used or Sold	Available County Credits
Wetland	800.000	154.081	645.919
Stream	30,000.000	7,246.720	22,753.280

Interim Transportation Director Maloney estimates as currently constituted, the remaining projects in the Transportation Penny program will require 100 wetland credits and 3,400 stream credits. Those numbers would increase if the Penny tax was extended and more projects were added. Based on these estimates, the request by SCDOT for 41.46 wetland credits and 2,962.40 stream credits will have no material impact on the County's ability to implement the Penny Program. As such, they may be considered excess credits at this time.

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 \$814,016.00 to \$176,960.00 for a difference of \$637,056.00 to the Transportation Program. The County Council has approved surplus mitigation credit sales on many occasions. All related County Council actions since 2014 are not included in the attachments for brevity.

**ADDITIONAL COMMENTS FOR CONSIDERATION:**

Click or tap here to enter text.

**ATTACHMENTS:**

1. Mill Creek Credit Sale Checklist SCDOT I-26 US 21 Interchange.pdf
2. Mill Creek Credit Sale Checklist SCDOT US 76 Bridge Replacement Wateree River.pdf

MITIGATION SURPLUS CREDIT SALES AGREEMENT SUMMARY

<u>Project:</u>	SCDOT I-26/US Highway 21 Interchange Project
<u>Location:</u>	Calhoun and Lexington Counties, SC
<u>8-Digit HUC Watershed Code</u>	03050110 (Congaree)
<u>Buyer:</u>	SCDOT
<u>Permittee:</u>	SCDOT
<u>Permittee's USACE 404 Permit # (from Public Notice):</u>	SAC 2017-01707
<u>Price Per Wetland Credit:</u>	\$12,500
<u>Price Per Stream Credit:</u>	\$125
<u>Wetland Credits:</u>	11.55 credits (5.78 restoration/enhancement & 5.77 preservation)
<u>Stream Credits:</u>	2,962.40 credits (1,481.20 restoration/enhancement & 1,481.20 preservation)
<u>Credit Proceeds:</u>	\$514,675.00
<u>Richland County Credit Share:</u>	\$473,501.00 (92% of \$514,675.00)
<u>MCMH Credit Share:</u>	\$41,174.00 (8% of \$514,675.00)
<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>	\$514,675.00
<u>Richland County Proceeds Share:</u>	\$473,501.00
<u>MCMH Proceeds Share:</u>	\$41,174.00

MITIGATION SURPLUS CREDIT SALES AGREEMENT SUMMARY

<u>Project:</u>	SCDOT US 76 Westbound Bridge Replacement Project across Wateree River
<u>Location:</u>	Richland and Sumter Counties, SC
<u>8-Digit HUC Watershed Code</u>	03050104 (Wateree)
<u>Buyer:</u>	SCDOT
<u>Permittee:</u>	SCDOT
<u>Permittee's USACE 404 Permit #:</u>	SAC 2019-01585
<u>Price Per Wetland Credit:</u>	\$12,500
<u>Price Per Stream Credit:</u>	N/A
<u>Wetland Credits:</u>	29.61 credits (14.81 restoration/enhancement & 14.80 preservation)
<u>Stream Credits:</u>	0.00 credits
<u>Credit Proceeds:</u>	\$370,125.00
<u>Richland County Credit Share:</u>	\$340,515.00 (92% of \$370,125.00)
<u>MCMH Credit Share:</u>	\$29,610.00 (8% of \$370,125.00)
<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>	\$370,125.00
<u>Richland County Proceeds Share:</u>	\$340,515.00
<u>MCMH Proceeds Share:</u>	\$29,610.00



**Agenda Briefing**

<b>Prepared by:</b>	Michael Maloney, PE	<b>Title:</b>	Interim Director
<b>Department:</b>	Transportation	<b>Division:</b>	Click or tap here to enter text.
<b>Date Prepared:</b>	April 27, 2022	<b>Meeting Date:</b>	May 24, 2022
<b>Legal Review</b>	Patrick Wright via email	<b>Date:</b>	May 17, 2022
<b>Budget Review</b>	Abhijit Deshpande via email	<b>Date:</b>	May 17, 2022
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	May 6, 2022
<b>Approved for consideration:</b>	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCEM	
<b>Meeting/Committee</b>	Transportation Ad Hoc		
<b>Subject</b>	Penny Program Administrative Fund Deprogramming		

**RECOMMENDED/REQUESTED ACTION:**

Staff requests approval to move the remaining balance from the Administrative/Debt Service costs and the County transferred General Fund proceeds to the Program Reserve Fund to be used as County Council approves for referendum projects. This amounts to \$31,130,528.15.

Request for Council Reconsideration:  Yes

**FIDUCIARY:**

Are funds allocated in the department’s current fiscal year budget?	<input type="checkbox"/>	Yes	<input checked="" 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:**

Not applicable.

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

None.

**REGULATORY COMPLIANCE:**

Not applicable.

**MOTION OF ORIGIN:**

There is no associated Council motion of origin.

<b>Council Member</b>	Click or tap here to enter text.
<b>Meeting</b>	Choose an item.
<b>Date</b>	Click or tap to enter a date.

**STRATEGIC & GENERATIVE DISCUSSION:**

As part of the original Transportation Sales Tax Ordinance, a maximum amount of funding to be collected shall be in the amount of \$1,070,000,000, and the maximum amount of funding to be expended towards projects shall be \$1,037,900,000. The difference between these two dollar amounts provided funding of \$32,100,000 which was specified in the ordinance to be used for administrative costs and debt services on bonds issued for the projects. Please see attachment 1 (page 2, Section 2, Paragraph C). The following is an accounting of the use of the Administrative Fund:

<b>Administrative Cost</b>	<b>(Expense)/Revenue</b>
FY14	(\$ 401,160.40)
FY15	(\$ 4,504,007.11)
FY16	(\$ 2,821,253.90)
FY17	(\$ 3,067,847.86)
SLBE	(\$ 990,992.97)
Subtotal	(\$11,785,262.24)
Debt Service in BANS	(\$ 4,347,114.99)
2021A Interest Expense and cost	(\$18,771,247.22)
Premium-net	\$17,395,897.60
Total	(\$17,507,726.85)

$$\$32,100,000 - \$17,507,726.85 = \text{Remaining Balance, } \$14,592,273.15$$

In 2018, the Department of Revenue provided guidelines to the County on the proper use of funds in the Penny Program. The guidelines specifically state that any expenditures must be tethered to a specific project or the administration of a specific project. Please see attachment 2 (page 1, Paragraph 7).

The County General Fund has made two transfers from General Fund to the Penny Program. The first is a transfer of \$1,000,000.00 and the second was a State Department of Revenue settlement amount of \$15,538,255.00

Staff requests that the remaining administrative and debt service costs and general fund transfers be re-programmed as a reserve fund to be made available for use on Program projects.

<b>Fund Category</b>	<b>Beginning Balance</b>	<b>Remaining Balance</b>
Administrative and Debt Service	\$32,100,000	\$14,592,273.15
General Fund Transfer to Penny Program		\$1,000,000.00
General Fund Transfer to Penny Program		\$15,538,255.00
<b>Total - Add to "Penny Program Project Reserve "</b>		<b>\$31,130,528.15</b>

**ADDITIONAL COMMENTS FOR CONSIDERATION:**

Click or tap here to enter text.

**ATTACHMENTS:**

1. Penny Tax Ordinance
2. Department of Revenue Guidelines

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. 039-12HR

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

Pursuant to the authority by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

SECTION 1. Findings and Determinations. The County Council (the "County Council") of Richland County, South Carolina (the "County"), hereby finds and determines:

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

(b) Pursuant to the terms of Section 4-37-10 of the Code of Laws of South Carolina 1976, as amended, the South Carolina General Assembly has authorized county government to finance the costs of acquiring, designing, constructing, equipping and operating highways, roads, streets, bridges, greenways, pedestrian sidewalks, bike paths and lanes, and other transportation-related projects either alone or in partnership with other governmental entities. As a means to furthering the powers granted to the County under the provisions of Section 4-9-30 and Sections 6-21-10, *et. seq* of the Code of Laws of South Carolina 1976, as amended, the County Council is authorized to form a transportation authority or to enter into a partnership, consortium, or other contractual arrangement with one or more other governmental entities pursuant to Title 4, Chapter 37 of the Code of Laws of the South Carolina 1976, as amended. The County Council has decided to provide funding for highways, roads, streets, bridges, mass transit, greenways, pedestrian sidewalks, bike paths and lanes, *inter alia*, without the complexity of a transportation authority or entering into a partnership, consortium, or other contractual arrangements with one or more other governmental entities at this time; provided that nothing herein shall preclude County Council from entering into partnerships, consortiums, or other contractual arrangements in the future. County Council may utilize such



provisions in the future as necessary or convenient to promote the public purposes served by funding highways, roads, streets, bridges, mass transit, greenways, pedestrian sidewalks, and bike paths and lanes as provided in this Ordinance.

(c) The County Council finds that a one percent sales and use tax should be levied and imposed within Richland County, for the following projects and purposes: For financing the costs of highways, roads, streets, bridges, greenways, pedestrian sidewalks, and bike paths and lanes and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Richland County or (jointly) operated by the County, other governmental entities and transportation authorities.

For a period not to exceed twenty-two (22) years from the date of imposition of such tax, to fund the projects at a maximum cost not to exceed \$1,037,900,000 to be funded from the net proceeds of a sales and use tax imposed in Richland County pursuant to provisions of the Act, subject to approval of the qualified electors of Richland County in referendum to be held on November 6, 2012. The imposition of the sales and use tax and the use of sales and use tax revenue, if approved in the referendum, shall be subject to the conditions precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act, the provisions of this Ordinance, and other applicable law. Subject to annual appropriations by County Council, sales and use tax revenues shall be used for the costs of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects, and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects. All spending shall be subject to an annual independent audit to be made available to the public.

(d) County Council finds that the imposition of a sales and use tax in Richland County for the projects and purposes defined in this Ordinance for a limited time not to exceed twenty-two (22) years to collect a limited amount of money will serve a public purpose, provide funding for roads and transportation, mass transit, and greenbelts to facilitate economic development, promote public safety, provide needed infrastructure, promote desirable living conditions, enhance the quality of life in Richland County, and prepare Richland County to meet present and future needs of Richland County and its citizens.

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

(a) A sales and use tax (the "Sales and Use Tax"), as authorized by the Act, is hereby imposed in Richland County, South Carolina, subject to a favorable vote of a majority of the qualified electors voting in a referendum on the imposition of the Sales and Use Tax to be held in Richland County, South Carolina on November 6, 2012.

(b) The Sales and Use Tax shall be imposed for a period not to exceed twenty-two (22) years from the date of imposition.

(c) The maximum cost of the projects to be funded from the proceeds of the Sales and Use Tax shall not exceed, in the aggregate, the sum of \$1,037,900,000, and the maximum amount of net proceeds to be raised by the Sales and Use Tax shall not exceed \$1,070,000,000, which includes administrative costs and debt service on bonds issued to pay for the projects. The estimated principal amount of initial authorization of bonds to be issued to pay costs of the projects and to be paid by a

portion of the Sales and Use Tax is \$450,000,000. The proceeds of these bonds shall be used for a portion of the following projects:

- Project 1: Improvements to highways, roads (paved and unpaved), streets, intersections, and bridges including related drainage system improvements.  
Amount: \$656,020,644
- Project 2: Continued operation of mass transit services provided by Central Midlands Regional Transit Authority including implementation of near, mid and long-term service improvements.  
Amount: \$300,991,000
- Project 3: Improvements to pedestrian sidewalks, bike paths, intersections and greenways.  
Amount: \$80,888,356

A list of the 2012 Roadway Projects and the 2012 Pedestrian/Bike/Greenway Projects are attached hereto as Appendix A and incorporated herein by reference.

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

(i) Improvements to highways, roads (paved and unpaved), streets, intersections, and bridges including related drainage system improvements. Amount: \$656,020,644;

(ii) Continued operation of mass transit services provided by Central Midlands Regional Transit Authority including implementation of near, mid and long-term service improvements. Amount: \$300,991,000; and

(iii) Improvements to pedestrian sidewalks, bike paths, intersections and greenways.  
Amount: \$80,888,356.

(e) The Sales and Use Tax, if approved in the referendum conducted on November 6, 2012, shall terminate on the earlier of:

(i) April 1, 2035; or

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

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

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

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

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

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

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

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

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

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

(a) The revenues of the Sales and Use Tax collected under this Ordinance must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the Sales and Use Tax, not to exceed one percent of such revenues, the State Treasurer shall distribute the revenues quarterly to the Richland County Treasurer and the revenues must be used only for the purposes stated herein. The State Treasurer may correct misallocations by adjusting

subsequent distributions, but these distributions must be made in the same fiscal year as the misallocation. However, allocations made as a result of city or county code errors must be corrected prospectively.

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

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

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

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

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

(a) The Commission shall conduct a referendum on the question of imposing the Sales and Use Tax in the area of Richland County on Tuesday, November 6, 2012, between the hours of 7 a.m. and 7 p.m. under the election laws of the State of South Carolina, mutatis mutandis. The Commission shall publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and purposes as set forth herein, and the cost of projects, and shall publish such election and other notices as are required by law.

(b) The referendum question to be on the ballot of the referendum to be held in Richland County on November 6, 2012, must read substantially as follows:

RICHLAND COUNTY SPECIAL SALES AND USE TAX

**QUESTION 1**

I approve a special sales and use tax in the amount of one percent (1%) to be imposed in Richland County, South Carolina (the "County") for not more than twenty-two (22) years, or until a total of \$1,070,000,000 in sales tax revenue has been collected, whichever occurs first. The sales tax revenue will be used to pay the costs of administrative expenses and the following projects:

Project 1: Improvements to highways, roads (paved and unpaved), streets, intersections, and bridges including related drainage system improvements.

Amount: \$656,020,644

Project 2: Continued operation of mass transit services provided by Central Midlands Regional Transit Authority including implementation of near, mid and long-term service improvements.

Amount: \$300,991,000

Project 3: Improvements to pedestrian sidewalks, bike paths, intersections and greenways.

Amount: \$80,888,356

YES

NO

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

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

**QUESTION 2**

I approve the issuance of not exceeding \$450,000,000 of general obligation bonds of Richland County, payable from the special sales and use tax described in Question 1 above, maturing over a period not to exceed twenty-two (22) years, to fund projects from among the categories described in Question 1 above.

YES

NO

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

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

(c) In the referendum on the imposition of the Sales and Use Tax in Richland County, all qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote "yes" and all qualified electors opposed to levying the tax shall vote "no." If a majority of the electors voting in the referendum shall vote in favor of imposing the Sales and Use Tax, then the Sales and Use Tax is imposed as provided in the Act and this Ordinance. Expenses of the referendum must be paid by Richland County government.

(d) In the referendum on the issuance of bonds, all qualified electors desiring to vote in favor of the issuance of bonds for the stated purpose shall vote "yes" and all qualified electors opposed to the issuance of bonds shall vote "no." If a majority of the electors voting in the referendum shall vote in favor of the issuance of bonds, then the issuance of bonds shall be authorized in accordance with S.C. Constitution Article X, Section 14, Paragraph (6). Expenses of the referendum must be paid by Richland County government.

#### **Section 5. Imposition of Tax Subject to Referendum.**

The imposition of the Sales and Use Tax in Richland County is subject in all respects to the favorable vote of a majority of qualified electors casting votes in a referendum on the question of imposing the Sales and Use Tax in the area of Richland County in a referendum to be conducted by the Board of Elections and Voter Registration of Richland County on November 6, 2012, and the favorable vote of a majority of the qualified electors voting in such referendum shall be a condition precedent to the imposition of a sales and use tax pursuant to the provisions of this Ordinance.

#### **Section 6. Miscellaneous.**

(a) If any one or more of the provisions or portions hereof are determined by a court of competent jurisdiction to be contrary to law, then that provision or portion shall be deemed severable from the remaining terms or portions hereof and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance; if any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied to any particular case in any jurisdiction or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, those circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever; provided, however, that the Sales and Use Tax may not be imposed without the favorable results of the referendum to be held on November 6, 2012.

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

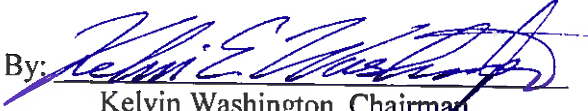
(c) The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation, or effect of this ordinance.

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

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

Enacted this 18<sup>th</sup> day of July, 2012.

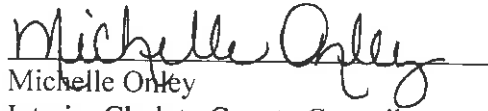
RICHLAND COUNTY, SOUTH CAROLINA

By:   
Kelvin Washington, Chairman  
Richland County Council


(SEAL)

ATTEST THIS 20<sup>th</sup> DAY OF

July, 2012:

  
Michelle Orley  
Interim Clerk to County Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

Date of First Reading: June 5, 2012  
Date of Second Reading: June 19, 2012  
Date of Public Hearing: June 19, 2012  
Date of Third Reading: July 18, 2012



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 12265, Columbia, South Carolina 29211

**GUIDELINES FOR USE OF TRANSPORTATION  
TAX REVENUE**

WHEREAS, the Optional Methods for Financing Transportation Facilities Act (the "Transportation Act"), codified at Title 4, Chapter 37 of the Code of Laws of South Carolina 1976, as amended, authorizes the governing body of a county to impose a sales and use tax in an amount not to exceed one percent (the "Transportation Tax," sometimes commonly referred to as the Penny Tax) within its jurisdiction for a single project or for multiple projects for a specific period of time to collect a limited amount of money, *see* S.C. Code Ann. § 4-37-30(A) (Supp. 2017); and

WHEREAS, the Transportation Act provides that the types of projects permitted to be funded with Transportation Tax revenues are highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities, *see* S.C. Code Ann. § 4-37-30(A)(1)(a); and

WHEREAS, the South Carolina Department of Revenue (the "Department") administers and collects the Transportation Tax and the revenues are periodically remitted to the county by the State Treasurer in accordance with the provisions of the Transportation Act. S.C. Code Ann. § 4-37-30(A)(15) (Supp. 2017); and

WHEREAS, the South Carolina Supreme Court in *Richland County and the Central Midlands Regional Transit Authority v. S.C. Department of Revenue*, -- S.E.2d --, 2018 WL 1177700 (March 7, 2018) held that the Department has extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code, which confers upon the Department a duty to ensure that a county's expenditures of Transportation Tax revenues comply with the revenue laws the Department is charged with enforcing; and

WHEREAS, the Department is the agency statutorily tasked with administering a Transportation Tax program, and the expenditure of millions of dollars of Transportation Tax revenues is an issue of wide concern both to the Department and to the residents and taxpayers of the county implementing the Transportation Tax; and

WHEREAS, Transportation Tax revenues must be used in accordance with statutory restrictions imposed by the General Assembly, namely, proceeds must be used for the types of transportation-related projects identified in the Transportation Act; and

WHEREAS, the Supreme Court determined that a proper expenditure of Transportation Tax funds must be tethered to a specific transportation-related capital project or the administration of a specific transportation project; and

WHEREAS, the Supreme Court has determined that objective criteria are necessary to



establish compliance with the Transportation Act, and has ordered that a county that has implemented a Transportation Tax program shall be subject to guidelines for determining whether expenses are properly allocable to a specific transportation project, or the direct administration of a specific transportation project; and

WHEREAS, the Department is authorized to conduct audits involving the taxes it administers and collects, including the Transportation Tax; and

WHEREAS, upon a determination that a county has expended Transportation Tax funds contrary to the Transportation Act, the county shall repay the improper expenditures from other legally available sources; and

NOW THEREFORE, a county shall be subject to the following guidelines and standards for determining whether expenditures of Transportation Tax revenues are proper:

### GENERAL GUIDELINES

The revenues generated from the Transportation Tax must be used in accordance with statutory restrictions imposed by the General Assembly – namely, proceeds must be used for “capital costs” of the types of transportation projects identified in the Transportation Act or the administration of a specific transportation project.

“Capital Costs” means expenditures that are treated as “capital” expenditures under generally accepted accounting principles. In general, costs are treated as Capital Costs if they are incurred for the planning, acquisition, construction, or improvement of property having a useful life of more than one year and include, without limitation, costs related to the planning, acquisition, construction, or improvement of land, buildings, vehicles, equipment, infrastructure improvements, and intangible assets (e.g., software and intellectual property with a useful life of more than one year). Capital Costs also include costs and expenditures that increase the value of existing property with a useful life of more than one year or that extend the useful life of existing property for a period of more than one year. “Capital Costs” consist of both Direct Costs and Indirect Costs (as each term is described below).

### ELIGIBLE COSTS

For purposes of these guidelines, “Eligible Costs” are Capital Costs, whether Direct Costs or Indirect Costs, and costs for Mass Transit Systems as further described in (C) below. “Eligible Costs” generally have the following characteristics:

- Costs that are reasonable, meaning that, in its nature and amount, it does not exceed that amount which would be incurred by a prudent person under the circumstances then and there prevailing in the conduct of government business.
- Costs that are generally recognized as ordinary and necessary for the project;
- Costs that are in compliance with generally accepted sound business practices;

- Costs that are the result of arms-length bargaining;
- Costs that are in compliance with Federal and state laws and regulations, as applicable;
- Costs that are consistent with market prices for comparable goods or services;
- Costs that are consistent with the county's fiduciary responsibilities to the public; and
- Costs that do not constitute a significant deviation from the county's established practices.

#### A. Direct Costs

"Direct Costs" are expenditures for material, labor, and financing for transportation-related projects that would be properly chargeable to a capital asset account as distinguished from current expenditures and ordinary maintenance expenses.

"Project(s)" means those transportation-related projects described in the imposition ordinance and ratified in the referendum question in accordance with the provisions of the Transportation Act, specifically: highways, roads, streets and adjacent sidewalks, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets and adjacent sidewalks, bridges, and other transportation-related projects.

Examples: The following, to the extent directly related to the planning, acquiring, constructing, or improving a Project or any portion thereof, are examples of eligible Direct Costs:

- The purchase price of the property (*e.g.*, land and interests in land, existing buildings and structures).
- The amounts paid a construction company for the construction of a Project (*e.g.* highways, roads, streets and adjacent sidewalks, bridges, bus terminals, train terminals, greenbelts, and other transportation-related facilities).
- Direct labor costs.
- Construction material costs (*e.g.*, asphalt, concrete, steel, electrical wiring, and piping including related shipping, freight, and insurance charges).
- Equipment costs directly used in the construction or improvement of a Project, including lease payments and depreciation.
- Site preparation costs (*e.g.*, demolition, environmental remediation, and utility relocation).
- Engineering, architectural, and design costs.

- Cost of permits, licenses, performance bonds, surety bonds, easements, and rights-of-way.
- Legal, accounting, and other professional service fees incurred in connection with the planning, acquisition, construction, and improvement of a specific transportation related project (e.g. right of way acquisition and condemnation).
- Inspection costs.
- Interest accrued on debt incurred to finance a Project, up to the time it (or the portion thereof that is financed) is placed in service. A Project (or portion thereof) shall be treated as “placed in service” at the time at which, based on all the facts and circumstances, (i) the Project (or portion thereof) has reached a degree of completion which would permit its operation at substantially its design level and (ii) the Project (or portion thereof) is in fact in operation at such level.
- Debt service on bonds or other obligations issued to finance a Project or Projects, including the costs of issuance of such bonds or obligations.
- Fees paid for public engagement and public information pertaining directly to a transportation project or projects.
- The cost of mitigation credits required by appropriate federal authorities to offset ecological losses created by a transportation project/improvement.

#### **B. Indirect Costs**

“Indirect Costs” are costs that benefit (i) the construction and improvement of authorized Projects or (ii) the construction and improvement of authorized Projects and other county operations. Only the portion of the Indirect Costs related to Projects are Eligible Indirect Costs.

“Eligible Indirect Costs” are costs that directly benefit or are incurred by reason of the planning, acquisition, construction or improvement of a Project. Such indirect costs should be proportionally allocated among the projects based upon an appropriate allocation method consistent with applicable accounting standards.

Eligible Indirect Costs do not include costs that are otherwise listed as Ineligible Costs (as defined and described herein below).

#### **Examples:**

The following are examples of Eligible Indirect Costs:

- Portion of an employee’s salary and benefits whose time is allocable to administering the planning, acquisition, construction and improvement of Projects.
- Licensure and Continuing Education expenses for full time transportation department employees whose job descriptions require that they hold a professional license.

- Ordinary and necessary costs of office equipment and supplies, telephone, transportation, fuel, and similar costs for employees devoted to administering the planning, acquisition, construction and improvement of Projects. This is meant to include the ordinary and necessary operating expenses of a County department devoted exclusively to the operation of a Transportation Penny program.
- Where a county department provides services to employees directly engaged in the transportation program, including the provision of public information to affected citizens or communities impacted by one or more Projects, and other county departments (*i.e.* a mixed service department), a portion of the county department's costs may be allocated as Eligible Indirect Costs based on either labor cost or labor hours.

### C. Mass Transit Systems Costs

"Mass Transit System" as used herein refers only to a mass transit system.

Eligible Costs include costs incurred for the acquisition, design, construction, equipping, and operation of Mass Transit Systems, provided that such costs are consistent with the public purpose of the Transportation Act, the county's imposition ordinance and the referendum approved by voters.

Eligible Costs for Mass Transit Systems must be tethered to the administration of the Mass Transit System and must be reasonable and not excessive. Eligible Costs include purchases of capital assets. Eligible Costs also include costs and expenses paid or incurred in connection with the day to day operation of the Mass Transit System.

Additionally, the Mass Transit System must comply with certain Federal and State requirements in the operation of the Mass Transit System. The expenditures necessary to fulfill these Federal and State requirements are also Eligible Costs, provided the expenditures are reasonable and not excessive.

### INELIGIBLE COSTS

"Ineligible Costs" are all costs that are not tethered to a Project or the direct administration of a Project. Furthermore, costs that are excessive or unreasonable or that do not directly benefit or are not incurred by reason of the planning, acquisition, construction or improvement of a Project are Ineligible Costs.

#### Examples:

The following are examples of Ineligible Costs:

- Amounts paid in transactions involving conflicts of interest as defined in S.C. Code Ann. § 8-13-700 and subsequent amendments.
- County wide programs intended to support all facets of county operations.

- County costs for the routine maintenance or upkeep of roads, streets, thoroughfares, bridges and highways.
- Expenditure for establishment or support of programs to benefit constituents or persons.
- Any costs associated with a mentor/mentee program.
- Legal fees and other professional costs incurred in prosecuting or defending a lawsuit or claim related to an alleged improper expenditure of Transportation Tax revenues.
- County overhead costs (e.g. utilities, office supplies, telephone, office facilities, salaries), except those incurred by the County Transportation Department in managing and administering the Projects.
- Costs associated with a county's normal cost of doing business (e.g., finance and accounting, procurement, executive management, human resources, budget and grants management, etc.) except where such services are performed exclusively for the benefit of the Transportation Department.
- County support costs (e.g. support for the small local business enterprise program of the office of small businesses opportunities, procurement, human resources, budget and grants management, and finance-related functions) except where such services are performed exclusively for the benefit of the Transportation Department.
- Professional fees (e.g. legal, accounting, and engineering) not directly related to a Project or exclusively performed for the benefit of the Transportation Department.
- Costs that are duplicative.

### COMPLIANCE WITH GUIDELINES

These guidelines apply to all counties and political subdivisions that receive Transportation Tax funds, including through intergovernmental agreements, contracts, or agreements with firms or a consortium of firms. Nothing herein shall be construed so as to permit a county to apply funds from the Transportation Tax revenue for other county purposes.

Based on the Department's extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code, the Department is authorized to conduct audits to ensure a county's expenditures of Transportation Tax revenues comply with the provisions of the Transportation Act and the South Carolina Code. All improper expenditures of Transportation Tax revenue shall be reimbursed from other legally available sources within the current fiscal year.

In addition, a county or political subdivision that receives any Transportation Tax funds shall conduct an independent annual audit of the financial records and transactions and expenditures of Transportation Tax funds. The results of the annual audit will be made available to the public on the county's website.