

STATE OF SOUTH CAROLINA)
)
CITY OF MAULDIN)
)
COUNTY OF GREENVILLE)

**INTERGOVERNMENTAL AGREEMENT
(Downtown Mauldin Multi-County Park Project)**

This **INTERGOVERNMENTAL AGREEMENT** (the “*Agreement*”) dated as of the ____ day of _____, 2017 (“*Effective Date*”) is made and entered into by and between the City of Mauldin, South Carolina (the “*City*”) and Greenville County, South Carolina (the “*County*”).

WHEREAS, the County has established jointly with Anderson County (the “*Partner County*”), a joint county industrial and business park (the “*Park*”) pursuant to an Agreement for Development for Joint County Industrial Park dated _____, 2017, as may be subsequently supplemented or amended, which contains certain tracts of land located within the City (“*Park Property*”) as provided in Article VIII, Section 13 of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended (the “*Code*”) in order to promote the economic welfare of the citizens of the City, the County and the Partner County; and

WHEREAS, the Greenville County Council, by and through an ordinance it enacted on July 18, 2017 and the Partner County Council, by and through an ordinance it enacted on July 18, 2017, have both authorized the execution and delivery of the Park Agreement; and

WHEREAS, the Mauldin City Council, by and through a resolution it adopted on July 17, 2017, has authorized the execution and delivery of this Agreement and consented to inclusion of the Park Property within the Park in accordance with the requirements of Section 4-1-170 of the Code; and

WHEREAS, the Greenville County Council, has authorized the execution and delivery of this Agreement; and

WHEREAS, as a consequence of the establishment of the Park, property situated therein is exempt from *ad valorem* taxation during the term of the Park Agreement, but the owners or lessees of such property pay annual fees during that term in an amount equal to that amount of *ad valorem* taxes or other in-lieu-of payments that would have been due and payable except for such exemption; and

WHEREAS, the City intends to develop or cause to be developed the Park Property, in order to attract private development within the Park Property thereby enhancing the economic base of the City and the County, by acquiring land and making various capital improvements on and within the Park Property beginning after the Effective Date; and

WHEREAS, the portion of the Park Fees (as defined below) generated from the Park Property based on any increase in assessed value for such Park Property from capital expenditures occurring after the Effective Date are referred to herein as the “*New Investment Fees*”; and

WHEREAS, as permitted by the Park Agreement, the City and the County desire to provide for the distribution of the New Investment Fees and the other Park Fees to the City and the County and such other political subdivisions and overlapping taxing districts which would, but for the Park Agreement, receive *ad valorem* taxes in the Park (the “*Participating Taxing Entities*”);

NOW, THEREFORE, BE IT AGREED:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall for all purposes of this Agreement, have the meanings herein specified.

“*Agreement*” shall mean this Intergovernmental Agreement.

“*City*” shall mean the City of Mauldin, South Carolina.

“*City New Investment Fees*” shall mean the portion of the New Investment Fee distributed to the City pursuant to this Agreement.

“*Code*” shall mean the Code of Laws of South Carolina 1976, as amended.

“*County*” shall mean Greenville County, South Carolina.

“*Effective Date*” shall mean the date first set forth in the preamble to this Agreement.

“*Event of Default*” shall have the meaning given such term in Section 3.1 below.

“*Force Majeure*” shall mean a failure or delay in the performance of a party’s obligations hereunder on account of strikes, riots, insurrection, terroristic acts, fires, flood, storm, explosions, earthquakes, pandemic flu, acts of God, war, governmental action or labor conditions.

“*New Investment Fees*” shall have the meaning given such term in the recitals of this Agreement.

“*Park*” shall have the meaning given such term in the recitals of this Agreement.

“*Park Agreement*” shall have the meaning given such term in the recitals of this Agreement.

“*Park Fees*” shall mean the annual fees paid in each tax year by the owners or lessees of property situated within the Park in accordance with the Park Agreement, Section 4-1-170 of the Code and Section 13 of Article VIII of the Constitution of the State, in an amount equal to the amount of *ad valorem* taxes or other in-lieu of payments that would have been due and payable except for the exemption provided in Section 13 of Article VIII of the Constitution of the State.

“**Park Property**” shall mean all parcels of real property contained within the Park pursuant to the Park Agreement and this Agreement, as the same may be amended from time to time.

“**Participating Taxing Entities**” shall have the meaning given such term in the recitals of this agreement.

“**Partner County**” shall mean Anderson County, South Carolina.

“**Partner County Park Fees**” shall have the meaning given such term in Section 2.2 below.

“**SSRBs**” shall mean special source revenue bonds issued by the County or the City in accordance with Section 4-29-68 of the Code

“**SSRCs**” shall mean credits against Park Fees in accordance with Section 4-1-175 of the Code or credits against fee-in-lieu of tax payments in accordance with Section 12-44-70 of the Code.

“**Term**” shall mean the term of this Agreement, commencing on the Effective Date and expiring ~~December 31, 2042~~ twenty (20) years from the Effective Date and can be changed by agreement of the City and the County but not later than the expiration date of the Park Agreement, which is currently December 31, 2052.

ARTICLE II

COVENANTS AND CONDITIONS

Section 2.1 Park Property. Except as provided herein, any removal of Park Properties from the Park shall be subject to prior consent of the City. Notwithstanding the foregoing, the County shall have sole discretion to remove Park Properties in the instance of change in use of a Park Property relating to owner-occupied property so as to remain consistent with state law.

Section 2.2 Distribution of Park Fees and New Investment Fees. As to all Park Property, Park Fees shall be distributed to the Partner County in accordance with the Park Agreement, such Park Fees being hereinafter referred to as the “**Partner County Park Fees.**” After distribution of the Partner County Park Fees to the Partner County, the remaining Park Fees received by the County which are not New Investment Fees shall be distributed by the County in its sole discretion.

(a) During the Term, the New Investment Fees received by the County with respect to each tax year shall be distributed as follows:

- (i) First, ninety percent (90%) of the New Investment Fees attributable to County millage will be distributed to the City to be used as described herein;

- (ii) Second, ninety percent (90%) of the New Investment Fees attributable to Greenville County School District millage will be distributed to the City to be used as described herein;
- (iii) Third, the New Investment Fees attributable to City millage will be distributed to the City; and
- (iv) Fourth, the remainder of the New Investment Fees, if any, shall be distributed to Participating Taxing Entities, in a pro-rata fashion based on comparative millage rates for the year in question for such Participating Taxing Entities;

(b) provided, however, that (i) all Participating Taxing Entities which overlap the Park Property shall receive some portion of the Park Fees (but not the City New Investment Fees) generated from such properties; and (ii) all such Park Fees (but not the City New Investment Fees) receivable by a Participating Taxing Entity in a fiscal year shall be allocated to operations and maintenance and to debt service as determined by the governing body of such Participating Taxing Entity; and (iii) the County may, by ordinance, from time to time, amend the distribution of the Park Fees to all Participating Taxing Entities except for the portion of Park Fees which are City New Investment Fees.

Section 2.3 Timing of Payment or Distribution. All distributions and payments of the New Investment Fees shall be made pursuant to the normal procedures of the County for remitting fee-in-lieu-of-tax revenues. In the event that the payment of Park Fees paid by any owner or lessee of any of the Park Property is made under protest or is otherwise in dispute, the County shall not be obligated to pay to the City more than the City's share of the undisputed portion thereof until thirty (30) days after the final resolution of such protest or dispute.

Section 2.4 Use of City New Investment Fees. The City New Investment Fee received by the City pursuant to this Agreement shall be applied by the City solely for economic development purposes (as set forth in Section 4-29-68 of the Code) for the following: (a) expenditures or reimbursement of expenditures for costs of public infrastructure, including soft costs, hard costs, financing costs incurred with respect to expenditures for costs of public infrastructure such as interest paid on bonds or other obligations used to finance expenditures for costs of public infrastructure to be paid or reimbursed by the City, including costs for relocating public facilities currently located in the Park; (b) grants for investment in real or personal property or infrastructure and/or job creation; and (c) debt service on SSRBs issued by the City or County. In no event shall New Investment Fees received by the City under this Agreement be used or expended by the City for any purposes unrelated to economic development purposes with respect to or for the benefit of the Park Property.

Section 2.5 [Reserved.]

Section 2.6 Special Source Revenue Bonds and Credits. The County may, during the Term of this Agreement, without obtaining the prior written consent of the City, issue any SSRBs payable in whole or in part from, or grant or otherwise make available any SSRBs against or payment derived from, Park Fees, other than from the City New Investment Fees payable under this Agreement, so long as, after giving effect to such SSRBs or SSRBs, a sufficient amount of

Park Fees remains to repay any other SSRBs issued and outstanding at such time. Likewise, the City may, during the Term of this Agreement, without obtaining the prior written consent of the County issue any SSRBs payable in whole or in part from, or grant or otherwise make available any SSRBs against or payment derived from, City New Investment Fees received by the City, so long as, after giving effect to such SSRBs or SSRBs, a sufficient amount of New Investment Fees remains to repay any other SSRBs secured by such portion of the New Investment Fees that are outstanding at such time.

Section 2.7 Effective Date; Term. This Agreement shall become effective as of the Effective Date. This Agreement shall continue in full force and effect throughout the Term. On the last day of the Term, this Agreement shall expire without further action or acknowledgment from either party hereto except any unfulfilled payment obligations of the County due to the City for periods prior to such expiration date shall survive the expiration of the Term.

ARTICLE III

DEFAULT; REMEDIES

Section 3.1 Events of Default.

Each of the following shall be an “Event of Default” under this Agreement:

(a) Any party hereto shall fail to observe and perform any agreement, term, or condition contained in this Agreement, and the continuation of the failure for a period of thirty (30) days after written notice thereof shall have been given to such party by any other party hereto; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected, but not within the applicable period, that failure shall not constitute an Event of Default so long as such party institutes curative action within the applicable period and diligently pursues that action to completion.

(b) The County or City shall act to abrogate this Agreement or the Park Agreement (as to the County).

(c) Notwithstanding the foregoing, if, by reason of Force Majeure, the defaulting party is unable to perform or observe any agreement, term, or condition hereof which would give rise to an Event of Default under paragraph (a) hereof, provided the inability to perform is other than the payment of money, that party shall not be deemed in default during the continuance of that inability. That party, however, shall promptly give notice to the other parties hereto of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided, that the settlement of strikes or other industrial disturbances shall be entirely within that party’s discretion.

Section 3.2 Remedies on Default. Upon the happening and continuance of any Event of Default, then and in every such case the non-defaulting party in its discretion may:

(a) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its rights and require the defaulting party to carry out any agreements with or for its benefit and to perform its duties under this Agreement;

- (b) bring suit upon this Agreement;
- (c) by action or suit in equity require the defaulting party to account as if it were the trustee of an express trust for the non-defaulting party; or
- (d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the non-defaulting party's rights.

ARTICLE IV

MISCELLANEOUS

Section 4.1 Notices. All notices, certificates, requests, or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when either hand delivered or deposited in the United States mail, certified mail, return receipt requested, with postage pre-paid, and addressed to the party or parties for whom intended as follows:

If to the County:

Greenville County, South Carolina
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
Attention: County Administrator

If to the City:

City of Mauldin
5 East Butler Road
Mauldin, South Carolina 29662
Attention: City Administrator

The County or the City by notice given hereunder, may designate any further or different address as to which subsequent notices, certificates, requests, or other communications shall be sent.

Section 4.2 No Personal Liability; Expenses. No covenant, obligation, or agreement contained herein shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the County or the City, other than in his or her official capacity, and neither the members of the Greenville County Council or the Mauldin City Council, nor any official executing this Agreement shall be personally liable thereon or be subject to any personal liability or accountability by reason of the covenants, obligations, or agreements of the County or the City contained in this Agreement. Since the City is requesting that the County enter into this Agreement, the City agrees it will provide for the payment of all fees and expenses related to legal counsel, expert witnesses and court costs in defense of any lawsuit brought challenging all or any portion of the Agreement.

Section 4.3 Agreement Binding. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the County and the City and their respective successors and assigns, and shall at all times be deemed an agreement authorized pursuant to Article VIII, Section 13 of the South Carolina Constitution.

Section 4.4 Amendment, Termination and Assignment. This Agreement may not be effectively amended, changed, modified, altered, terminated or assigned, except in accordance with the express provisions of this Agreement or with the written consent of all parties hereto.

Section 4.5 Execution in Counterpart. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 4.6 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of South Carolina and for all purposes shall be governed by and construed in accordance with the laws of the State of South Carolina.

Section 4.7 Sections; Headings. The sections, headings and other titles to paragraphs of this Agreement are inserted solely for the convenience of reference. None shall in any way define, limit, extend or aid in the construction of the scope, extent, meaning or intent of this Agreement.

Section 4.8 Time of the Essence. The parties hereto specifically agree that time is of the essence of this Agreement with respect to the performance of the obligations of the parties under this Agreement.

Section 4.9 No Third-Party Beneficiary. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person, other than the parties hereto, any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement except for any bondholders of SSRBs.

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IN WITNESS WHEREOF, the County and the City have caused this Agreement to be duly executed in their respective names as of the Effective Date.

GREENVILLE COUNTY, SOUTH CAROLINA

Chairman of County Council

County Administrator

ATTEST:

Clerk to County Council

CITY OF MAULDIN, SOUTH CAROLINA

Mayor

ATTEST:

City Clerk