

NORTH CAROLINA

CHATHAM COUNTY

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this “**MOA**”) made and entered into this ___ day December, 2018, by and between **CHATHAM COUNTY**, a body politic and corporate of the State of North Carolina (the “**County**”) and **TIM’S FARM & FORESTRY, LLC**, a North Carolina limited liability company, and **TIM’S FARM & FORESTRY II, LLC**, a North Carolina limited liability company (collectively the “**Developer**”).

RECITALS

1. The Developer owns or controls certain tracts of real estate located in Chatham and Randolph Counties, North Carolina containing approximately 1,800 acres, which are under option to the County pursuant to an Option Agreement dated the 7th day of September, 2017, which tracts of real estate the County and the Developer plan to develop as an industrial site known as the Chatham-Siler City Advanced Manufacturing Site (the “**CAM Site**”).
2. The County and the Developer have entered into a Locally Administered Project-State Contingency Agreement with the North Carolina Department of Transportation (“**DOT**”) dated October 24, 2018 (the “**DOT Agreement**”) for the completion by the Developer of planning and environmental documentation specific to transportation improvements needed for the CAM Site (the “**Project**”). The County and the Developer specifically understand the Project does not include the preparation of environmental documentation or applications that may be required for the overall development of the CAM Site.
3. DOT has agreed, subject to the provisions of the DOT Agreement and the availability of funds, to participate in the cost of the Project by reimbursing the County for the cost of professional services incurred by County and/or the Developer as provided in the DOT Agreement up to the maximum amount of \$750,000. Pursuant to the terms of the DOT Agreement, if additional funds are needed to complete the Project, the Developer shall bear such cost only to the extent additional funds are approved by the Board of Transportation, in which case a supplemental agreement must be executed among the Department, the County, and the Developer, prior to any reimbursement of funds.
4. The DOT Agreement is a “reimbursement agreement”, meaning there is no disbursement of funds to the County until DOT receives appropriate invoices based on eligible expenses under the DOT Agreement that have already been paid.
5. The purpose of this MOA is to set out the respective obligations of the County and the Developer with respect to the Project and the reimbursement of funds available under the DOT Agreement.

NOW, THEREFORE, the County and the Developer, each in consideration of the promises and undertakings of the other as herein provided, covenant and agree as follows:

1. **Incorporation of Recitals.** The DOT Agreement and the above and foregoing recitals are incorporated in this MOA by reference.

2. **Kimley-Horn Contract.** The Developer has an existing contract with Kimley-Horn and Associates for professional service related to the Project that has been reviewed and approved by DOT (the “Kimley-Horn Contract”). The Kimley-Horn Contract covers a broad range of engineering services for the transportation related items for the CAM Site. Task orders under the Kimley-Horn Contract with specific scopes and specific dollar amounts tied to those services (the “Task Order”) are required to be submitted to and approved by DOT before any reimbursement eligible work is commenced. The Developer has provided the County with copies of paid invoices in the amount of \$262,758.66 (the “Initial Kimley-Horn Reimbursement”) for work completed under reimbursement eligible Task Orders approved by DOT. The County will submit those invoices to DOT for reimbursement under the DOT Agreement.

3. **Allocation of Initial Kimley-Horn Reimbursement.**
 - (a) The County and the Developer agree that \$150,000 of the Initial Kimley-Horn Reimbursement received by the County will be paid to the Chatham County Economic Development Corporation (the “EDC”) to be used by the EDC (after approval by the County) for the benefit of the County, the Developer, and the CAM site to reimburse the Developer for costs incurred and paid for by the Developer related to the new US 64 entrance for the CAM Site, including \$65,127.00 already spent by the Developer which is to be paid to the Developer by the EDC within ten (10) business days of receipt of the Initial Kimley-Horn Reimbursement. The balance of the \$150,000 (\$84,873.00) shall be paid to the Developer for the cost of establishing grubbed building pads and biannual maintenance of said building pads as hereinafter provided.

 - (b) The County and the Developer further agree that the balance of the Initial Kimley-Horn Reimbursement (\$112,758.66) will be paid to the EDC to be used by the EDC (after approval by the County) for the benefit of the CAM Site for the following purposes:
 - Studies needed in preparation for, or as a result of, site visits
 - Other consultant fees needed in preparation for, or as a result of, site visits
 - Preparation of presentation materials for site visits
 - Preparation of building and site layouts for potential projects

- Reasonable travel expenses for offsite presentations (these would be rare and would only apply if the CAM Site is the only Chatham County site under the consideration)
- A redo of the CAM website, if deemed necessary by EDC
- Other unusual or burdensome expenses the EDC deems critical in preparing for a site visit
- Reimbursements to the Town of Siler City for expenses related to mowing the CAM Site in preparation for site visits.

All expenses (except the \$65,127.00 entrance expense) paid by the Developer and for which reimbursement is sought under 3(a) or 3(b) above must be pre-approved by the County upon recommendation by the EDC as to the expense and work to be completed, which approval shall not be unreasonably withheld, conditioned or delayed. Once the expense has been preapproved, and the Developer completes the work and submits commercially reasonable documentation that the work is completed and the expenses incurred, the County shall have ten (10) business days to inspect the work and determine that it has been completed (the “Inspections Period”). The EDC will reimburse the Developer for the completed work within ten (10) business days from the end of the Inspection Period.

4. **Future Contracts for Professional Services.** The Developer shall be solely responsible for future contracts and/or Task Orders for professional engineering services required by the DOT Agreement and for meeting all of the requirements of paragraph 3 of the DOT Agreement, if required. All such contracts and/or Task Orders, with supporting documents, shall be submitted to DOT for approval with a copy of the submittal forwarded to the County.
5. **Documentation of Expenses.** The Developer shall document all expenses eligible for reimbursement under the DOT Agreement and submit copies of the invoices and evidence of payment to the County who shall promptly submit the documentation to DOT for reimbursement.
6. **Planning and Environmental Documents.** The Developer at its sole cost and expense, and at no cost or expense to the County, shall prepare or cause to be prepared the environmental and/or planning documents required for the Project and reimbursable under the terms of the DOT Agreement and in accordance with DOT standards, specifications, policies and procedures.
7. **Future DOT Reimbursements.** Any DOT reimbursements for eligible expenses made by the Developer pursuant to the DOT Agreement and received by the County subsequent to the receipt of the Initial Kimley-Horn Reimbursement shall be paid by the County to the Developer within ten (10) business days of receipt from DOT.
8. **Developers Reimbursement Obligations.** The DOT Agreement places certain reimbursement obligations on the Developer (e.g., in the event of the failure of the

Developer to satisfactorily complete all responsibilities under the DOT Agreement, termination of the Project prior to its completion, etc.). Such reimbursement obligations under the DOT Agreement shall be the obligation of the Developer.

9. **Books and Records.** The Developer shall maintain books, documents, papers, accounting records, and such other evidence in a commercially reasonable manner to substantiate cost incurred with respect to the Project and to document progress with respect to the same, and shall submit copies thereof to the County monthly, on or before the 15th day of each month for the previous month.
10. **County's Reimbursement Obligation.** In no event shall the County have any obligation to make any payment hereunder (except under the indemnity provision of this MOA) unless it has received reimbursement from DOT for an expense previously paid by the Developer and eligible for reimbursement under the DOT Agreement.
11. **Developer's Obligations.** As between the Developer and the County and subject to any required approval by DOT pursuant to paragraph 12 of the DOT Agreement, the County shall have no obligations under the DOT Agreement, to the degree those obligations can be avoided or assigned by the County, except as expressly provided in this MOA. All undertakings, obligations, and expenditures required of the Developer under the DOT Agreement shall be the obligation of the Developer.
12. **Indemnity.** The Developer shall defend, indemnify, and hold the County harmless from any cost, loss, expense (including reasonable attorney fees), payment, or liability the County may incur or suffer resulting, directly or indirectly, from the Developer's failure or refusal to carry out any of its obligations or requirements under this MOA or the DOT Agreement.

The County shall defend, indemnify, and hold the Developer harmless from any cost, loss, expense (including reasonable attorney fees), payment, or liability the Developer may incur or suffer resulting, directly or indirectly, from the County's failure or refusal to carry out any of its obligations or requirements under this MOA or the DOT Agreement.
13. **Further Assurances.** The County and the Developer shall cooperate with each other and take such other and further actions, and execute and deliver such documents as may be reasonably requested by the other party in order to effectuate the purposes of this MOA.
14. **Notices.** All notices made or given pursuant to this Agreement shall be in writing, delivered in person, mailed by certified mail, return receipt requested, or delivered by a recognized overnight courier, postage or fees prepaid, addressed to a party at the address given below, and shall be deemed effective upon the date received, via personal delivery, certified mail, or overnight delivery. The parties shall be responsible for notifying each other of any change of address. Mailing/delivery addresses for the parties are as follows:

If to County: Chatham County
Attention: County Manager

Post Office Box 1809
12 East Street
Pittsboro, North Carolina 27312

If to Developer: Tim's Farm & Forestry, LLC
Attention: Tim Booras
7157 Bobby Jean Road
Julian, North Carolina 27283

15. **Miscellaneous**. This MOA constitutes the entire agreement and understanding between the County and the Developer with respect to the subject matter hereof, and it is understood and agreed that all undertakings negotiations, representations, promises, inducements, and agreements heretofore entered into between the parties with respect to the Project and/or the DOT Agreement are merged in this MOA. This MOA may not be changed orally, but only by a written document signed by each of the parties. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. The provisions of this MOA shall be governed by and construed and enforced in accordance with the laws with the State of North Carolina. The headings contained in this Agreement are solely for the convenience of the parties and do not constitute a part of this Agreement and shall not be used to construe or interpret any provision hereof. This MOA shall be considered for all purposes as having been prepared by the joint efforts of the parties and shall not be construed against one party or the other as a result of preparation, substitution, submission, or any other event of negotiation. The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any other provision of this MOA, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any less extent, such provision shall be enforceable in all such parts and to the greatest extent permissible under applicable law. This MOA may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, and the parties hereto may execute this MOA by signing any such counterpart.

[Signature Page Follows]

IN WITNESS WHEREOF, this MOA has been executed as of the day and year first above written.

CHATHAM COUNTY

By: _____

Name: _____

Title: _____

TIM'S FARM & FORESTRY, LLC

By: _____

Name: _____

Title: _____

TIM'S FARM & FORESTRY II, LLC

By: _____

Name: _____

Title: _____