

ORDINANCE NO. 16-17-719

AN ORDINANCE AUTHORIZING AND APPROVING (1) DEVELOPMENT OF A JOINT COUNTY INDUSTRIAL AND BUSINESS PARK PURSUANT TO SECTION 4-1-170 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, IN CONJUNCTION WITH AIKEN COUNTY (THE "PARK"), SUCH PARK TO BE, AT THE TIME OF ITS INITIAL DEVELOPMENT, GEOGRAPHICALLY LOCATED IN AIKEN COUNTY AND TO INCLUDE CERTAIN PROPERTY NOW OR TO BE OWNED AND/OR OPERATED BY SHAW CREEK SOLAR, LLC, A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT MCFARLAN, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS; (2) THE EXECUTION AND DELIVERY OF A WRITTEN PARK AGREEMENT WITH AIKEN COUNTY AS TO THE REQUIREMENT OF PAYMENTS OF FEE IN LIEU OF *AD VALOREM* TAXES WITH RESPECT TO PARK PROPERTY AND THE SHARING OF THE REVENUES AND EXPENSES OF THE PARK; (3) THE DISTRIBUTION OF REVENUES FROM THE PARK WITHIN AIKEN COUNTY; AND (4) OTHER MATTERS RELATED THERETO.

WHEREAS, Edgefield County, South Carolina ("Edgefield County") and Aiken County, South Carolina ("Aiken County"), as authorized under Article VIII, Section 13(D) of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended (the "Act"), propose to develop a joint county industrial and business park (the "Park"); and

WHEREAS, in order to promote economic development and thus encourage investment and provide additional employment opportunities within both of said counties, Edgefield County and Aiken County have agreed to develop a Park in Edgefield County and Aiken County to be located, at the time of its initial development, upon property that is located in Aiken County and which now or will be owned and/or operated by Shaw Creek Solar, LLC, a company previously identified as Project McFarlan, one or more affiliates, and/or other project sponsors; and

WHEREAS, Edgefield County and Aiken County have agreed to the specific terms and conditions of such arrangement as set forth in the Agreement for Development of a Joint County Industrial and Business Park (Shaw Creek Solar, LLC) proposed to be entered into by and between Edgefield County and Aiken County as of such date as may be agreed to by Edgefield County and Aiken County (the "Park Agreement"); and

WHEREAS, it appears that the Park Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by Edgefield County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED BY THE EDGEFIELD COUNTY COUNCIL AS FOLLOWS:

Section 1. Approval of the Park Agreement. The form, provisions, terms and conditions of the Park Agreement now before this meeting and filed with the Clerk to Edgefield County Council be and they are hereby approved, and all of the provisions, terms and conditions thereof are hereby incorporated herein by reference as if the Park Agreement were set out in this Ordinance in its entirety. The Chairman of Edgefield County Council is hereby authorized, directed, and empowered to execute

the Park Agreement in the name and on behalf of Edgefield County; the Clerk to Edgefield County Council is hereby authorized, directed, and empowered to attest the same; and the Chairman of Edgefield County Council is further authorized, directed, and empowered to deliver the Park Agreement to Aiken County.

The Park Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of Edgefield County thereunder and as shall be approved by the officials of Edgefield County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Park Agreement now before this meeting.

The Chairman of Edgefield County Council, the County Administrator of Edgefield County, and the Clerk to the Edgefield County Council, for and on behalf of Edgefield County, are hereby each authorized and empowered to do any and all things necessary or proper to effect the development of the Park and the performance of all obligations of Edgefield County under and pursuant to the Park Agreement and to carry out the transactions contemplated thereby and by this Ordinance.

Section 2. Payment of Fee in Lieu of Tax. The businesses and industries located in the Park must pay a fee in lieu of *ad valorem* taxes as provided for in the Park Agreement. With respect to properties located in the Edgefield County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Edgefield County. That portion of such fee allocated pursuant to the Park Agreement to Aiken County shall be thereafter paid by the Treasurer of Edgefield County to the Treasurer of Aiken County in one payment by June 30 of the Edgefield County fiscal year of receipt for distribution in accordance with the Park Agreement. With respect to properties located in the Aiken County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Aiken County. That portion of such fee allocated pursuant to the Park Agreement to Edgefield County shall thereafter be paid by the Treasurer of Aiken County to the Treasurer of Edgefield County in one payment by June 30 of the Aiken County fiscal year of receipt for distribution in accordance with the Park Agreement. The provisions of Section 12-2-90 of the Code of Laws of South Carolina 1976, as amended, or any successor statutes or provisions, apply to the collection and enforcement of the fee in lieu of *ad valorem* taxes.

Section 3. Distribution of Revenues within Edgefield County.

(a) Revenues generated from industries and businesses located in the Edgefield County portion of the Park to be retained by Edgefield County shall be distributed within Edgefield County in accordance with this subsection: first, unless Edgefield County elects to pay or credit the same from only those revenues which Edgefield County would otherwise be entitled to receive as provided under the third item below, to pay annual debt service on any special source revenue bonds issued by Edgefield County pursuant to, or to be utilized as a special source revenue credit in the manner provided in, Section 4-1-175 of the Act; second, at the option of Edgefield County, to reimburse Edgefield County for any expenses incurred by it in the administration, development, operation, maintenance and promotion of the Park or the industries and businesses located therein or for other economic development purposes of Edgefield County; and third, to those taxing entities in which the applicable revenue-generating property is located, in the same manner and proportion that the millage levied for the taxing entities would be distributed if such property were taxable but without regard to exemptions otherwise available pursuant to Section 12-37-220 of the Code of Laws of South Carolina 1976, as amended, for that year.

(b) Notwithstanding any other provision of this section, all taxing entities which overlap an applicable revenue-generating property within the Park shall receive at least some portion of the

revenues generated from such property, and all revenues receivable by a taxing entity in a fiscal year shall be allocated to operations and maintenance and to debt service as determined by the governing body of the taxing entity.

(c) Revenues generated from industries and businesses located in the Aiken County portion of the Park and received by Edgefield County shall be distributed by Edgefield County in accordance with an ordinance to be passed by Edgefield County.

Section 4. Applicable Ordinances and Regulations. Any applicable ordinances and regulations of Edgefield County including those concerning zoning, health and safety, and building code requirements shall apply to the Park properties located in Edgefield County unless the properties are within the boundaries of a municipality in which case, the municipality's applicable ordinances and regulations shall apply. Any applicable ordinances and regulations of Aiken County including those concerning zoning, health and safety, and building code requirements shall apply to the Park properties located in Aiken County unless the properties are within the boundaries of a municipality in which case, the municipality's applicable ordinances and regulations shall apply.

Section 5. Law Enforcement Jurisdiction. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties located in Edgefield County is vested with the Sheriff's Department of Edgefield County. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties located in Aiken County is vested with the Sheriff's Department of Aiken County. If any of the Park properties located in either Edgefield County or Aiken County are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality.

Section 6. Conflicting Provisions. To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Edgefield County Code or other Edgefield County ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 7. Severability. If any section of this ordinance is, for any reason, determined to be void or invalid by a court of competent jurisdiction, it shall not affect the validity of any other section of this ordinance which is not itself void or invalid.

Section 8. Effectiveness. This Ordinance shall be effective upon third and final reading.

[End of Ordinance - Signature page to follow]

Enacted and approved, in meeting duly assembled, this ____ day of _____, 2017.

EDGEFIELD COUNTY, SOUTH CAROLINA

By: _____
Dean Campbell, Chairman, County Council
Edgefield County, South Carolina

[SEAL]

Attest:

By: _____
Jennifer Gilley, Clerk to County Council
Edgefield County, South Carolina

First Reading: May 2, 2017
Second Reading: June 6, 2017
Public Hearing: _____, 2017
Third Reading: _____, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 COUNTY OF EDGEFIELD)

) **AGREEMENT FOR DEVELOPMENT OF A JOINT
 COUNTY INDUSTRIAL AND BUSINESS PARK
 (SHAW CREEK SOLAR, LLC) (AIKEN
 COUNTY/EDGEFIELD COUNTY PARK _____)**

THIS AGREEMENT for the development of a joint county industrial and business park to be located within Aiken County and Edgefield County is made and entered into as of [_____], 2017, by and between Aiken County, South Carolina (“Aiken County”) and Edgefield County, South Carolina (“Edgefield County”).

RECITALS

WHEREAS, Aiken County and Edgefield County are contiguous counties which, pursuant to Ordinance No. [_____], enacted by Aiken County Council on [_____], 2017, and Ordinance No. [_____] enacted by Edgefield County Council on [_____], 2017, have each determined that, in order to promote economic development and thus encourage investment and provide additional employment opportunities within both of said counties, there should be developed in Aiken County and Edgefield County a joint county industrial and business park (the Aiken County/Edgefield County Park, referred to herein as “Park”), to be located upon property more particularly described in Exhibit A (Aiken) and Exhibit B (Edgefield) hereto; and

WHEREAS, as a consequence of the development of the Park, property comprising the Park and all property having a situs therein is exempt from *ad valorem* taxation pursuant to Article VIII, Section 13(D) of the South Carolina Constitution, but the owners or lessees of such property shall pay annual fees in an amount equivalent to the property taxes or other in-lieu-of payments that would have been due and payable except for such exemption.

NOW, THEREFORE, in consideration of the mutual agreement, representations and benefits contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Binding Agreement.** This Agreement serves as a written instrument setting forth the entire agreement between the parties and shall be binding on Aiken County and Edgefield County, their successors and assigns.

2. **Authorization.** Article VIII, Section 13(D) of the South Carolina Constitution provides that counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties, provided that certain conditions specified therein are met and further provided that the General Assembly of the State of South Carolina provides by law a manner in which the value of property in such park will be considered for purposes of bonded indebtedness of political subdivisions and school districts and for purposes of computing the index of taxpaying ability pursuant to any provision of law which measures the relative fiscal capacity of a school district to support its schools based on the assessed valuation of taxable property in the district as compared to the assessed valuation of taxable property in all school districts in South Carolina. The Code of Laws of South Carolina, 1976, as amended (the “Code”) and particularly, Section 4-1-170 thereof, satisfies the conditions imposed by Article VIII, Section 13(D) of the South Carolina Constitution and provides the statutory vehicle whereby a joint county industrial or business park may be created.

3. **Location of the Park.**

(A) As of the original execution and delivery of this Agreement, the Park initially consists of property that is located in Aiken County and which now or will be owned and/or operated by Shaw Creek Solar, LLC, a company previously identified as Project McFarlan, one or more affiliates, and/or other project sponsors, as more particularly described in Exhibit A (Aiken) hereto. It is specifically recognized that the Park may from time to time consist of non-contiguous properties within each county. The boundaries of the Park may be enlarged or diminished from time to time as authorized by ordinances of the county councils of both Aiken County and Edgefield County. If any property proposed for inclusion in the Park is located, at the time such inclusion is

proposed, within the boundaries of a municipality, then the municipality must give its consent prior to the inclusion of the property in the Park.

(B) In the event of any enlargement or diminution of the boundaries of the Park, this Agreement shall be deemed amended and there shall be attached hereto a revised Exhibit A (Aiken) or a revised Exhibit B (Edgefield) which shall contain a legal description of the boundaries of the Park within Aiken County or Edgefield County, as the case may be, as enlarged or diminished, together with a copy of the ordinances of Aiken County Council and Edgefield County Council pursuant to which such enlargement or diminution was authorized.

(C) Prior to the adoption by Aiken County Council and by Edgefield County Council of ordinances authorizing the diminution of the boundaries of the Park, separate public hearings shall first be held by Aiken County Council and Edgefield County Council. Notice of such public hearings shall be published in newspapers of general circulation in Aiken County and Edgefield County, respectively, at least once and not less than fifteen (15) days prior to such hearing. Notice of such public hearings shall also be served in the manner of service of process at least fifteen (15) days prior to such public hearing upon the owner and, if applicable, the lessee of any property which would be excluded from the Park by virtue of the diminution.

4. **Fee in Lieu of Taxes.** Pursuant to Article VIII, Section 13(D) of the South Carolina Constitution, all property located in the Park is exempt from all *ad valorem* taxation. The owners or lessees of any property situated in the Park shall pay in accordance with this Agreement an amount (referred to as fees in lieu of *ad valorem* taxes) equivalent to the *ad valorem* taxes or other in-lieu-of payments that would have been due and payable but for the location of such property within the Park.

5. **Allocation of Expenses.** Aiken County and Edgefield County shall bear expenses incurred in connection with the Park, including, but not limited to, those incurred in the administration, development, operation, maintenance and promotion of the Park, in the following proportions:

If the property is located in the Aiken County portion of the Park:

- A. Aiken County 100%
- B. Edgefield County 0%

If the property is located in the Edgefield County portion of the Park:

- A. Aiken County 0%
- B. Edgefield County 100%

Notwithstanding anything herein to the contrary, to the extent that privately owned property is located in the Park, the owner of such property shall bear, exclusively, any expense associated with such property.

6. **Allocation of Revenues.** Aiken County and Edgefield County shall receive an allocation of all net revenues (after payment of all Park expenses and other deductions from Park revenue necessitated by projects located in the Park) generated by the Park through payment of fees in lieu of *ad valorem* taxes in the following proportions:

If the property is located in the Aiken County portion of the Park:

- A. Aiken County 99%
- B. Edgefield County 1%

If the property is located in the Edgefield County portion of the Park:

- A. Aiken County 1%
- B. Edgefield County 99%

With respect to such fees generated from properties located in the Aiken County portion of the Park, that portion of such fees allocated to Edgefield County shall thereafter be paid by the Treasurer of Aiken County to the

Treasurer of Edgefield County in one payment by June 30 of the Aiken County fiscal year of receipt for distribution. With respect to such fees generated from properties located in the Edgefield County portion of the Park, that portion of such fees allocated to Aiken County shall thereafter be paid by the Treasurer of Edgefield County to the Treasurer of Aiken County in one payment by June 30 of the Edgefield County fiscal year of receipt for distribution.

7. Revenue Allocation within Each County.

(A) Revenues generated by the Park through the payment of fees in lieu of *ad valorem* taxes shall be distributed to Aiken County and to Edgefield County, as the case may be, according to the proportions established by this Agreement. With respect to revenues allocable to Aiken County or Edgefield County by way of fees in lieu of *ad valorem* taxes generated from properties within its own boundaries (the “Host County”), such revenue shall be distributed within the Host County in the manner provided by ordinance of the county council of the Host County; provided, that (i) each taxing entity which overlaps the applicable revenue-generating portion of the Park shall receive at least some portion of the revenues generated from such revenue-generating portion, and (ii) with respect to amounts received in any fiscal year by a taxing entity, the governing body of such taxing entity shall allocate the revenues received to operations and/or debt service of such entity, (iii) all taxing entities other than the foregoing shall receive zero percent (0%) of such revenues. Each Host County is specifically authorized, in its sole discretion, to use a portion of the revenue for economic development purposes as permitted by law and as established by ordinance of the county council of the Host County.

(B) Revenues allocable to Aiken County by way of fees in lieu of *ad valorem* taxes generated from properties located in the Edgefield County portion of the Park shall be distributed solely to Aiken County. Revenues allocable to Edgefield County by way of fees in lieu of *ad valorem* taxes generated from properties located in the Aiken County portion of the Park shall be distributed solely to Edgefield County.

8. Fees in Lieu of Ad Valorem Taxes Pursuant to Title 4 or Title 12 of the Code. It is hereby agreed that the entry by Aiken County into any one or more fee in lieu of *ad valorem* tax agreements pursuant to Title 4 or Title 12 of the Code or any successor or comparable statutes (“Negotiated Fee in Lieu of Tax Agreements”), with respect to property located within the Aiken County portion of the Park and the terms of such agreements shall be at the sole discretion of Aiken County. It is further agreed that entry by Edgefield County into any one or more Negotiated Fee in Lieu of Tax Agreements with respect to property located within the Edgefield County portion of the Park and the terms of such agreements shall be at the sole discretion of Edgefield County.

9. Assessed Valuation. For the purpose of calculating the bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3) of the Code, allocation of the assessed value of property within the Park to Aiken County and Edgefield County and to each of the taxing entities within the participating counties shall be in accordance with the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties, pursuant to this Agreement.

10. Applicable Ordinances and Regulations. Any applicable ordinances and regulations of Aiken County including those concerning zoning, health and safety, and building code requirements shall apply to the Park properties located in the Aiken County portion of the Park unless any such property is within the boundaries of a municipality in which case, the municipality’s applicable ordinances and regulations shall apply. Any applicable ordinances and regulations of Edgefield County including those concerning zoning, health and safety, and building code requirements shall apply to the Park properties located in the Edgefield County portion of the Park unless any such property is within the boundaries of a municipality in which case, the municipality’s applicable ordinances and regulations shall apply.

11. Law Enforcement Jurisdiction. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties located in Aiken County is vested with the Sheriff’s Office of Aiken County, for matters within their jurisdiction. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties located in Edgefield County is vested with the Sheriff’s Office of Edgefield County, for matters within their jurisdiction. If any of the Park properties located in either Aiken County or Edgefield County are within the boundaries of a municipality, then jurisdiction to make arrests and

exercise law enforcement jurisdiction is also vested with the law enforcement officials of the municipality for matters within their jurisdiction.

12. **Emergency Services.** All emergency services in the Park shall be provided by those emergency service providers who provide the respective emergency services in that portion of the Host county.

13. **South Carolina Law Controlling.** This Agreement has been entered into in the State of South Carolina and shall be governed by, and construed in accordance with South Carolina law.

14. **Severability.** In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Agreement.

15. **Counterpart Execution.** This Agreement may be executed in multiple counterparts.

16. **Term; Termination.** This Agreement shall extend for a term of thirty (30) years from the effective date of this Agreement, or such later date as shall be specified in any amendment hereto. Notwithstanding the foregoing provisions of this Agreement or any other provision in this Agreement to the contrary, this Agreement shall not expire and may not be terminated to the extent that Aiken County or Edgefield County has outstanding contractual covenants, commitments or agreements to any owner or lessee of Park property, including, but not limited to, Shaw Creek Solar, LLC, a company previously identified as Project McFarlan, to provide, or to facilitate the provision of, special source revenue credits, including, but not limited to, those set forth in that certain Fee in Lieu of Tax and Incentive Agreement by and between Aiken County and Shaw Creek Solar, LLC, a company previously identified as Project McFarlan, dated as of [_____], 2017, as may be amended, modified, or supplemented from time to time, or other incentives requiring inclusion of property of such owner or lessee within the boundaries of a joint county industrial or business park created pursuant to Article VIII, Section 13(D) of the South Carolina Constitution and Title 4, Chapter 1 of the Code, unless the Host County (as defined in Section 7(A) hereof) shall first (i) obtain the written consent of such owner or lessee and, to the extent required (ii) include the property of such owner or lessee as part of another joint county industrial or business park created pursuant to Article III, Section 13(D) of the South Carolina Constitution and Title 4, Chapter 1 of the Code, which inclusion is effective immediately upon termination of this Agreement.

[End of Agreement – Execution Page to Follow]

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

AIKEN COUNTY, SOUTH CAROLINA

By: _____
Ronnie Young, Chairman, County Council
Aiken County, South Carolina

[SEAL]

Attest:

By: _____
Tamara Sullivan, Clerk to County Council
Aiken County, South Carolina

EDGEFIELD COUNTY, SOUTH CAROLINA

By: _____
Dean Campbell, Chairman, County Council
Edgefield County, South Carolina

[SEAL]

Attest:

By: _____
Jennifer Gilley, Clerk to County Council
Edgefield County, South Carolina

Exhibit A (Aiken)

Aiken County Property

[TO BE INSERTED]

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Exhibit B (Edgefield)

Edgefield County Property

None.

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