

STATE OF NORTH CAROLINA
COUNTY OF LINCOLN
COUNTY OF GASTON

**INTERLOCAL AGREEMENT
BETWEEN
LINCOLN COUNTY AND GASTON COUNTY**

THIS INTERLOCAL AGREEMENT is dated as the ____ day of _____, 2023 (the "Agreement"), and is among **LINCOLN COUNTY**, a North Carolina body corporate and politic (referred to herein as "Lincoln"), and **GASTON COUNTY**, a North Carolina body corporate and politic (referred to herein as "Gaston," and referred to collectively with Lincoln as the "Counties").

RECITALS

WHEREAS, the Counties are both local governments that are governed by the laws of North Carolina; and

WHEREAS, Riverbend Preserve, LLC (the "Developer") is the owner of approximately 867 acres of land that borders the county lines of both Counties (the "Property"), and the Developer intends to develop an industrial park (the "Industrial Park") on the Property; and

WHEREAS, the Counties and the Developer intend to enter into a development agreement pursuant to N.C.G.S. §160D-1006 for the development of the Industrial Park (the "Development Agreement"); and

WHEREAS, pursuant to N.C.G.S. §160A-461, any unit of local government in the State of North Carolina and any one or more other units of local government may enter into contracts or agreements with each other in order to execute any undertaking; and

WHEREAS, pursuant to N.C.G.S. §160A-466, when two or more units of local government are engaged in a joint undertaking, they may enter into an agreement regarding financing, expenditures, and revenues related to the joint undertaking; and

WHEREAS, funds collected by any participating unit of government may be transferred to and expended by any other unit of government in a manner consistent with the said agreement; and

WHEREAS, pursuant to N.C.G.S. §158-7.4(a), any two or more units of local governments may enter into contracts or agreements ... under which each participating local government agrees to provide resources for the development of an industrial or commercial park; and

WHEREAS, pursuant to N.C.G.S. §158-7.1(a), a county is authorized to make appropriations for economic development purposes, and these appropriations must be determined by the governing body of the county to increase the population, taxable property, agricultural industries, employment, industrial output, or business prospects of the county; and

WHEREAS, pursuant to N.C.G.S. §158-7.1, a county may extend or may provide for or assist in the extension of water and sewer lines to industrial properties or facilities, whether the industrial property or facility is publicly or privately owned; and

WHEREAS, Lincoln is a Tier 3 County and Gaston is a Tier 2 County pursuant to the tier designation system established under N.C.G.S. §143B-437.08; and

WHEREAS, an eligible two-county industrial park may have the lower development tier designation of the two counties so long as it meets the requirements set forth in N.C.G.S. §143B-437.08(g); and

WHEREAS, the Lincoln County Board of Commissioners and the Gaston County Board of Commissioners have determined that it is in the best interest of their respective counties and citizens to enter into this Agreement; and

WHEREAS, the Counties have also determined that this Agreement will increase the population, taxable property, agricultural industries, employment, industrial output, or business prospects of the respective counties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, and pursuant to North Carolina law, the Counties agree as follows:

ARTICLE I

GENERAL PROJECT TERMS

A. The Counties will cooperate in the development of the Industrial Park, as more particularly described in the Development Agreement.

B. Approximately two-thirds (2/3) of the Industrial Park will be located within Lincoln and the remaining one-third (1/3) will be located in Gaston. Both of the Counties have previously approved plans for the development of the Industrial Park, as required by law.

C. Lincoln has received approximately \$18.5 Million Dollars from the State of North Carolina to provide water and sewer services to the Industrial Park pursuant to House Bill 2021-103, Part XII, Section 12.9(e)(46), as amended by Session Law 2023-11, House Bill 2, Part IV, Section 4.2 (the “State”

Funds”).

D. Lincoln County water and sewer lines will be installed to the Property for the Industrial Park portion of the development, and will also be extended to the residential portion located wholly in Gaston County (the “Utility Lines”).

E. Each County will collect its own property taxes within the territorial jurisdiction of the respective counties.

F. The Counties have agreed to an arrangement regarding tax revenue on the Industrial Park portion of the Property, as more detailed within this Agreement.

G. Neither County intends to contribute county funds, outside of the State Funds, to the development of the Industrial Park.

H. Term. This Agreement shall be for a term of thirty (30) years.

ARTICLE II

ESTABLISHMENT OF TWO-COUNTY INDUSTRIAL PARK

Pursuant to N.C.G.S. §143B-437.08(g), an eligible two-county industrial park may be established if it meets the following requirements, which are established and acknowledged by both the Counties as follows:

A. ***(g)(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.*** The Industrial Park will be located in Lincoln and Gaston, which are contiguous counties. Gaston has a Tier 2 development tier designation which is lower than Lincoln, which has a Tier 3 development tier designation.

B. ***(g)(2) At least one-third of the park is located in the county with the lower tier designation.*** Approximately one-third (1/3) of the Industrial Park will be located within Gaston, which has a lower tier designation than Lincoln.

C. ***(g)(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.*** The Counties have, or will be, entering into a development agreement with Riverbend.

D. ***(g)(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.*** The county with the lower tier designation is Gaston. Neither Lincoln or Gaston intends to invest funds to the initial development of the Industrial Park. The State Funds being invested by Lincoln County for the extension of Utility Lines to the Property were provided by the General Assembly of North Carolina, and are not being paid from either the general fund or any enterprise fund.

(1) Future Costs. If basic costs may arise in the future, the Counties agree that those costs shall be split on a 50/50 basis. However, any costs that may arise for the maintenance and upkeep of the Utility Lines shall be the sole responsibility of Lincoln, as the owner of those Utility Lines.

ARTICLE III

TAXING JURISDICTION AND TAX REVENUES

A. Subdivision of Industrial Park. The Developer shall be required, pursuant to the Development Agreement, to subdivide the Property for use as the Industrial Park. Given that all parties acknowledge that the Industrial Park will be across the county line in both Lincoln and Gaston Counties then a plat shall be recorded in the Register of Deeds in both Counties and said final recorded plat shall be referred to as herein as the “Subdivision Plat.”

B. Determination of Taxing Jurisdiction. The taxing jurisdiction shall be determined based upon if a parcel, resulting from the recorded Subdivision Plat, is located within Lincoln or Gaston County.

(1) Wholly Located Parcel. If based upon the Subdivision Plat, a parcel is located entirely within either Lincoln or Gaston then the taxing jurisdiction shall be the county within which the parcel is located.

(2) Partially Located Parcel. If based upon the Subdivision Plat, a parcel is located partially within both Lincoln or Gaston then the taxing jurisdiction shall be determined based upon the location of the constructed building. The county where the majority of the building is located shall be the taxing jurisdiction of the entire parcel.

(3) Collection by Taxing Jurisdiction. The taxing jurisdiction, as determined herein, shall be responsible for the collection of all ad valorem taxes for both real estate and business personal property taxes. The following definitions shall apply to this Agreement:

- i. Unimproved Base Value.** The tax value of the real estate prior to any improvements being made to the property.
- ii. Improved Base Value.** The tax value of the real estate following improvements being made to the property.
- iii. Improvement Value.** The tax value of the structure, and other related improvements, constructed on the real estate.
- iv. Business Personal Property Value.** The tax value of all taxable personal property related to the business being conducted on the property.

C. Division of Tax Revenues. The Counties agree to split tax revenues within the Industrial Park based on the follow terms:

(1) Lincoln is entitled to retain all tax revenue from the Unimproved Base Value of all parcels subject to Lincoln’s taxing authority, at its then-current tax rate.

(2) Gaston is entitled to retain all tax revenue from the Unimproved Base Value of all parcels subject to Gaston’s taxing authority, at its then-current tax rate.

(3) Upon improvement of the parcel, the Counties agree to a fifty percent (50%) split of all tax

revenue earned on the following:

- i. The difference of the Unimproved Base Value and the Improved Base Value,
 - ii. The Improvement Value, and
 - iii. The Business Personal Property Value
- (4) The split tax revenue described herein shall be sent to the other County by November 1st of each year for the preceding tax year.

ARTICLE IV

ESSENTIAL SERVICES

Pursuant to North Carolina law, the Counties, are required and/or allowed to provide essential services for the health and safety to its citizens. The Counties have agreed that the following essential services shall be addressed based upon the following terms:

A. Fire Service. For the safety of all citizens, the Counties have determined that the Industrial Park shall be covered by the East Lincoln Fire Department, which is a Lincoln County fire department with a fire taxing district within Lincoln. In the case that additional fire personnel would be needed to cover a call, outside of routine calls, the Lucia-Riverbend Fire Department, which is a Gaston County fire department would be the back-up station. Any additional documentation required for said arrangement shall be determined by the Fire Marshals of Lincoln and Gaston. It is acknowledged by both Counties that there are standing mutual aid agreements between the above-mentioned departments.

Any parcel located within Gaston and/or being taxed by Gaston shall be taxed the East Lincoln Fire tax based on the then-current tax rate for that district, which is established each year by the Lincoln Board of Commissioners. *This shall not apply to any additional residential development being performed by the Developer.*

B. Law Enforcement. For the safety of all citizens, the Counties have determined that the Sheriff's Office of Lincoln County shall be the primary law enforcement for any parcel located within Lincoln County, and the Gaston Police Department shall be the primary law enforcement for any parcel located within Gaston County.

C. Emergency Services. For the safety of all citizens, the Counties have determined that the Industrial Park shall be covered by Lincoln County Emergency Medical Services (EMS). However, given the mutual-aid agreements between both Gaston and Lincoln, the Counties will work together to provide the most efficient service to its citizens. Both Counties operate communication centers for the dispatch of emergency calls, and shall work together to properly dispatch the appropriate entities to calls within the Industrial Park.

D. Planning & Inspections. Any planning and inspections required for the development of the Industrial Park shall be the responsibility of the County with taxing authority. The Developer has previously received approval from both Counties for the development of the Industrial Park, and the Developer will be subject to those specific approvals during its development of the Industrial Park. If there are any issues that relate to properties within both Counties, then the Counties agree to work together through their Development Services departments to resolve said issue.

E. Erosion and Stormwater Control. A stormwater permit is required for all land-disturbing operations that equal to or exceed one (1) acre, and any stormwater and erosion control shall be subject to all requirements of Gaston County. Permitting shall be in compliance with all local watersupply watershed permitting requirements. This does not include any State permitting requirements during the construction and installation of any water and sewer utilities by Lincoln County.

F. Water and Sewer Utilities. Water and sewer utilities shall be provided to the Industrial Park by Lincoln. As stated herein, and in the Development Agreement, Lincoln has received the State Funds for the provision of water and sewer utilities to the Industrial Park. Any parcel located within the Industrial Park shall be provided with water and sewer, so long as the Developer has provided for said connections during development. The parcels within the Industrial Park shall be charged the In-County Rate for industrial customers, regardless of their taxing jurisdiction.

Residential Development. Lincoln has agreed to allow the residential neighborhood being developed in Gaston, by Developer, to be served by Lincoln water and sewer utilities. The extension of these services is included in the water and sewer line extension funded by the State Funds and the Developer. All residences within the residential neighborhood that are served by Lincoln water and sewer utilities shall be required to pay the Out-of-County Rate for residential customers.

No Right to Extend. The provision of these water and sewer utilities to industrial and residential customers under this Agreement does not constitute a right to Gaston to extend these Lincoln services to any other properties within Gaston. Any extension of these Lincoln services is at the sole discretion of Lincoln.

Mount Holly Loop. In an effort to plan for an emergency system failure within water systems in the area of the Development, Lincoln agrees to enter into discussion with the City of Mount Holly, a Gaston County municipality, to discuss a redundant interconnection for an emergency water supply plan. This interconnection would consist of a pipeline connection that allows Lincoln County and Mount Holly to share water resources in the event of an emergency. The specifics of this interconnection shall be provided for in an Interlocal Agreement between Lincoln County and Mount Holly prior to any interconnection. Also, any financial expense for the interconnection shall be the responsibility of Mount Holly.

ARTICLE V

TERM AND TERMINATION OF AGREEMENT; WITHDRAWAL

A. This Agreement shall become effective on the date of final execution and approval by the Counties (the “Effective Date”).

B. The obligations of the Counties in regards to tax revenue, pursuant to Section III herein, shall begin at the time that a Certificate of Occupancy is issued for the first industrial building constructed within the Industrial Park (the “Start Date”).

C. This Agreement shall be for a term of thirty (30) years which shall begin on the Start Date (the “Term”).

D. Termination of Agreement. Either County may terminate this Agreement by giving proper notice of termination to each of the other parties. A termination may not be requested solely for the reason that the terminating county has selected to not share tax revenue pursuant to Section III herein. There shall be some other necessary reason for termination. Any termination shall not be effective until the second July 1st following the date that notice is received by the other party.

ARTICLE VI **DEFAULT AND REMEDIES**

Upon the occurrence of any Event of Default, and the continuation thereof for ten (10) days after notice from either County to the defaulting party, the non-defaulting party may **(a)** incur and pay such reasonable expenses for the defaulting party's account as may be necessary to cure the cause of any default and **(b)** proceed to protect and enforce its rights under this Agreement by a suit, action or special proceeding at law or in equity, either for the specific performance of any covenant or agreement or execution of any power or for the enforcement of any legal or equitable remedy as may be deemed most effectual to protect and enforce such rights.

All remedies under this Agreement are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. If any Event of Default shall occur and thereafter be waived, such waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any other breach under this Agreement.

If any party employs an attorney to assist in the enforcement of provisions of this Agreement, and such party prevails in its attempts at enforcement, then the defaulting party must pay the reasonable attorneys' fees and all of the other costs that the non-defaulting party may reasonably have incurred (whether or not any suit or proceeding is commenced).

ARTICLE VII **INDEMNIFICATION**

To the extent permitted by law, each County will indemnify, protect and save the other parties and their respective officers and employees harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, arising out of, connected with, or resulting directly or indirectly from the actions of the indemnifying party (or its officers, employees or other agents) related to this Agreement or to the transactions contemplated by or relating to this Agreement.

ARTICLE VIII **REPRESENTATIONS OF COVENANTS AND WARRANTIES**

Each of the Counties represents, covenants and warrants for the benefit of the others, as follows:

A. Neither the execution and/or delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreements or instruments

to which such County is now a party or by which it is bound, or constitutes a default under any of the foregoing agreements or instruments.

B. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein, nor the fulfillment of or compliance with the terms and conditions of this Agreement, to the best of such County's knowledge, constitutes a violation of any provision of law governing either County.

C. To the knowledge of each County, there is no litigation or other court or administrative proceeding pending or threatened against such County (or against any other person) affecting either County's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body (other than its governing board) or any other entity the approval of which has not been obtained.

D. All of such party's representations, covenants and warranties in this Agreement are true, correct and complete in all material respects, and not false or misleading in any material respect.

E. This Agreement has been validly authorized, executed and delivered by the Counties, and is a valid, legal and binding obligation of both Lincoln and Gaston, and their respective governing boards.

ARTICLE IX **LEGAL COUNSEL**

Both Lincoln and Gaston, have both been represented by their respective County Attorneys, and no outside counsel has been retained in regards to this Agreement.

ARTICLE X **MISCELLANEOUS**

A. Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina.

B. Notices. Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement. Any communication shall be sufficiently given and deemed given when delivered by hand or on the date shown on a delivery receipt from either the United States Postal Service or a nationally-recognized express delivery service, if addressed as follows:

Lincoln County:

Lincoln County
Attn: County Manager
P.O. Box 738
Lincolnton, NC 28093

With a copy to:

Lincoln County
Attn: County Attorney

P.O. Box 738
Lincolnton, NC 28093

Gaston County:

Gaston County
Attn: County Manager
P.O. Box 1578
Gastonia, NC 28053

With a copy to:

Gaston County
Attn: County Attorney
P.O. Box 1578
Gastonia, NC 28053

Any addressee may designate additional or different addresses for communications by notice given under this Section to the other parties.

C. Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right is not a Business Day, such payment may be made or act performed or right exercised on or before the next succeeding Business Day.

D. Severability. If any provision of this Agreement, or its application to any person, is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to accomplish the Counties' original intent to achieve the economic outcomes they intended to the greatest extent possible. In any event, invalidation of any provision of this Agreement, or its application to any person, shall not affect any other provisions of this Agreement or its application to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect and the Counties shall cooperate to amend this Agreement so as to achieve the economic outcomes intended by the Counties when they formed this Agreement.

E. Entire Agreements. This Agreement contains the entire agreement between the Counties, and all prior or contemporaneous oral or written agreements are merged into this Agreement. To the extent a conflict or inconsistency exists between this Agreement and any other document related to the Industrial Park is not merged into this Agreement, the provision which most encourages, promotes, and enables Development of the Industrial Park controls.

F. No Assignments. No party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.

G. Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully executed counterpart.

H. Amendments. This Agreement may only be amended by agreement of both Counties, in writing, and executed by both Counties.

I. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement is binding upon and inures to the benefit of, and is enforceable by, the parties and their respective successors and assigns.

J. Time. Time is of the essence in this Agreement and each and all of its provisions.

K. Liability of Officers and Agents. No officer, agent or employee of any party shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

L. No Third-Party Beneficiaries. There are no entities which are, or which are intended as, third-party beneficiaries of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

SIGNATURES TO APPEAR ON FOLLOWING PAGES

LINCOLN COUNTY,
a North Carolina body corporate and politic

BY: _____
Carrol D. Mitchem
Chairman of the Board of Commissioners

ATTEST:

(SEAL)

Melissa Elmore, Clerk to the Board

Approved as to form on behalf of Lincoln County.

Megan H. Gilbert, County Attorney

STATE OF NORTH CAROLINA
COUNTY OF LINCOLN

I _____, a Notary Public, do hereby certify that **Melissa Elmore** came before me this day and acknowledge that she is the Clerk to the Board of Lincoln County, a North Carolina body corporate and politic, and that by authority duly given and as the act of the Board of Commissioners of Lincoln County, the foregoing instrument was signed in its name and by its Chairman of the Board of Commissioners, sealed with its corporate seal and attested by her, its Clerk to the Board.

Witness my hand and official seal this _____ day of _____, 2023.

(SEAL)

Notary Public
My Commission Expires: _____

GASTON COUNTY,
a North Carolina body corporate and politic

BY: _____
Chad Brown
Chairman of the Board of Commissioners

ATTEST:

(SEAL)

Donna Buff, Clerk to the Board

Approved as to form on behalf of Lincoln County.

William Stetzer, County Attorney

STATE OF NORTH CAROLINA
COUNTY OF GASTON

I _____, a Notary Public, do hereby certify that **Donna Buff** came before me this day and acknowledge that she is the Clerk to the Board of Gaston County, a North Carolina body corporate and politic, and that by authority duly given and as the act of the Board of Commissioners of Gaston County, the foregoing instrument was signed in its name and by its Chairman of the Board of Commissioners, sealed with its corporate seal and attested by her, its Clerk to the Board.

Witness my hand and official seal this _____ day of _____, 2023.

(SEAL)

Notary Public
My Commission Expires: _____