

COST SHARING AGREEMENT

This COST SHARING AGREEMENT (this "*Agreement*") is entered into this 13th day of September 2019 (the "*Effective Date*") by and between the Town of James Island, South Carolina (the "*Town*"), a municipality of the State of South Carolina (the "*State*"), and the James Island Public Service District (the "*District*"), a special purpose district of the State, each a "*Party*" and together the "*Parties*."

RECITALS

The District was created pursuant to Act 498 of 1961, pursuant to which the District is authorized to "[e]stablish, operate and maintain a system of fire protection;" "[e]stablish, operate and maintain a garbage collection service;" and "[c]ontract with any municipal or public agency for any or all of the services authorized under this act." The Town is authorized to exercise those powers granted to municipalities under the general laws of the State, the Constitution of the State of South Carolina (the "*Constitution*"), and Home Rule.

The Parties are empowered by Article VIII, Section 13(A) of the Constitution to share the cost of any function or exercise of powers, and pursuant to such authorization the Parties have determined to share the cost of providing solid waste and fire protection services (collectively, the "*Services*") within the Town.

NOW THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1. Sharing of Costs of Services. Subject to the provisions of this Agreement and pursuant to the applicable provision of the Constitution, the Town and the District shall share the cost of the Services. The provisions of this Agreement shall be construed in accordance with the Parties exercising the powers afforded by the Constitution that permit the sharing of the cost of the Services.

Section 2. Annual Appropriation; Administrative Fee. (a) In each year, the Town shall determine the amount of the cost of the Services (the "*Annual Cost Share*") that shall be appropriated in the Town's budget (the "*Budget*") for the upcoming fiscal year for the purpose of sharing the cost of the Services. No later than April 1, the Town shall provide the District with a preliminary estimate of the amount of the Annual Cost Share that the Town expects to appropriate in the Budget and shall promptly update the District if the preliminary estimate of the Annual Cost Share changes during the Town's budget process or is eliminated. As soon as is practicable after the approval of the Budget, and in no case later than June 30, the Town shall notify the District of the amount, if any, that has been appropriated in the Budget as the Annual Cost Share. The notice provided by the Town shall be in writing and shall include a copy of the Budget for the upcoming fiscal year (the "*Annual Notice*"). Upon delivery of the Annual Notice by the Town, the Board of Commissioners of the District shall give consideration to the acceptance of and consent to the amount of the Annual Cost Share in such year at its next regularly scheduled meeting, and shall promptly notify the Town after such meeting whether such acceptance and consent has been given.

Each Annual Notice, upon delivery by the Town and acceptance by the District shall be considered an addendum to this Agreement, subject to the terms hereof.

(b) In each year in which the Town elects to participate in the Annual Cost Share, the Town shall pay to the District an administrative fee (the "*Administrative Fee*") for the administration of the transactions and arrangements provided for in this Agreement in the amount of 1% of the amount of the Annual Cost Share for such year.

(c) Upon delivery of the Annual Notice, the amounts of the Annual Cost Share and the Administrative Fee shall constitute current obligations and expenses of the Town for the fiscal year in which the appropriations of the Annual Cost Share and Administrative Fee are made that are payable from initially appropriated funds. Neither the Annual Payment nor the Administrative Fee shall constitute or be construed in any way as an indebtedness of the Town within the meaning of any State constitutional or statutory limitation and shall not constitute a pledge of the general tax revenues or credit of the Town.

Section 3. Calculation and Application of Tax Credits. (a) Upon delivery of the Annual Notice in each year, in coordination with the District, the Town shall notify the Office of the Charleston County Auditor (the "*County Auditor*") that (i) credits shall be applied to the *ad valorem* property tax ("*Property Tax*") bills of the owners of real and personal property situated within the Town ("*Taxable Property*") that, in the aggregate, equal the amount of the Annual Cost Share, and (ii) the total amount of the Annual Cost Share.

(b) The Town shall, to the extent necessary, work in conjunction with the Auditor to determine the amount of the tax credit (the "*Tax Credit*") that shall be applied to the Property Taxes due in each year with respect to each item of Taxable Property, which shall be calculated by multiplying the appraised value of the taxpayer's Taxable Property by a fraction in which the numerator is the total amount of the Annual Cost Share and the denominator is the total of the appraised value of all Taxable Property situated in the Town as of January 1 of the then-current tax year. The appraised value of each item of Taxable Property used to calculate the Tax Credit shall be the appraised value of such property that is used to calculate the Property Tax for such item of Taxable Property in the tax year in which to which the Tax Credit is applicable.

By way of example only, if the appraised value of all Taxable Property within the Town were to be \$1,380,440,958, and the amount of the Annual Payment were to be \$1,000,000, the amount of the Tax Credit applicable to a property with an appraised value for tax purposes of \$300,000 would be calculated as follows:

$$\frac{1,000,000}{1,380,440,958} \times \$300,000 = \$217.32 \text{ (Amount of Tax Credit)}$$

(c) The Tax Credit shall be applied to the all items of real and personal property that are subject to Property Taxes levied by the Town and the District in any given tax year. In order to ensure clarity in the application of the Tax Credit in instances where parcels of real property are annexed into the Town, the Town shall instruct the County Auditor that only those parcels that have been annexed into the Town as of January 1 of each tax year shall be subject to Property

Taxes levied by the Town for that tax year, and thereby subject to the Tax Credit. The Town shall instruct the County Auditor that Property Taxes shall be levied on items of personal property based upon to the standard taxation procedures of the County Auditor regarding the imposition of Property Taxes levied by the Town.

(d) The District hereby consents to and acknowledges that the amount of the Property Tax revenues remitted to the District for each item of Taxable Property shall be reduced by the amount of the Tax Credit applicable to the item of Taxable Property.

Section 4. Payment Schedule. The Town shall pay the amount of the Annual Cost Share and the Administrative Fee to the District in accordance with the following schedule:

i. On the later of July 15 of each year or fifteen days after the Annual Cost Share has received the final approval of the Town and the District, the Town shall pay to the District 1/12 of the amount of the Annual Cost Share for that year, plus the total amount of the Administrative Fee for that year; and

ii. On the 15th day of each of month thereafter through June 15 of such year, the Town shall pay to the District 1/12 of the Annual Cost Share for that year.

Section 5. Term and Termination. (a) The term of this Agreement shall commence upon the Effective Date and shall automatically renew for succeeding 1-year terms on June 30 of each year.

(b) Either Party may terminate this Agreement in any year of its term by giving the other Party written notice of its termination by no later than April 30 of such year. In the event of termination by either Party, termination shall be effective as of June 30 of such year.

Section 6. Payment of Costs. (a) Except as set forth in Section 6(b) regarding certain legal fees and Section 10 regarding the cost of monitoring, the Parties shall each bear their own costs incurred in the initial implementation and continued administration of the Tax Credit and the sharing of the cost of the Services. The Town shall bear any costs of any third-party that are necessary for the initial implementation and the continued administration of the Tax Credit and the sharing of the cost of the Services, including but not limited to, any expenses that must be reimbursed to the the County Auditor.

(b) Except for any costs for legal counsel engaged to jointly represent the Parties in connection with the transactions contemplated in this Agreement, which shall be borne by the Town, the Parties shall each bear their own costs for their own legal counsel associated with transactions contemplated in this Agreement.

Section 7. No Annual Obligation of the Town. The Town is not obligated under this Agreement to budget for and appropriate funds for an Annual Cost Share in any fiscal year. In the event that the Town does not budget for and appropriate funds for the Annual Cost Share by June 30 of any year, the Town shall not be liable for an Annual Cost Share or Administrative Fee to the District in the upcoming fiscal year; however, this Agreement shall, during the term set forth in

Section 5 of this Agreement, remain in full force and effect with respect to future fiscal years in which the Town may budget for and appropriate funds for an Annual Cost Share.

Section 8. District Autonomy. No provision of this Agreement or any course of dealing between the Parties in carrying out the transactions contemplated in this Agreement shall be construed as permitting the Town to engage in or be involved in any function of the District, including, without limitation, (i) regulating or overseeing the provision of the Services provided by the District, (ii) the fixing of millage rates, fees, or charges by the District, (iii) the preparation of the annual budget of the District, (iv) the expenditure of funds by the District, or (v) capital planning activities of the District. The District covenants that it shall provide the Services within the Town on substantially the same basis as the District provides the Services to areas outside of the Town.

Section 9. Correction of Erroneous Tax Levies. (a) In the event that any taxpayer initiates a timely and successful protest for a refund of Property Taxes under a claim that a Tax Credit should have been applied to the taxpayer's Property Tax bill (a "*Property Tax Refund*"), the Town shall use its best efforts, working in conjunction with the Office of the Charleston County Treasurer (the "*County Treasurer*") to directly pay the Property Tax Refund to the applicable taxpayer.

(b) In the event that (i) a Property Tax Refund must be paid to a taxpayer by the District, (ii) is paid to the taxpayer by the County Auditor from the District's Property Tax receipts, or (iii) is paid to the taxpayer by the County Auditor causing a reduction in future tax receipts of the District as a result, the District and the Town shall net reconcile any such refund payments at the end of the year to achieve no less than, and no more than, the benefits to the District intended by the measure of the Annual Cost Share for that year. Any payment due from the Town as a result of the reconciliation shall be payable to the general fund of the District.

Section 10. Monitoring. The District shall conduct monitoring through random sampling of the Property Tax bill generated by the County Auditor and the amounts remitted in connection therewith to ensure the accuracy of amount of the Tax Credit applied to items of Taxable Property. Monitoring shall be conducted by a Certified Public Accounting Firm meeting the requirements of *Government Auditing Standards* and by executing an Agreed Upon Procedures engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. The Town shall reimburse the District for the annual cost of such monitoring in an amount not to exceed \$5,000 each year, and any additional costs of monitoring above \$5,000 shall be paid by the District.

Section 11. Survival of Provisions. The obligations set forth herein, to the extent that they are intended to govern the actions, rights, and liabilities of the Parties after the end of any annual term shall survive the expiration or termination of this Agreement and such terms shall be fully enforceable thereafter unless replaced by a subsequent agreement between the Parties.

Section 12. Counterparts. This Agreement may be executed in counterparts, which when assembled shall constitute but one original Agreement.

Section 13. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Agreement, unless that decision destroys the basis for the sharing of costs hereunder or the granting of the Tax Credit, in which event the parties shall in good faith attempt to preserve, to the maximum extent possible, the rights of the Parties and the payment obligations of the Town hereunder under any then applicable law or equitable remedy.

Section 14. Effect of Dissolution of a Party. In the event either the Town or the District for any reason shall be dissolved, consolidated or its legal existence shall otherwise be terminated, all of the covenants, stipulations, obligations, and agreements contained in this Agreement by or on behalf of or for the benefit of such Party shall bind or inure to the benefit of the successor or successors thereof.

Section 15. Manner of Giving Notice. All notices, demands, and requests to be given to or made hereunder by the Parties shall be given or made as indicated below in writing and shall be deemed to be properly given or made if sent by United States certified mail, return receipt requested, postage prepaid, addressed as follows:

As to the Town:

Town of James Island
Attn: City Administrator
PO Box 12240
James Island, SC 29422

As to the District:

James Island Public Service District
Attn: Administrator
PO Box 12140
Charleston, SC 29422-2140

Any such notice, demand, or request may also be transmitted to the appropriate above-mentioned Party by email or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above. Any of such addresses may be changed at any time upon written notice of such change sent by United States certified mail, return receipt requested, postage prepaid, to the other Parties by the Party effecting the change.

Section 16. Parties Alone Have Rights under Agreement. Except as herein otherwise expressly provided, nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation, other than the Parties any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof. This Agreement and each provision herein are intended to be and are for the sole and exclusive benefit of the Parties.

Section 17. Headings. Any heading preceding the text of the sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

Section 18. Further Authority. The officers of the Parties, their attorneys, and other agents or employees are hereby authorized to do all acts and things required of them by this Agreement for the full, punctual, and complete performance of all of the terms, covenants, and agreements contained herein.

Section 19. Authorization of Parties. The provisions of this Agreement and the execution thereof has been duly authorized by appropriate action of the Parties.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the James Island Public Service District has caused this Agreement to be signed in its name by the duly authorized officer provided below as of the Effective Date.



JAMES ISLAND PUBLIC SERVICE
DISTRICT, SOUTH CAROLINA


Chairman


Secretary

IN WITNESS WHEREOF, the Town of James Island has caused this Agreement to be signed in its name by the duly authorized officer provided below as of the Effective Date.

**TOWN OF JAMES ISLAND,
SOUTH CAROLINA**

[SEAL]

ATTEST:



Mayor



Clerk to Town Council