

CF HIPPOLYTA CHARLOTTE LLC INFRASTRUCTURE REIMBURSEMENT INTERLOCAL AGREEMENT

This Interlocal Agreement, made ____, 2018 (“Agreement”), by and between the **CITY OF CHARLOTTE**, a municipal corporation organized under the laws of the State of North Carolina (the “City”) and **THE COUNTY OF MECKLENBURG**, a political subdivision of the State of North Carolina (“County”).

WITNESSETH:

WHEREAS, the City has contemporaneously with this Agreement entered into an Infrastructure Reimbursement Agreement with Developer, which agreement contains and sets forth recitals which are incorporated herein by reference;

WHEREAS, under Article 20 of Chapter 160A of the North Carolina General Statutes, as amended, cities 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, the City has the authority to construct streets and roads (G.S. 160A-296(a)(3)), the City and the County have the authority to enter into infrastructure reimbursement agreements with developers and property owners (SL 2001-329; G.S. 153A-451), and the City has the authority to finance such infrastructure (G.S. 160A-20);

WHEREAS, the parties hereto desire to set forth their agreement herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

ARTICLE I

The following terms have the meanings as set forth herein, unless the context otherwise requires:

“*Agreement*” means this Interlocal Agreement between the City and the County, and any amendment or supplement thereto.

“*Baseline Tax (City)*” refers to the total real and personal ad valorem taxes assessed by the City against the Increment District for the Baseline Tax Year.

“*Baseline Tax (County)*” refers to the total real and personal ad valorem taxes assessed by the County against the Increment District for the Baseline Tax Year.

“*Baseline Tax Year*” refers to the City’s and County’s 2018 Fiscal Year (i.e. the period from July 1, 2017 to June 30, 2018) in connection with which the valuation of the Increment District for tax purposes will be established as of January 1, 2018.

“Developer” means collectively CF Hippolyta Charlotte, LLC, a North Carolina limited liability company, or their related entities.

“Fiscal Year” means the fiscal year of the City and County which extends from July 1 to June 30th of the immediately following calendar year. For example, fiscal year 2018 extends from July 1, 2017 to June 30, 2018.

“Increment District” shall mean the area and properties depicted and identified on Exhibit A to the Infrastructure Reimbursement Agreement to the extent that such properties are located within the City and the County.

“Incremental Tax Increase Amount (City)” means, as to each Fiscal Year after the Baseline Tax Year, the amount by which (i) the total real and personal ad valorem taxes levied by the City on the Increment District for such Fiscal Year and collected by February 1 of the Fiscal Year (including any delinquent taxes collected for a prior fiscal year) exceed (ii) the Baseline Tax (City).

“Incremental Tax Increase Amount (County)” shall mean, as to the Fiscal Year after the Baseline Tax Year, the amount by which (i) the total real and personal ad valorem taxes levied by the County on the Increment District for such Fiscal Year and collected by February 1 of the Fiscal Year (including delinquent taxes collected for a prior fiscal year) exceed (ii) the Baseline Tax (County).

“Infrastructure Reimbursement Agreement” means the agreement between the City and Developer that requires the Developer to construct certain Public Improvements and the City to acquire and finance the acquisition of the Public Improvements.

“Installment” means each annual payment of principal due and payable pursuant to City’s infrastructure reimbursement agreement with Developer.

“Installment Commencement Notice” means written notice given by Developer to the City of Developer’s desire for the City to commence paying to the Developer the Installments.

“Interlocal Act” means Section 160A-460 et seq. of the General Statutes of North Carolina, as amended.

“Public Improvements” means those roadway, streetscape, sidewalk, landscaping, irrigation, signage, traffic signal facilities, and other similar improvements for the benefit of the City described in Exhibit B attached to the Infrastructure Reimbursement Agreement.

“Tax Increment Payment” means a payment determined by some percentage of incremental taxes from within the Increment District pursuant to an Infrastructure Reimbursement Agreement.

ARTICLE II

Under the laws of the State of North Carolina, the City has the authority to build and otherwise improve streets (G.S. 160A-296(a)(3)), the City and the County have the authority to reimburse property owners and developers for the design and construction of municipal infrastructure including streets (SL 2001-329; G.S. 153A-451), and the City has the power to finance such improvements with the property owner or developer who is responsible for designing and constructing the improvements (G.S. 160A-20). The City and the County are entering into this Agreement under the Interlocal Act to cooperate in the design, construction, and financing of the Public Improvements contemplated in the Infrastructure Reimbursement Agreement.

ARTICLE III

REIMBURSEMENT FOR THE INFRASTRUCTURE IMPROVEMENTS

3.1 *Reimbursement.* The City will be responsible for acquiring the Public Improvements from the Developer pursuant to the terms of the Infrastructure Reimbursement Agreement. Other than as provided in this Interlocal Agreement, the County will have no obligation to pay for the acquisition or financing of the Public Improvements.

3.2 *County incremental tax contribution.*

- a. The County shall make annual payments to the City on or before March 1 beginning in the calendar year that immediately follows the delivery by the Developer to the City of the Installment Commencement Notice.
- b. Annual payments shall be an amount equal to 45% of the Incremental Tax Increase Amount (County).
- c. The County's payment obligations shall terminate upon the earlier of: (i) payment by the City to the Developer of the outstanding balance pursuant to the Infrastructure Reimbursement Agreement; or (ii) the tenth (10th) annual payment.
- d. In the year in which a payment by the City to Developer pursuant to the Infrastructure Reimbursement Agreement will satisfy the City's repayment obligation, the County's payment to the City shall be that percentage of Incremental Tax Increase Amount (County) that together with the same percentage of Incremental Tax Increase Amount (City) will be sufficient to satisfy the City's repayment obligation to Developer.

3.3. *Method of payment.* The County shall make all payments pursuant to this Agreement directly to the City and payments shall not be made in whole or in part as a set off to other obligations of the City to the County or the County to the City. Interest for late payments by the County shall accrue at a rate equal to the City's cost of funds as of January 1 immediately preceding any late payment.

ARTICLE IV DURATION

This Agreement will terminate when the City's obligations under the Infrastructure Reimbursement Agreement are satisfied or said agreement is earlier terminated.

ARTICLE V MISCELLANEOUS

5.1. Amendment. This Agreement may be amended through a supplement approved in writing by the City and the County.

5.2. Severability. If any section of this Agreement is deemed to be illegal or otherwise unenforceable, it is the intent of the parties hereto that all other provisions of this Agreement shall remain in full force and effect.

5.3. Governing Law. This Agreement is to be governed by and interpreted in accordance with the laws of the State of North Carolina.

5.4. Time is of the essence. Time is of the essence in this Agreement.

5.5. Execution in Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which constitutes a completed document.

5.6. Effective Date. This Agreement takes effect on its execution by the City and the County.

IN WITNESS WHEREOF, the City Manager of the City and the County Manager of the County have each executed this Interlocal Agreement to evidence the agreement of the parties hereto and the City Clerk and the Clerk of the Board of County Commissioners have affixed the seal of the City and the County, as applicable to this Interlocal Agreement.

CITY OF CHARLOTTE

COUNTY OF MECKLENBURG

Attest:

Attest:

City Clerk

Clerk to Board of County Commissioners

(SEAL)

(SEAL)

This instrument has been pre-audited
in the manner required by the “Local
Government Budget and Fiscal
Control Act.”

No Pre-Audit Required.

County Finance Director

City Finance Director

APPROVED AS TO FORM

County Attorney