



COUNTY ATTORNEY'S OFFICE

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MEMORANDUM

TO: Finance Committee

CC: Joseph Kernell, County Administrator
Nicole Wood, Assistant County Administrator

FROM: Mark W. Tollison, County Attorney *MT*

DATE March 8, 2024

RE: Intergovernmental Agreement between Greenville County and the City of Greenville for Multi-County Industrial Business Parks

This memorandum is to introduce a proposed Intergovernmental Agreement (“IGA”) between Greenville County (“County”) and the City of Greenville (“City”). The purpose of the IGA is to cover Multi-County Industrial Business Parks (“MCIBP” or “Park”) locating in the City of Greenville. The new IGA will be linked to the Finance Agenda and I will be presenting the proposal to the Finance Committee this Monday.

This IGA is being brought forward to simplify the process that we have undertaken with the City relating to new MCIBP properties into a new single document. In order for property to be placed into a Park within a municipality’s boundary, that municipality must approve the action as part of the process required by State Law. Recently, the City and County have been handling that Park placement process using IGAs for each individual project coming into the City.

This proposed IGA will work as a general agreement covering MCIBPs going into the City. It reflects the County and City’s existing agreements and practice on pro rata share of revenues for all taxing entities consistent with their tax rate and notice for future project changes. The proposed IGA carries similar language to our recent agreements and will help us avoid going back for additional IGA approvals unless there is a change or special project needing specific language or a more specific agreement.

As always, should you have any questions regarding this matter and proposal, please do not hesitate to contact me.

STATE OF SOUTH CAROLINA) CITY OF GREENVILLE AND
) COUNTY OF GREENVILLE
)
 COUNTY OF GREENVILLE) INTERGOVERNMENTAL AGREEMENT
) REGARDING JOINT MULTICOUNTY
) INDUSTRIAL AND BUSINESS PARK
) PROPERTY

This **INTERGOVERNMENTAL AGREEMENT REGARDING JOINT MULTICOUNTY INDUSTRIAL AND BUSINESSS PARK PROPERTY** (the “Agreement”) is made and entered into this the _____ day of _____, 2024 (the “Effective Date”), by and between the **CITY OF GREENVILLE**, a municipal corporation under the laws of the State of South Carolina (the “City”), and **GREENVILLE COUNTY**, a body politic and corporate and a political subdivision of the State of South Carolina (the “County”), acting by and through the Greenville County Council (the “County Council”) as the governing body of the County.

WHEREAS, the County along with partner counties in South Carolina are authorized under Article VIII, Section 13 of the South Carolina Constitution to jointly develop an industrial and business park within the geographical boundaries of one or more of the member counties; and

WHEREAS, in order to promote the economic welfare of the citizens of the County and the City by providing employment and other benefits to the citizens and promoting economic development in, and enhancing the tax base of the County, the County enters into agreements with neighboring counties to develop jointly industrial and business parks (“MCIBPs” or “Parks”) within the County as provided by Article VIII, Section 13 of the South Carolina Constitution and in accordance with Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended (collectively, the "Act"); and

WHEREAS, as part of encouraging the location or expansion of existing industries and businesses in the community (“Company or Companies”), the County utilizes MCIBPs as an approved method under state law for providing certain incentives to Companies in connection with such location or expansion (“Projects”); and

WHEREAS, S.C. Code Ann. §4-1-170(C) provides that, if a MCIBP encompasses all or a portion of a municipality, the counties establishing the MCIBP must obtain the consent of the municipality prior to the creation of the MCIBP; and

WHEREAS, the City and County recognize the benefit to the community of continued economic development Projects in Greenville involving approved incentive tools which can include the use of MCIBPs to encourage commercial and industrial development as well as affordable housing projects; and

WHEREAS, the City and County desire to clarify certain rights regarding properties located within the City that are currently in a MCIBP and not the subject of a separate agreement between the County of City, or which may be placed in a MCIBP in the future, for incentive purposes (such properties being hereinafter referred to as “Project Property”), and to provide for the conditions on which the City’s consent to the addition of Project Property to MCIBPs hereafter will be granted, by entering into this Agreement; and

WHEREAS, the inclusion of Project Property located within the City into MCIBPs requires the consent of the City and the City is willing to consent to such addition of property pursuant to the conditions contained in this Agreement.

NOW, THEREFORE, in consideration of and for the mutual exchange of promises herein set forth, and intending to be legally bound thereby, the County and the City do hereby covenant and agree as follows:

1. City Agreement. The purpose of this Agreement is to set forth the terms on which the City will provide its consent to the addition of specific Project Property to MCIBPs hereafter (“Future Project Property”), and to impose the covenants of the County set forth herein with respect to Project Property which is already, as of the date hereof, contained within an MCIBP for which there is no other existing intergovernmental agreement in existence between the City and the County which controls (“Existing Project Property”). The City hereby consents to Existing Project Property being included within the applicable MCIBPs, subject to the terms of this Agreement. Existing Project Properties are specifically identified as Project Woven and Project Delano. See City Resolution Nos. 2023-43 and 2024-09 respectively. Further, subject to the terms of this Agreement, the City agrees to provide its consent to the inclusion of Future Project Property in MCIBPs from time to time, subject to the adoption of separate resolutions by the City as to the particular Company, Project and Project Property. The City resolution approving the addition of specific Future Project Property to a MCIBP shall not be subject to additional agreements, conditions or requirements of the County, other than compliance by the County with the terms of this Agreement.

2. County Agreement. The County agrees as follows: (a) to require the commitment of the Company in the fee in lieu of tax agreement, special source credit agreement or other similar property tax or fee in lieu of tax based incentive agreement (each an “Incentive Agreement”) to make, or cause to be made, the agreed investment amounts; (b) any special source revenue credits for infrastructure in the fee in lieu of tax agreement (the “Credits”) shall be applied on a pro-rata basis to proportionally reduce the portion of the annual fee in lieu of tax payments received by taxing authorities with jurisdiction over the Project Property; (c) to provide to the City each year the Incentive Agreement is in place a distribution of the fee in lieu of tax payments paid in connection with the Project Property and all property located thereon, including the Project, based on the percentage that the City’s millage bears to the total millage applicable to the Project Property for the applicable tax year; (d) that neither the percentage amount nor the duration of the Credits granted to the Company by the County under the applicable Incentive Agreement shall be increased by subsequent amendment of the Incentive Agreement without the consent of the City; and (e) if all or a portion of particular Project Property is removed from the applicable Incentive Agreement or the applicable Incentive Agreement otherwise terminates with respect to such Project Property, then upon receipt of a 30-day written notice from the City to the County and the Company that the City requires the removal of the Project Property from the MCIBP, the County will take such action after the expiration of such 30-day period as is required to remove the Project Property from the MCIBP. The provisions of this section shall apply to Existing Project Property not the subject of a separate agreement between the parties and Future Project Property,

3. Properties Situated in the City Limits in Existing MCIBPs not the Subject of Separate Agreements. The City and County agree that the terms of this Agreement shall apply to any and all Existing Project Property situated within the corporate limits of the City which have been placed into existing MCIBPs, each by the statutorily required procedures, and which are not the subject of separate and distinct agreements between the parties for the distribution of MCIBP revenue, allocation of Credits or other terms and conditions as may be applicable. Such Existing Project Property includes, without limitation, those properties identified more fully herein in Exhibit A to this Agreement.

4. MCIBP and Intergovernmental Agreement of June 20, 2017 Excluded. In addition to Project Property referred to in Section 3 above which is situated within the corporate limits the City and is already the subject of separate and distinct agreements between the parties, the Project Property included within that certain Joint County Industrial/Business Park between Greenville County and Anderson County (University Ridge) dated as of June 20, 2017 is excluded from the application and effect of this Agreement, and the Intergovernmental Agreement between the City and County effective June 20, 2017 shall control with respect thereto.

5. Assignment; Successors and Assigns. Neither the City nor the County is authorized to assign its respective duties under this Agreement to third parties without first having received from the other party a written consent, which consent shall not be unreasonably withheld, executed with the same formality of the Agreement. This Agreement is binding upon respective successors and permitted assigns of each party.

6. Notice. All notices and communications hereunder shall be in writing and shall be delivered personally or sent by certified mail, return receipt requested, addressed to the parties as follows:

CITY:

City of Greenville
Attention: City Manager
206 S. Main Street
P.O. Box 2207
Greenville, SC 29602
Phone: 864.467.5700

With a copy to:

City of Greenville
Attention: Economic Development
206 S. Main Street
P.O. Box 2207
Greenville, SC 29602
Phone: 864.467.4401

COUNTY:

Greenville County
Attn: County Administrator
301 University Ridge, Suite N-4000
Greenville, South Carolina 29601

With a copy to:

Greenville County Attorney
301 University Ridge, Suite N-4000
Greenville, South Carolina 29601

Any notice so mailed shall be deemed to have been given and received by the party to whom addressed on the third day after the date such notice was properly deposited in the mail.

7. Miscellaneous. This Agreement expresses the complete agreement and understanding of the parties, and any and all prior or contemporaneous oral agreements or prior written agreements regarding the subject matter hereof shall be merged herein and then extinguished. The waiver of a breach of this Agreement by either party shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of the Agreement shall be construed to be a waiver of the breach. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and each such term, covenant, or condition of the Agreement shall be valid and enforceable to the full extent permitted by law. No modification, amendment, or waiver of any provision of this Agreement shall be binding upon the parties unless the same is first reduced to writing in a document having the same formality as the Agreement and executed by the duly authorized officer for each party. The terms of this Agreement shall be construed in accordance with and governed by the laws of the State of South Carolina. Any dispute between the parties arising or related in any manner to this Agreement shall be brought exclusively in the state or federal courts sitting in Greenville County, South Carolina. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute the same instrument. A signed copy of this Agreement delivered by email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall be deemed to have the same legal effect as physical delivery of a signed original of this Agreement and may be used in lieu of the signed original for all purposes.

[Signature pages follow]

