

RESOLUTION NO.: R-2016-027

Authorizing the City Manager to execute an Intergovernmental Agreement between the City of Columbia and Richland County relating to the Widening and Improvement of North Main Street between Anthony Avenue and Fuller Avenue

WHEREAS, a one percent (1%) special sales and use tax (the "Penny Tax") was imposed by and throughout the County pursuant to a successful referendum held in the County on November 6, 2012; and

WHEREAS, one of the projects identified to be completed with a portion of the proceeds of the Penny Tax is the widening of North Main Street between Anthony Avenue and Fuller Avenue, as approved by County Council in the Richland County Transportation Improvement Program as approved on March 17, 2015 (the "Penny Project"); and,

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

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

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

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

WHEREAS, constituents within the project corridor are interested in a review of the median blocking Avondale Drive from the northbound lane of North Main, and thus the city will work with the county design team to reevaluate the traffic study at Sunset and North Main Street to determine if the median can be reduced; and,

WHEREAS, the City wishes to authorize the County to construct the North Main Project on the terms and conditions set forth herein and in the Intergovernmental Agreement; NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council this 19th day of April, 2016, that the City Manager is authorized to execute the attached Intergovernmental Agreement, or on a form approved by the City Attorney between the City of Columbia and Richland County for Widening and Improvements of North Main Street between Anthony Avenue and Fuller Avenue.

Requested by:

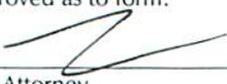
Assistant City Manager Gentry


Mayor

Approved by:


City Manager

Approved as to form:


City Attorney

ATTEST:


City Clerk

Introduced: 4/19/2016
Final Reading: 4/19/2016

ORIGINAL
STAMPED IN RED

**INTERGOVERNMENTAL AGREEMENT BETWEEN
RICHLAND COUNTY, SOUTH CAROLINA, AND COLUMBIA, SOUTH CAROLINA
RELATING TO THE WIDENING AND IMPROVEMENT OF
NORTH MAIN STREET BETWEEN ANTHONY AVENUE AND FULLER AVENUE**

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Default Involving Non-Payment by the City to the County and Remedies. In the event of a default involving non-payment by the City to the County under this Agreement, the past due amount shall accrue interest at the rate set forth in S.C. Code of Laws Section 34-3-120(A).

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

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

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

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

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

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

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

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

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

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

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

RICHLAND COUNTY, SOUTH CAROLINA

By: _____
Printed Name: Torrey Rush
Title: Chair, County Council

CITY OF COLUMBIA, SOUTH CAROLINA

By: *Teresa Wilson*
Printed Name: Teresa Wilson
Title: City Manager

Richland County Attorney's Office
Elizabeth A. McCall
Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

APPROVED AS TO FORM
Quinn O'Connell
Legal Department City of Columbia, SC

EXHIBIT A
TIGER GRANT AGREEMENT
[See attached]

EXHIBIT B
PROJECT BUDGET
[SEE ATTACHED]