

STATE OF NORTH CAROLINA

TRANSYLVANIA COUNTY

INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT, made and entered into this the 28th day of November, 1994 by and between TRANSYLVANIA COUNTY, a political subdivision of the State of North Carolina, hereinafter called the "County", and the CITY OF BREVARD, a North Carolina municipal corporation, hereinafter called the "City";

W I T N E S S E T H:

THAT WHEREAS, the County has invited the City to participate in an economic development project designed to construct and develop a site for an industrial park within Brevard and Transylvania County in accordance with applicable provisions of the North Carolina General Statutes; and,

WHEREAS, the County has prepared a document dated September 1994 and entitled, "Preliminary Engineering Report, Proposed Transylvania County Mars Hill Industrial Site" detailing a project subsequently called "The Brevard Commerce Center"; and,

WHEREAS, the City has been requested by the County to generally assume the responsibility of developing the water, sewer and streets for this project; and,

WHEREAS, the City and County find it desirable to enter into an agreement to provide for interlocal cooperation as authorized by Part 1, Article 20 of Chapter 160A of the North Carolina General Statutes for purposes of executing this undertaking; and,

WHEREAS, the parties to this agreement are in accord that this agreement is prudent for encouraging the location of industrial enterprises in Brevard and Transylvania County and will provide for the economic development of the City and County in such a way as to create jobs, increase industrial tax base, and enhance business prospects of the City and County;

NOW, THEREFORE, it is agreed among the parties as follows:

1. The purpose of this agreement shall be to encourage the location of industrial enterprises in Brevard and Transylvania County and provide for economic development in such a way as to create jobs, increase industrial tax base, and enhance business prospects of the City and County by developing an industrial park ready for use by businesses and industries willing to locate in Brevard and Transylvania County.

2. The County hereby agrees to undertake and complete development of the Brevard Commerce Center as an economic development project, the preliminary details for site preparation of which are set forth in its September 1994 document entitled, "Preliminary Engineering Report, Proposed Transylvania County Mars Hill Industrial Site". Pursuant to a grant awarded by the North Carolina Technological Development Authority (NCTDA), the County, or the County's designee, will construct a shell building - estimated in size at approximately 20,000 square feet - to be used as an "incubator" or "spec building" intended for use and/or sale to prospective businesses or industries which desire to locate in the City or County. In lieu of an incubator or spec building, the project may include the construction of a private building(s) suitable for use as specified in Section 1 of this agreement.

3. The City hereby agrees to participate in the development of the Brevard Commerce Center by assuming responsibility for site preparation in the form of water, sewer and street construction for this industrial site. Water, sewer and street development shall be as envisioned by the preliminary engineering report referenced herein, and as provided by the provisions of this agreement. The County will provide all related architectural and engineering drawings necessary for the City to meet its obligation as set forth herein.

4. The County presently has an option to purchase the real estate which is subject to the aforesaid preliminary engineering report. The City shall not begin construction of water lines, sewer lines, or streets until the County, or the County's designee, has exercised the option to purchase the subject property, or sufficient and adequate rights-of-way have been dedicated by the lawful property owner(s) and accepted by the City. Subsequently, and upon the County's delivery of adequate architectural and engineering drawings as specified in Section 3 of this agreement, the City will make application to all appropriate regulatory agencies to obtain related construction permits. Upon receipt of these permits, and satisfaction of all pertinent laws governing bidding and constructing public facilities, the City will begin construction of the referenced water, sewer and roads at its earliest practicable time.

5. Total estimated costs for this project, inclusive of the referenced building, amount to approximately \$800,000 which may be provided in any combination of funds from cash, grants, in-kind, debt, contributions, etc. lawfully applicable to such an economic development project. It is agreed among the parties that, of this amount, the City's obligation for site preparation - consisting of water, sewer and streets - shall be limited to an amount not to exceed \$100,000 which may be provided in any combination of funding sources as listed within this section.

6. The City's obligation for water and sewer utilities shall be limited to utility mains, taps, meters, and appurtenant facilities which subsequently shall be owned, maintained and operated as a part of the Brevard Water and Sewer Systems. All service lines, on-site sprinkler systems, stand pipes, pretreatment facilities, etc. as may be needed for individual businesses or industries shall be the responsibility of the County, or individual property owners, in accordance with applicable provisions of the Brevard City Code and its Utilities Ordinance.

7. The City's obligation for street construction shall be limited to the primary street proposed for servicing the Brevard Commerce Center, said roadway to become a public street and included within the Brevard Street System for ownership, maintenance and operation when completed. The proposed street shall meet all City standards for road construction set forth by the Brevard City Code and approved for design purposes by the Brevard Planning Department and the Brevard Public Works Department. The County, or individual property owners, shall be responsible for construction of all driveways and parking lots within the industrial site.

8. In the event that the City proceeds with site development and completes installation of water, sewer and streets for this project and the County, or the County's designee, subsequently decides to abandon or modify the project without constructing the incubator or shell building envisioned for this effort as approved by the NCTDA grant, or, in lieu thereof, construction of a private building(s) suitable for use as specified in Section 1 of this agreement, the County shall reimburse the City its costs for site preparation. Notwithstanding the foregoing provisions of this Section, the County shall nonetheless reimburse the City its costs for site preparation if the incubator or shell building, or, in lieu thereof, a private building(s), shall not be constructed within forty-eight (48) months, or four (4) years, of the date of this agreement.

9. The duration of this agreement shall be for a period of time beginning upon the execution of this contract and continuing for forty-eight (48) months, same being a term of four (4) years, at which time the agreement shall end. This agreement cannot be canceled during the initial term unless both parties agree in written form to the terms, conditions and timing of such termination in a manner acceptable to both parties.

10. Following the initial duration and term of this agreement, should the development of the Brevard Commerce Project not be complete, said agreement shall be automatically renewed annually thereafter unless sooner terminated in writing by both parties. Should either party to this agreement subsequently seek to terminate same, six months written notice to the other party shall be required.

11. The County shall be the principal party responsible for all development activities associated with this project, contracting with the City for construction of water, sewer and street facilities. Upon completion of the Brevard Commerce Center, the County, or the County's designee, shall be the owner of the shell building, land (exclusive of utility and street rights-of-way which shall be dedicated to the City), driveways, parking lots, and any other property of value which otherwise is not assigned for ownership within this agreement.

12. The personnel required for development of the Brevard Commerce Center shall be assigned, designated or contracted as the parties of this agreement shall, from time to time, agree. It is further understood by both parties, the City, in particular and at its discretion, may utilize its own force account labor force for completion of any or all of the responsibilities of the City under this agreement.

13. This agreement can be amended only in written form by formal approval and resolution by the respective governing bodies of both the City and County. Any resolution(s) ratified amending this agreement shall be spread upon the minutes of the respective governing boards.

14. The City and County shall hold and save each other harmless from any acts or omissions of their respective employees which may arise from the operation and enforcement of this agreement.

15. The City and County shall cooperate to make the official records of their respective units of government associated with the Brevard Commerce Center available to each other at any time for purposes of this agreement. Each party shall further assure the other that all financial records associated with this project shall be included in its annual financial statements and audits.

16. The respective managers of the City and County shall be the official representatives and contact persons for each party of this agreement. Development of the Brevard Commerce Center shall comply with all development requirements of the Brevard City Code.

17. Should any portion of this agreement for any reason be held invalid, unlawful or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions thereof.

18. Should the Brevard Commerce Center Project be subject to provisions of Article 1 of Chapter 158 of the North Carolina General Statutes (the Local Development Act of 1925), the City and County each shall comply with all procedural and substantive requirements of this act.

19. All terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate originals, one of which is retained by each party the day and year first above written.

CITY OF BREVARD

John H. Peterson
John H. Peterson
Mayor

ATTEST:

Glenda W. Sansosti
Glenda W. Sansosti, CMC/AEE
City Clerk

TRANSYLVANIA COUNTY BOARD OF
COUNTY COMMISSIONERS

John K. Smart, Jr.
John K. Smart, Jr.
Chairman

ATTEST:

Sandra Jameson
Sandra Jameson
Clerk to the Board

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, Donna Olsen, a Notary Public in and for the State and County aforesaid, do hereby certify that Glenda W. Sansosti, personally came before me this day and acknowledged that she is City Clerk of the City of Brevard, a Municipality and that by authority duly given and as the act of the Municipality, the foregoing instrument was signed in its name by its Mayor, sealed with its official seal and attested by her as its City Clerk.

WITNESS my hand and Notarial seal, this the 8 day of December, 1994.

Donna Olsen
Notary Public

My Commission Expires:

June 9, 1998

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, a Notary Public of said State and County, do hereby certify that Sandra Jameson, personally appeared before me this day and acknowledged that she is Clerk to the Board of Commissioners for Transylvania County, and that by authority duly given and as the act of this corporation, the foregoing instrument was signed in its name by its Chairman to the Board of Commissioners, sealed with its corporate seal, and attested by herself as its Clerk to the Board.

WITNESS my hand and Notarial Seal, this the 30 day
of November, 1994.

Christy D. Jinsley
Notary Public

My Commission Expires:

3-6-96

STATE OF NORTH CAROLINA
TRANSYLVANIA COUNTY

Filed for registration on the 14 day of December 1994
at 2:20 o'clock P.M. and registered and verified on the 14 day
of December, 1994 in Book No. 382 and Page No. 705

REGISTER OF DEEDS

Register of Deeds
Transylvania County