

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: February 20, 2023

Agenda Item: 5F	Prepared by: Chris Noury, City Attorney
Agenda Section: Consent: Ordinance. Second Reading	Date: February 6, 2023
Subject: An ordinance to authorize and approve an Intergovernmental Agreement between the City of North Myrtle Beach and Horry County relating to the joint county industrial and business park and to provide the City’s consent to the creation of the park	Division: Legal

Background:

1. Horry County, South Carolina (“Horry County”) proposes to create, pursuant to Article VIII, Section 13(D) of the South Carolina Constitution and Sections 4-1-170, 4-1-172 and 4-1-175, Code of Laws of South Carolina 1976, as amended (the “MCP Law”), a multi-county park for certain parcels located within the boundaries of the City (the “Park”); and
2. To establish the Park pursuant to the MCP Law, Horry County proposes to enter into an agreement (a “Park Agreement”) with Marion County, South Carolina; and
3. Section 4-1-170(C) of the MCP Law requires the consent of the municipality prior to the creation of a multi-county park when the multi-county park encompasses all or a portion of a municipality.

It is the purpose of this ordinance to provide the City’s consent to the creation of the Park, and to approve an Intergovernmental Agreement between the City and Horry County relating to the Park which provides for the distribution to the City of a portion of the fees-in-lieu of tax paid on behalf of properties located in the Park.

The creation of a Joint County Industrial and Business Park requires that the host county (in this case Horry County) enter into an agreement to create such a park with at least one contiguous county and provide at least some portion of the tax revenue generated by the property to that partner county. In this case, Horry County has selected Marion County as the partner county and the 1% of revenue that it will distribute to Marion County is standard in these types of arrangements.

The proposed industrial and business park is located within the boundaries of the City of North Myrtle Beach, South Carolina.

The proposed intergovernmental agreement regarding the joint industrial and business park is attached for Council’s review.

Recommended Action:

Approve or deny the proposed ordinance on second reading

Reviewed by City Manager		Reviewed by City Attorney
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Council Action:
Motion By _____ 2nd By _____ To _____

STATE OF SOUTH CAROLINA)
)
CITY OF NORTH MYRTLE BEACH)

ORDINANCE NO. 23-17

AN ORDINANCE

TO AUTHORIZE AND APPROVE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND HORRY COUNTY RELATING TO THE JOINT COUNTY INDUSTRIAL AND BUSINESS PARK (PROJECT COOK), SO AS TO, AMONG OTHER THINGS, PROVIDE THE CITY’S CONSENT TO THE CREATION OF THE PARK.

Be it ordained by the Council of the City of North Myrtle Beach, South Carolina (the “City”):

SECTION 1. Findings and determinations; Purpose.

A. The Council finds and determines that:

1. Horry County, South Carolina (“Horry County”) proposes to create, pursuant to Article VIII, Section 13(D) of the South Carolina Constitution and Sections 4-1-170, 4-1-172 and 4-1-175, Code of Laws of South Carolina 1976, as amended (the “MCP Law”), a multi-county park for certain parcels located within the boundaries of the City (the “Park”); and

2. To establish the Park pursuant to the MCP Law, Horry County proposes to enter into an agreement (a “Park Agreement”) with Marion County, South Carolina; and

3. Section 4-1-170(C) of the MCP Law requires the consent of the municipality prior to the creation of a multi-county park when the multi-county park encompasses all or a portion of a municipality.

B. It is the purpose of this ordinance to provide the City’s consent to the creation of the Park, and to approve an Intergovernmental Agreement between the City and Horry County relating to the Park which provides for the distribution to the City of a portion of the fees-in-lieu of tax paid on behalf of properties located in the Park.

SECTION 2. Consent to multi-county park.

Pursuant to Section 4-1-170(C) of the MCP Law, the City consents to the creation of a multi-county park for those parcels identified below by the parcel identification number (PIN) used by the Horry County Assessor’s Office, the owner, and, if available, acreage:

1. PIN: 389-000-002-40, property of PCIP 4 Partners LLC, 22.15 acres.
2. PIN: 389-020-200-01, property of PCIP 4 Partners LLC, 2.96 acres.

SECTION 3. Approval of Intergovernmental Agreement.

The City Manager is authorized, empowered, and directed, in the name of and on behalf of the City, to execute, acknowledge, and deliver an Intergovernmental Agreement by and between the City and Horry County relating to the Park (the “Intergovernmental Agreement”). The Clerk to Council is authorized to attest the execution of the Intergovernmental Agreement by the City

Manager. The form of the Intergovernmental Agreement is attached to this ordinance as Exhibit A and all terms, provisions and conditions of the Intergovernmental Agreement are incorporated into this ordinance as if the Intergovernmental Agreement were set out in this ordinance in its entirety. By enactment of this ordinance, City Council approves the Intergovernmental Agreement and all of its terms, provisions and conditions. The Intergovernmental Agreement is to be in substantially the form as attached to this ordinance and hereby approved, or with such changes therein as the City Manager determines, upon advice of counsel, necessary and that do not materially change the matters contained in the form of the Intergovernmental Agreement.

SECTION 4. Conflicting Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Code of Ordinances for the City or other City ordinances and resolutions, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

SECTION 5. Severability.

If any section, phrase, sentence, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, the invalid or unconstitutional portion is deemed a separate, distinct, and independent provision, and the holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 6. Effective Date.

This Ordinance is effective upon second reading.

AND IT IS SO ORDAINED, this ____ day of _____, 20_____.

CITY OF NORTH MYRTLE BEACH, SOUTH
CAROLINA

Marilyn Hatley, Mayor

Attest:

Allison Galbreath, City Clerk

Exhibit A to Ordinance No. 23-17

Intergovernmental Agreement

See attached.

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SECTION 2. INCORPORATION OF RECITALS.

The above recitals are incorporated into this Intergovernmental Agreement as if the recitals were set out in this Intergovernmental Agreement in their entirety.

SECTION 3. CONSENT TO MULTI-COUNTY PARK.

Pursuant to Section 4-1-170(C) of the MCP Law, the City consents to the creation of the Park as a Multi-County Industrial Park. As used in this Intergovernmental Agreement, unless the context expressly indicates otherwise, the “Park” means only those parcels set forth below, identified by the parcel identification number (PIN) used by the Horry County Assessor’s Office (as of January 24, 2023), the owner (as of January 24, 2023), and, if available, acreage:

1. PIN: 38900000240, property of PCIP 4 Partners LLC, 22.15 acres; and
2. PIN: 38902020001, property of PCIP 4 Partners LLC, 2.96 acres.

SECTION 4. AGREEMENTS OF COUNTY.

A. Use of Negotiated Fee in Lieu of Tax and Special Source Revenue Credit Incentives.

City acknowledges and agrees that County may enter into any one or more fee-in-lieu-of tax agreements and any arrangements for the provision of special source revenue credits pursuant to Chapters 1, 12 and 29 of Title 4 and Chapter 44 of Title 12 of the Code of Laws of South Carolina 1976, as may be amended from time to time (collectively, “Negotiated Fee-in-Lieu of Tax Agreements”), with a business or industry that is located, or may locate, in the Park and that the entry into a Negotiated Fee-in-Lieu of Tax Agreement, and the terms of those agreements, are at the sole discretion of the County; provided, however, that notwithstanding anything herein to the contrary, the County may not enter into any such agreement or arrangement to the extent that such agreement or arrangement would preclude or prevent the City’s receipt of the distribution of Net Park Revenues set forth in Section 4.B. hereof.

B. Distribution of Multi-County Park Revenues.

City acknowledges and agrees that the Multi-County Park agreement between the County and Marion County (the “Park Agreement”), and the County ordinance approving the Multi-County Park agreement (the “Park Ordinance”), both with respect to the Park, provide for the distribution of revenues received from businesses and industries located in the Park between the two counties and within the County. Further, the Park Ordinance provides that, with respect to the revenues received by the County, net of any reduction due to the application of any special source revenue credits and following the distribution of 1% of such net revenues to Marion County (the “Net Park Revenues”), the City shall receive a distribution of such Net Park Revenues calculated in the manner described in this Intergovernmental Agreement.

Accordingly, the County and the City agree that the City shall receive a distribution of such Net Park Revenues calculated on the basis of: (A) (i) the City’s millage rate for the applicable tax year, (ii) the assessment ratio set forth in any applicable Negotiated Fee-in-Lieu of Tax Agreement (or, in the absence thereof, the applicable assessment ratio provided by law), (iii) the taxable value set forth in any applicable Negotiated Fee-in-Lieu of Tax Agreement (or, in the absence thereof, the applicable value provided by law), and (iv) the *inapplicability* of any special source revenue credits, *less* (B) the City’s portion of the 1% distribution to Marion County based on the fraction where the numerator equals the City’s millage rate for

the applicable tax year, and the denominator equals the total millage rate applicable to the property in the Park for such tax year.

By way of example, assume for a particular tax year:

- Negotiated FILOT Payment (prior to application of 50% special source revenue credit): \$203,670

- Taxable Value of Capital Investment: \$15,000,000
- Assessment Ratio: 6%
- Total Millage Rate: 226.3 mills
- City's Millage Rate: 45 mills

$$\$15,000,000 \times .06 \times .2263 = \$203,670$$

- Negotiated FILOT Payment (after applicability of 50% special source revenue credit): \$101,835

$$\$203,670 \times .50 = \$101,835$$

$$\$203,670 - \$101,835 = \$101,835$$

- 1% Distribution from Horry County to Marion County: \$1,018.35

$$\$101,835 \times .01 = \$1,018.35$$

- Net Park Revenues: \$100,816.65

$$\$101,835 - \$1,018.35 = \$100,816.65$$

- Distribution to City: \$40,297.50

- Capital investment taxable value: \$15,000,000
- Assessment ratio: 6%
- Millage rate: 45 mills

$$\$15,000,000 \times .06 \times .045 = \$40,500$$

Less

$$\$1,018.35 \times 45/226.3 = \$202.50$$

$$\$40,500.00 - \$202.50 = \$40,297.50$$

- Remaining Net Park Revenues for Distribution by Horry County: \$60,316.65

$$\$100,816.65 - \$40,297.50 = \$60,519.15$$

SECTION 5. ENFORCEMENT.

The City and County shall each have the right to enforce the terms, provisions and conditions of this Intergovernmental Agreement by any remedy available at law or in equity, including specific performance, and the right to recover attorney's fees and costs associated with enforcement.

SECTION 6. TERMINATION.

This Intergovernmental Agreement terminates on December 31, 2072; provided, however: (i) this agreement may be terminated earlier than, or extended beyond, such date by mutual agreement of the City and the County, and (ii) this agreement shall automatically terminate in the event of the termination of the Park Agreement.

SECTION 7. MISCELLANEOUS PROVISIONS.

A. Representations and Warranties.

1. County represents and warrants, as the basis for the undertakings on its part contained in this Intergovernmental Agreement, that it (i) is a body politic and corporate and a political subdivision of the State of South Carolina, (ii) is authorized by state law to enter into this Intergovernmental Agreement, (iii) has approved this Intergovernmental Agreement in accordance with the procedural requirements of state law and any other applicable state law, and (iv) has authorized its officials to execute and deliver this Intergovernmental Agreement.

2. City represents and warrants, as the basis for the undertakings on its part contained in this Intergovernmental Agreement, that it (i) is a municipality organized and existing pursuant to the laws of the State of South Carolina, (ii) is authorized by state law to enter into this Intergovernmental Agreement, (iii) has approved this Intergovernmental Agreement in accordance with the procedural requirements of state law and any other applicable state law, and (iv) has authorized its officials to execute and deliver this Intergovernmental Agreement.

B. Entire Agreement.

This Intergovernmental Agreement sets forth, and references all of the agreements, conditions, and understandings between the City and County relative to the purpose of this Intergovernmental Agreement and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, between the City and County relative to the matters addressed in this Intergovernmental Agreement other than as set forth or as referred to in this Intergovernmental Agreement.

C. Governing Law.

This Intergovernmental Agreement is governed by the laws of South Carolina.

D. Counterparts.

This Intergovernmental Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

E. Notices.

Any notice, election, demand, request or other communication to be provided under this Intergovernmental Agreement shall be in writing and shall be effective (i) when delivered to the party named below, (ii) when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, or (iii) when deposited in Federal Express (or any other reputable national “next day” delivery service) addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

To the County: County of Horry
Attn: County Administrator
1301 Second Avenue (29526)
P.O. Box 1236 (29528)
Conway, SC

With Copy to: County of Horry
Attn: County Attorney
1301 Second Avenue (29526)
P.O. Box 1236 (29528)
Conway, SC

And to the City: City of North Myrtle Beach
Attn: City Manager
1018 2nd Avenue South
North Myrtle Beach, SC 29582

With Copy to: City of North Myrtle Beach
Attn: City Attorney
1018 2nd Avenue South
North Myrtle Beach, SC 29582

F. Amendments and Waiver.

This Intergovernmental Agreement may be amended or cancelled by mutual consent of the parties to the Intergovernmental Agreement. An amendment to this Intergovernmental Agreement must be in writing. No statement, action or agreement made after the date of this Intergovernmental Agreement shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Intergovernmental Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the party against whom the change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

G. Effective Date.

This Intergovernmental Agreement is effective as of the date first above written.

IN WITNESS WHEREOF, Horry County, South Carolina, and the City of North Myrtle Beach, South Carolina, pursuant to due authority, have duly executed this Intergovernmental Agreement, all as of _____, 2023.

Horry County, South Carolina

Steve Gosnell, County Administrator

Attest:

_____, Clerk to Council

City of North Myrtle Beach,
South Carolina

Mike Mahaney, City Manager

Attest:

Allison Galbreath, City Clerk

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