

**AGREEMENT FOR THE
ESTABLISHMENT OF MULTI-COUNTY
BUSINESS PARK FOR AFFORDABLE HOUSING PROPERTIES**

THIS AGREEMENT FOR THE ESTABLISHMENT OF A MULTI-COUNTY BUSINESS PARK FOR AFFORDABLE HOUSING PROPERTIES is made and entered into and to be effective as of December __, 2023 (this “Agreement”), by and between Charleston County, South Carolina (“Charleston County”) and Colleton County, South Carolina (“Colleton County”) (Charleston County and Colleton County are collectively referred to herein as the “Counties”) (the Counties and any other counties, political subdivisions, or other governmental entities that become parties hereto are collectively referred to herein as the “Members”).

RECITALS

WHEREAS, the County Councils of Charleston County and Colleton County have determined that, housing is a key element in stable economic growth and in order to further promote economic growth and thus enhance citizens’ quality of life within each of the Counties, there should be established a Multi-County Business Park (the “Park”), which Park shall be in addition to any multi-county industrial or business parks previously established between Charleston County and Colleton County, including the multi-county industrial parks established pursuant to (i) the Agreement for Development for Joint County Industrial Park dated September 1, 1995 (the “1995 MCIP”), (ii) the Agreement for Establishment of Multi-County Industrial/Business Park for Properties located in the Redevelopment Project Area dated December 6, 2016 (the “2016 MCIP”); and (iii) the Agreement for the Establishment of a Multi-County Industrial/Business Park (3600 Rivers Avenue) dated December 16, 2020 ; and

WHEREAS, the County Councils of Charleston County and Colleton County have determined that, in order to promote the economic growth in the respective Counties, that provision for Affordable Housing (as defined by the Uniform Tax Exemption Policy adopted, and amended from time-to-time, by the respective County Council) be promoted by means of this Agreement and the Park established hereby: and

WHEREAS, as a consequence of the establishment of the Park, the area to comprise the Park and all property having a situs therein shall be exempt from all *ad valorem* taxation, but the owners, or any lessees or any other taxpayers of such property shall pay an amount equivalent to the *ad valorem* property taxes or other fee-in-lieu-of-payments that would have been due and payable but for the location of such property within the Park; and

NOW, THEREFORE, in consideration of the mutual agreement, representations, and benefits contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Binding Agreement. This Agreement serves as a written instrument setting forth the entire agreement among the Members with respect to the subject matter hereof and shall be binding on the Members, their successors and assigns.

2. Authorization. (A) Article VIII, Section 13(D) of the Constitution of South Carolina provides that counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties, provided that certain conditions specified therein are met and further provided that the General Assembly of the State of South Carolina provides by law a means by which the value of property in such park will be considered for purposes of bonded indebtedness of political subdivisions and school districts and for purposes of computing the index of taxpaying ability for school districts. The Code of Laws of South Carolina 1976, as amended (the "Code"), and particularly Section 4-1-170 thereof, satisfies the conditions imposed by Article VIII, Section 13(D) of the Constitution of South Carolina and provides the statutory vehicle whereby a multi-county industrial or business park may be created.

(B) Article VIII, Section 13 of the South Carolina Constitution provides that nothing in the State Constitution may be construed to prohibit any of the counties, incorporated municipalities, or other political subdivisions in South Carolina from agreeing to share the lawful cost, responsibility, and administration of functions with one or more governments, whether within or without the State of South Carolina.

3. Location of the Park.

(A) (i) The Park shall consist of (a) real property located in Charleston County, as identified from time to time on Exhibit A attached hereto. The Park shall consist of real property located in Colleton County as identified from time to time on Exhibit B attached hereto.

(ii) The Park may at any time and from time to time consist of non-contiguous properties. The Park may be enlarged or diminished from time to time upon completion of all of the following authorizations approving such action: (a) an ordinance of the County in which the property to be added or removed from the Park is actually located (such County is herein referred to as the "Host County"), (b) a resolution of the governing body of the other County or counties, and (c) a resolution of the applicable municipality (as provided in subparagraph (A)(iii) of this Section 3).

(iii) To the extent required by Section 4-1-170 of the Code, if property proposed for addition to the Park is located within the corporate limits of a municipality, then before adding such property to the Park, the Host County shall obtain each such municipality's consent, by resolution, to the addition of such property to the Park.

(B) In the event of any enlargement or diminution of the Park, this Agreement shall be deemed amended, and the Host County shall cause to be attached to this Agreement (i) an appropriate revision of the applicable Exhibit hereto which, when read cumulatively with previous revisions, shall contain a legal description of all real property located in the Park, as enlarged or diminished, (ii) a copy of the ordinance of the Host County adding or removing the property from the Park, and (iii) copies of the resolutions of the governing bodies of the other County and any applicable municipalities as provided in subparagraphs (A)(ii) and (iii) of this Section 3.

(C) (i) Prior to the enactment of an ordinance authorizing the removal of property from the Park, a public hearing shall first be held by the Host County. Notice of the public hearing shall be published in a newspaper of general circulation in the Host County not less than fifteen (15) days before the public hearing. At least fifteen (15) days before the public hearing, the Host County shall mail written notice of the public hearing to the owner or lessee (in the event the Host County is the owner pursuant to a negotiated fee-in-lieu-of-tax agreement under Title 4, Chapter 29 or Chapter 12 of the Code) or other taxpayer of or with respect to property that is proposed to be removed from the Park, by United States first class registered or certified mail, postage prepaid, return receipt requested, or via facsimile transmission or reputable courier service at the address shown on the Host County's property tax records. (ii) No action of any municipality is required for the removal of property from the Park.

4. Fee in Lieu of Taxes. Property located in the Park shall be exempt from *ad valorem* taxation. The owners or lessees of any property situated in the Park shall pay in accordance with this Agreement an amount equivalent to the *ad valorem* property taxes or other fee-in-lieu-of-payments that would have been due and payable but for the location of such property within the Park. Such payments are herein referred to as the "Park Revenues."

5. Allocation of Expenses. Each County shall bear, or cause to be borne, 100% of the expenses, including, but not limited to, development, operation, maintenance, and promotion of that portion of the Park located within the boundaries of such County and the cost of providing customary public services for that portion of the Park located within the boundaries of such County.

6. Allocation of Park Revenues.

(A) Charleston County shall receive an allocation of all Park Revenues generated by that portion of the Park located within the boundaries of Charleston County through the payment of fees in lieu of *ad valorem* property taxes or from any other source (the "Charleston Park Revenues"), in the following proportions: (i) Charleston County 98.25% and Colleton County 1.75%; all such Charleston Park Revenues are to be distributed in accordance with **Section 7** hereof.

(B) Colleton County shall receive an allocation of all Park Revenues generated by that portion of the Park located within the boundaries of Colleton County through the payment of fees in lieu of *ad valorem* property taxes or from any other source (the "Colleton Park Revenues"), in the following proportions: (i) Colleton County 98.25% and Charleston County 1.75%; all such Colleton Park Revenues to be distributed in accordance with **Section 7** hereof.

(C) Any payment from a Host County to the other County of such other County's allocable share of Park Revenues: (i) shall be made no later than ninety (90) days following the end of the calendar quarter in which the Host County receives such Park Revenues; and (ii) shall be accompanied by a statement showing the manner in which total payment and each Host County's share were calculated. If any Park Revenues are received by a Host County through payment by any owner, lessee, or other taxpayer made under protest, or otherwise as part

of a dispute, then such Host County is not obligated to pay the other County more than such County's share of the undisputed portion of the Park Revenues until thirty (30) days after the final resolution of the protest or dispute.

7. Revenue Allocation Within Each of the Counties. (A) Except as Charleston County may otherwise provide from time to time by ordinance with respect to Park Revenues that it receives pursuant to **Section 6** hereof, and notwithstanding anything herein to the contrary (other than paragraph (E) of this section), (i) 7.5% of Park Revenues generated from Non-Negotiated FILOT Property (as defined below) and paid to Charleston County as provided in **Section 6** hereof shall be appropriated to the Charleston County [**Name of Affordable Housing Fund**] for such uses as provided in Charleston County's annual budget; (ii) then, Park Revenues shall be applied to fund applicable special source revenue bonds and special source revenue credits, if any; and (iii) then, the balance of such Park Revenues shall be distributed to all other overlapping taxing entities in whose jurisdiction such Non-Negotiated FILOT Property is located and levying millage on such location in the same relative percentages as the relative millage rates imposed by such taxing entities at the time of collection of such revenues.

(B) Except as Colleton County may otherwise provide from time to time by ordinance with respect to Park Revenues that it receives pursuant to **Section 6** hereof, and notwithstanding anything herein to the contrary (other than paragraph (F) of this section), Park Revenues generated from Non-Negotiated FILOT Property (as defined below) and paid to Colleton County as provided in **Section 6** hereof shall be applied (i) to fund applicable special source revenue bonds and special source revenue credits, if any; and (ii) then, shall be distributed to all other overlapping taxing entities in whose jurisdiction such Non-Negotiated FILOT Property is located and levying millage on such location in the same relative percentages as the relative millage rates imposed by such taxing entities at the time of collection of such revenues.

(C) Except as Charleston County may otherwise provide from time to time by ordinance with respect to Park Revenues that it receives pursuant to **Section 6** hereof, and notwithstanding anything herein to the contrary (other than paragraph (F) of this section), (i) 7.5% of Park Revenues generated from Negotiated FILOT Property and paid to Charleston County as provided in **Section 6** hereof shall be appropriated to the Charleston County [**Name of Affordable Housing Fund**] for such uses as provided in Charleston County's annual budget; (ii) then, Park Revenues shall be applied to fund applicable special source revenue bonds and special source revenue credits, if any; and (iii) then, the balance of such Park Revenues generated from Negotiated FILOT Property shall be paid to Charleston County as provided in **Section 6** hereof and distributed to all other overlapping taxing entities in whose jurisdiction such Negotiated FILOT Property is located and levying millage on such location in the same relative percentages as the relative millage rates imposed by such taxing entities at the time of collection of such revenues or will be distributed for such Negotiated FILOT Property as provided in the agreements providing for the Negotiated FILOT Incentive (as defined below).

(D) Except as Colleton County may otherwise provide from time to time by ordinance with respect to Park Revenues that it receives pursuant to **Section 6** hereof, and notwithstanding anything herein to the contrary (other than paragraph (F) of this section), such Park Revenues generated from Negotiated FILOT Property shall be paid to Colleton County as provided in **Section 6** hereof (i) to fund applicable special source revenue bonds and special source revenue

credits, if any; and (ii) then, distributed to all other overlapping taxing entities in whose jurisdiction such Negotiated FILOT Property is located and levying millage on such location in the same relative percentages as the relative millage rates imposed by such taxing entities at the time of collection of such revenues or will be distributed for such Negotiated FILOT Property as provided in the agreements providing for the Negotiated FILOT Incentive.

(E) Revenues allocable to a Member County (the “Beneficiary County”) by way of fees generated within the other Member County shall be distributed solely to such Beneficiary County.

(F) Any distribution of Park Revenues must be in accordance with applicable law, including as of the date of original execution and delivery of this Agreement, Section 4-1-170 of the Code, Article VIII, Section 13(D) of the Constitution of South Carolina, and *Horry County School District v. Horry County*, 346 S.C. 621, 552 S.E.2d 737 (2001). To the extent that a school district receives Park Revenues, then the Park Revenues received by such school district shall be divided on a pro-rata basis between operational and debt service expenditures in accordance with the amount of operating and debt service millage levied by such school district or collected on behalf of such school district.

8. Negotiated Fee in Lieu of Ad Valorem Tax Arrangements. It is hereby agreed that each Member County is entitled to have heretofore entered or to hereafter enter into any one or more negotiated fee-in-lieu-of-tax agreements (“Negotiated FILOT Incentive”) pursuant to Title 4, Chapter 29 or Chapter 12 of the Code, or Title 12, Chapter 44 of the Code, or any successor or comparable statutes, with respect to property located in the Park and within the boundaries of such Member County with the terms of these Negotiated FILOT Incentive being at such Member County’s sole discretion. Property subject to a Negotiated FILOT Incentive is referred to herein as “Negotiated FILOT Property.” Property that is not subject to a Negotiated FILOT Incentive is referred to herein as “Non-Negotiated FILOT Property.”

9. Assessed County Valuation. For the purpose of calculating bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability of school districts of Section 59-20-20(3) of the Code, allocation of the assessed value of property within the Park to each Member County shall be identical to the percentage established for the allocation of Park Revenues to each Member County pursuant to **Sections 6 and 7** herein.

10. Governing Laws and Regulations. In order to avoid any conflict of laws or ordinances among the Member Counties, the ordinances or other local laws of each Member County will be the reference for such regulations or laws in connection with Park premises located within such Member County. Nothing herein shall be taken to supersede any applicable municipal, state, or federal law or regulation.

11. South Carolina Law Controlling. This Agreement shall be governed by, and construed in accordance with, South Carolina law.

12. Severability. In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Agreement shall be held invalid or unenforceable by

any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision of this Agreement.

13. Counterpart Execution. This Agreement may be executed in multiple counterparts.

14. Additional Members. This Agreement may be amended from time to time to add as Members hereto additional municipalities, other political subdivisions, or governmental entities located within either Member County, subject to any limitation contained in Article VIII, Section 13 of the Constitution of South Carolina or Title 4, Chapter 1 of the Code, by ordinances or comparable action of the governing body of each then current Member.

15. Amendments. This Agreement may not be amended, changed, modified, or altered except:

(a) to add property to or remove property from the Park solely in compliance with **Section 3** hereof;

(b) otherwise, with the written consent of all then current Members.

16. Termination; Withdrawal of Members.

(A) In the event that the Park is enlarged to include additional property in accordance with **Section 3** hereof, the ordinance of the Host County and the resolutions of the other Member County and applicable municipalities that approve such enlargement of the Park may include additional limitations on the termination of this Agreement with respect to such additional property.

(B) Except as otherwise provided in **Section 3** or this **Section 16** of this Agreement, this Agreement may only be terminated by ordinances (or comparable action) of the governing bodies of each of the Member Counties and other Members.

(C) Any Member may terminate all of its rights hereunder and withdraw from this Agreement by providing to each other Member (i) written notice of its intention to withdraw from this Agreement at least 45 days prior to the effective date of such withdrawal and (ii) a certified copy of the ordinance (or comparable action) of its governing body terminating all of such Member's rights hereunder. The withdrawing Member agrees to pay all costs and expenses incurred by the other Members in connection with its withdrawal from this Agreement.

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

CHARLESTON COUNTY, SOUTH CAROLINA

By: _____
Chairman of County Council
Charleston County, South Carolina

[SEAL]

Attest:

By: _____
Clerk to County Council
Charleston County, South Carolina

COLLETON COUNTY, SOUTH CAROLINA

By: _____
Chairman of County Council
Colleton County, South Carolina

[SEAL]

Attest:

By: _____
Clerk to County Council
Colleton County, South Carolina

EXHIBIT A

CHARLESTON COUNTY PARK PROPERTY

None

EXHIBIT B

COLLETON COUNTY PARK PROPERTY

None