
INTERLOCAL AGREEMENT
BETWEEN
CITY OF KANNAPOLIS, NORTH CAROLINA
AND
ROWAN COUNTY, NORTH CAROLINA

Dated as of November ____, 2018

Old Beatty Ford Road Interchange Project

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INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT** ("*Agreement*" or "*Interlocal Agreement*"), made and entered into this the ____ day of November, 2018, between the City of Kannapolis, North Carolina, a municipal corporation created and existing under the laws of the State of North Carolina (the "*City*") and the County of Rowan, North Carolina (the "*County*"), a political subdivision created and existing under the laws of the State of North Carolina;

WITNESSETH:

WHEREAS, the City and County equally desire to facilitate the private development of land adjacent and in close proximity to a new Interstate 85 interchange at Old Beatty Ford Road in southern Rowan County approximately one mile from the primary corporate limits of the City; and

WHEREAS, the City and County have collectively determined that there are numerous benefits that will come from public investment of potable water and sanitary sewer extensions (the "*Infrastructure Extension Project*") to this interchange including but not limited to long-term tax base growth, improved economic conditions in southern Rowan County, additional sales tax generation and job creation; and

WHEREAS, the City intends to extend potable water lines and sanitary sewer lines and related components to an approximately 318 acre site contemplated for a private development investment (the "*High Bridge Site*"); and

WHEREAS, more specifically, Louisiana-based Commercial Properties Realty Trust ("*Developer*") has secured the rights to purchase the High Bridge Site and has expressed to the City and County its intent to develop the property for a multitude of residential and non-residential purposes contingent upon the successful implementation of a plan for the Infrastructure Extension Project; and

WHEREAS, on August 15, 2011 the City and County entered into an Interlocal Agreement ("*Stadium Property Transfer Agreement*") which provided that the City would purchase the current minor league baseball stadium and approximately 55.68 acres (the "*Stadium Property*") from Rowan County for \$3,000,000, including certain down payment requirements and 48 annual payments of \$62,500; and

WHEREAS, the City currently owes the County \$2,687,500 on its obligations in accordance the Stadium Property Transfer Agreement; and

WHEREAS, under Article 20 of Chapter 160A of the North Carolina General Statutes, as amended (the "*Interlocal Act*"), municipalities and counties are authorized to enter into interlocal cooperation undertakings with other local governments for the joint exercise of any power, function, public enterprise, right, privilege, or immunity of local governments in North Carolina;

WHEREAS, as permitted by the Interlocal Act, the County desires to provide assistance to the City for the funding of the Infrastructure Extension Project by participating in both direct funding and by releasing the City of certain obligations of the Stadium Property Transfer Agreement, subject to the limitations, restrictions and conditions set forth in this Interlocal Agreement; and

NOW, THEREFORE, in consideration of the foregoing, the City and the County desire to provide in this Interlocal Agreement for the basis on which the County Contribution will be made, the City and the County do hereby covenant, promise, agree and represent as follows:

ARTICLE I
GENERAL PROVISIONS

SECTION 1.1 Purpose of the Interlocal Agreement. This Interlocal Agreement is being entered into as a means for the County to provide financial assistance to the City in funding the Infrastructure Extension Project by making a payment to the City of \$1,000,000 (“Cash Contribution”) and by releasing the City from its debt obligations described in Section 2.3 of the Stadium Property Transfer Agreement.

SECTION 1.2 Duration of the Interlocal Agreement. This Interlocal Agreement shall be effective immediately upon its execution by both parties and shall remain in effect until all payment obligations hereunder are satisfied or until it is replaced by a subsequent agreement or terminated by agreement of the parties.

SECTION 1.3 City Annexation. This Interlocal Agreement in its entirety is subject to and contingent upon the annexation of the High Bridge Site into the City of Kannapolis by the North Carolina General Assembly or by other lawful means on or before _____. Rowan County will publicly support (via resolution or other method acceptable to the City) the City’s pursuit of municipal annexation of the High Bridge Site.

ARTICLE II
COUNTY CONTRIBUTIONS AND RESPONSIBILITIES

SECTION 2.1 Funding Commitment. The County shall remit to the City one-half of the Cash Contribution within 60 days following execution of the Development Agreement described in Section 3.2, and the remaining one-half shall be paid upon delivery of an executed copy of the Engineer of Record Certificate of Project Completion for the Infrastructure Extension Project.

SECTION 2.2 Use of Cash Contribution. The City shall apply the Cash Contribution to pay direct costs of designing and constructing the Infrastructure Extension Project.

SECTION 2.3 Release of City Debt Obligations. As additional consideration for this Agreement and to further support the Infrastructure Extension Project, Rowan County will release the City from its remaining debt obligations described in Section 2.1 of the Stadium Property Transfer Agreement (the “Stadium Debt Release”). The Stadium Debt Release shall be executed and recorded contemporaneously with the execution of the Development Agreement described in Section 3.2 subject, however, to the provisions of Section 2.4 hereinafter.

SECTION 2.4 Excess Proceeds from Sale of the Stadium Property. Any proceeds up to \$3,750,000 from the future sale of the Stadium Property shall accrue entirely to the City. Any proceeds greater than \$3,750,000 (“*Excess Proceeds*”) will be shared equally between the City and County. Further, the County will commit its share of the Excess Proceeds to match any incentives or other public investments by the City for the purposes of facilitating private sector development of the High Bridge Site as described in Section 2.6 hereinafter.

SECTION 2.5 Release of City Debt Obligations. The contributions described in Section 1.1 and this Article II shall constitute Rowan County’s only financial obligation to this Interlocal Agreement except as provided in 2.6 hereinafter.

SECTION 2.6 Future Tax Incentives. County agrees to participate equally with the City to provide tax or other financial incentives that are deemed by the parties necessary to attract specific quantities and qualities of job and tax base generating investments on the High Bridge Site. The Excess Proceeds described in Section 2.4 herein above, if any, shall be used, in part, for this purpose. In the event the parties agree that such incentives are desirable and appropriate, the parties shall enter into an agreement at that time further defining respective contributions and responsibilities.

ARTICLE III CITY RESPONSIBILITIES

SECTION 3.1 City to Financing, Design and Construct. The City and County acknowledge that the County contributions are intended to assist the City in the funding of the Infrastructure Extension Project. The City shall be solely responsible for the financing, design and construction of the Infrastructure Extension Project. Except as otherwise described herein, the City assumes all risk and responsibilities related to its implementation.

SECTION 3.2 Development Agreement. Within 90 days from and after execution of this Interlocal Agreement, it is the intent of the City to negotiate and execute a Development Agreement and/or Utility Extension Agreement (“*Development Agreement*”) with the Developer. The County will not be a party to the proposed Development Agreement. Notwithstanding this intent, in the event a Development Agreement is not executed between the City and the Developer within 180 days from and after the execution of this Agreement, this Agreement is voidable by the County and the County shall have no further obligations to the City under this Interlocal Agreement.

SECTION 3.3 Clawbacks. It is the City’s intent to negotiate as part of the Development Agreement certain provisions that establish minimum tax value increase benchmarks tied to a repayment schedule by the Developer of part of the utility costs. The City intends to require provisions relating to the potential cancellation, recoupment, rescission, payback or similar clawback procedures in the event the Developer fails to achieve the benchmarks. In the event clawback funds are collected it is intended that such funds shall be

shared with the County on a pro-rata share of contributions and obligations to Infrastructure Extension Project.

ARTICLE IV MISCELLANEOUS

SECTION 4.1 Notices. All notices, demands or requests required or permitted to be given pursuant to this Interlocal Agreement shall be given in writing and shall be deemed to have been properly given or served and shall be effective upon being deposited in the United States mail, postage prepaid, sent to the respective address as follows:

As to the City: City of Kannapolis
 401 Laureate Way
 Kannapolis, NC 28081
 Attention: City Manager

As to the County: Rowan County
 130 West Innes Street
 Salisbury, NC 28144
 Attention: County Manager

Any party may, however, at any time, change its address for notification purposes by giving to the other parties a notice in the manner herein provided stating the change and setting forth the new address.

SECTION 4.2 Headings. The headings appearing in this Interlocal Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any article, section or paragraph of this Interlocal Agreement.

SECTION 4.3 Counterparts. This Interlocal Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature of any party to any counterpart may be appended to any other counterpart.

SECTION 4.4 Modification. No change or modification of, or waiver under, this Interlocal Agreement shall be valid unless it is in writing and signed by duly authorized representatives of the City and the Authority.

SECTION 4.5 Time is of the Essence. Time is of the essence as to all parts of this Interlocal Agreement.

SECTION 4.6 Rules of Construction. Unless the context otherwise indicates:

- (a) Word importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders as well.

(b) All references to Articles or Sections are references to Articles or Sections of this Agreement.

(c) All references to a “party” or the “parties” are to the parties to this Agreement.

(d) The headings herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

SECTION 4.7 Additional Parties. The parties agree that other units of local government(s) may be allowed to join in this effort and become a party to this Agreement, when the entry of such other units of local government(s) will further this effort to accomplish the goals of this Agreement. Any local government seeking to be allowed to participate in this effort, and to be a party to this Agreement, shall be subject to the unanimous approval of the then existing parties.

SECTION 4.8 Nature of Obligation of the Parties. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of a party to this Agreement within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted neither as delegating governmental powers nor as a donation or a lending of the credit of any party to this Agreement within the meaning of the State Constitution.

SECTION 4.9 Severability. If any provision of this Agreement shall be determined to be unenforceable, such unenforceability shall not affect any other provision of this Agreement.

SECTION 4.10 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties, and shall not be modified except in writing signed by all the parties.

SECTION 4.11 Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

SECTION 4.12 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.

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be duly executed and delivered as of the day and year first above written.

CITY OF KANNAPOLIS, NORTH CAROLINA

By: _____
City Manager

Attest: _____
City Clerk

[SEAL]

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer
City of Kannapolis, North Carolina

[SIGNATURE PAGE TO THE INTERLOCAL AGREEMENT BETWEEN
CITY OF KANNAPOLIS, NORTH CAROLINA AND COUNTY OF ROWAN, NORTH CAROLINA]

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

ROWAN COUNTY, NORTH CAROLINA

By: _____
County Manager

Attest: _____
Clerk to the Board of Commissioners

[SEAL]

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer
County of Rowan, North Carolina

[SIGNATURE PAGE TO THE INTERLOCAL AGREEMENT BETWEEN
CITY OF KANNAPOLIS, NORTH CAROLINA AND COUNTY OF ROWAN, NORTH CAROLINA]