
SPECIAL SOURCE CREDIT AGREEMENT

among

GREENVILLE COUNTY, SOUTH CAROLINA,

and

[PROJECT OTT]

a _____

Dated as of December [DATE],
2021

SPECIAL SOURCE CREDIT AGREEMENT

THIS SPECIAL SOURCE CREDIT AGREEMENT, dated as of December [DATE], 2021 (the “Agreement”), among GREENVILLE COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the “*County*”), and [PROJECT OTT], a _____ organized and existing under the laws of the State of _____ (the “*Company*”), _____, a _____ organized and existing under the laws of the State of _____.

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “*County Council*”) is authorized by Section 4-1-175 of the Code of Laws of South Carolina 1976, as amended (the “*Infrastructure Credit Act*”), to provide special source credit financing, secured by and payable solely from revenues of the County derived from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the Infrastructure (as defined below), used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County, all within the meaning of Section 4-29-68 of the Code of Laws of South Carolina 1976, as amended; and

WHEREAS, the Company will operate the Project (as defined below) on the land in the County described in Exhibit A hereto, owned by the Company (the “*Land*”); and

WHEREAS, the Company has represented that they intend to invest in the acquisition, construction and installation of buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute a mixed use development consisting of a combination of any of the following uses: multi-family residential, office, hotel, conference center, life science, data center, retail, food and beverage, and cultural and civic community uses, and various public amenities including hiking trails and green spaces in the County (the “*Project*”), which is expected to result in an aggregate investment of at least \$200,000,000 (“*Investment Commitment*”) by the end of the Investment Period (as defined herein); and

WHEREAS, the County and Anderson County have established a joint county industrial and business park (the “*Park*”) by entering into an Agreement for the Development of a Joint County Industrial and Business Park (2021 Park) dated as of [DATE] (the “*Park Agreement*”), pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution and Title 4, Chapter 1 Code of Laws of South Carolina 1976 (collectively, the “*Multi-County Park Act*”), as amended, and have designated the Land as being included within the Park, and the County desires to cause the Park to continue to be located in the Park or such other multi-county industrial and business park so as to afford the Company the benefits of the Infrastructure Credit Act as provided herein; and

WHEREAS, pursuant to the provisions of the Park Agreement, the Company is obligated to make or cause to be made payments in lieu of taxes in the total amount equivalent to the *ad valorem* property taxes, or, if applicable, any negotiated payments in lieu of taxes pursuant to the Code of Laws of South Carolina 1976, as amended, including Title 12, Chapter 44 thereof (the “*FILOT Act*”), that would have been due and payable but for the location of the Project within the Park; and

WHEREAS, pursuant to the Infrastructure Credit Act, the County has agreed to provide certain credits to the Company in respect of the Company’ investment in the Infrastructure with respect to the Project, and is delivering this Agreement in furtherance thereof; and

WHEREAS, the County Council has duly authorized execution and delivery of this Agreement by ordinance duly enacted by the County Council on [DATE], 2021, following conducting a public hearing on [DATE], 2021;

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agrees as follows:

ARTICLE I

DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

“Agreement” shall mean this Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof.

“Code” shall mean the Code of Laws of South Carolina 1976, as amended.

“Company” and **“Company”** shall have the meaning set forth with respect to such term in the recitals to this Agreement.

“Cost of the Infrastructure” shall mean to extent permitted by law, the cost of acquiring, by construction and purchase, the Infrastructure and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Infrastructure; (b) the cost of design and engineering of the Infrastructure; (c) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (d) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, including all costs incurred by the Company, any Project Affiliate, and by any governmental entity or organization that incurs costs in association with environmental cleanup or remediation efforts on the Property, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Infrastructure; (e) all other costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure; and (f) all financing, development, legal, accounting and related costs properly capitalizable to the cost of the Infrastructure.

“County” shall mean Greenville County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina and its successors and assigns.

“Fee Payments” shall mean the payments in lieu of taxes made by the Company and any Project Affiliates with respect to the Project by virtue of the Project’s location in (a) the Park or (b) in any joint county industrial park created by the County and a partner county pursuant to the Park Agreement qualifying under Section 4-1-170 of the Multi-County Park Act or any successor provision.

“FILOT Act” shall mean Title 12, Section 44, of the Code.

“Infrastructure” shall include (i) any tangible property serving the County or its residents, (ii) any improved or unimproved real estate, and (iii) any personal property, including machinery and equipment, used in the operation of the Project, it being the intent of the Company and the County that this term shall have the broadest possible construction permitted by law under Section 4-29-68 of the Code.

“Infrastructure Credit Act” shall have the meaning set forth with respect to such term in the recitals to this Agreement.

“Investment Period” shall mean the period beginning with the first day any Phase of the Project is placed in service and ending five (5) years after the last day of the first property tax year during which any Phase of the Project is placed in service, which period shall be automatically extended upon the achievement of certain investment milestones as described in this paragraph. In the event the Company and any Project Affiliates (as defined below) invest, in the aggregate, not less than \$50,000,000 on or before the last day of the property tax year that is five (5) years after the first property tax year during which the initial Phase of the Project is placed in service, as determined by the Company’s filing of the Infrastructure Investment Certification form attached hereto as Exhibit B (the **“Five Year Investment”**), then the initial Investment Period shall be automatically extended by ten years (**“Five Year Milestone”**). In the event the Company and any Project Affiliates, after achieving the Five Year Milestone, invest, in the aggregate, not less than \$100,000,000 on or before the last day of the property tax year that is ten (10) years after the first property tax year during which the initial and all subsequent Phases of the Project is placed in service, as determined by the Company’s filing of the Infrastructure Investment Certification form attached hereto as Exhibit B (the **“Ten Year Investment”**), then the investment period shall be automatically extended by five years (**“Ten Year Milestone”**). In the event the Company and any Project Affiliates, after achieving the Ten Year Milestone, invest, in the aggregate, not less than \$150,000,000 by the last day of the property tax year that is fifteen (15) years after the first property tax year during which the initial and all subsequent Phases of the Project is placed in service, as determined by the Company’s filing of the Infrastructure Investment Certification form attached hereto as Exhibit B (the **“Fifteen Year Investment”**), then the investment period shall be automatically extended by another five years (**“Fifteen Year Milestone”**). In the event the Company and any Project Affiliates, after achieving the Fifteen Year Milestone, invest, in the aggregate, not less than \$200,000,000 by the last day of the property tax year that is twenty (20) years after the first property tax year during which the initial and all subsequent Phases of the Project is placed in service, as determined by the Company’s filing of the Infrastructure Investment Certification form attached hereto as Exhibit B (the **“Twenty Year Investment”**), then the investment period shall be automatically extended by an additional five (5) years for a maximum investment period of thirty (30) years (**“Twenty Year Milestone”**).

“Land” shall have the meaning set forth with respect to such term in the recitals to this Agreement.

“Minimum Investment” shall mean the aggregate capital investment in the Project by the Company and any Project Affiliate of not less than \$10,000,000 by the Five Year Milestone.

“Multi-County Park Act” shall mean Title 4, Chapter 1 of the Code, and all future acts amendatory thereto.

“Net Fee Payments” shall mean the Fee Payments less any amount payable to the partner county under the Park Agreement.

“Ordinance” shall mean the ordinance enacted by the County Council on _____, 2021, authorizing the execution and delivery of this Agreement.

“Park Agreement” shall mean the Agreement for the Development of a Joint County Industrial and Business Park (2021 Park) dated as of December [DATE], 2021 between the County and Anderson County, South Carolina, as the same may be further amended or supplemented from time to time or such other agreement as the County may enter with respect to the Project to offer the benefits of the Infrastructure Credit Act to the Company hereunder.

“Park” shall mean (i) the joint county industrial park established pursuant to the terms of the Park Agreement and (ii) any joint county industrial park created pursuant to a successor park agreement delivered by the County and a partner county in accordance with Section 4-1-170 of the Act, or any successor provision, with respect to the Project.

“Person” shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, or a government or political subdivision.

“Phase” or “Phases” in respect of the Project shall mean that the components of the Project are placed in service during more than one year during the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year during the Investment Period. As used herein, the term “placed in service” means the date on which a component of the Project has received a certificate of occupancy from the applicable governmental authority with respect to the Project or other evidence that such component is complete for purposes of being considered as placed in service for federal income tax purposes.

“Project” shall have the meaning set forth with respect to such term in the recitals to this Agreement.

“Project Affiliates” means any and all entities, whether or not related to the Company, that join with or are an affiliate of the Company and that participate in the investment in, or financing of, any portion of the Project, provided the Project Affiliate is designated by the Company and executes a signed Joinder Agreement, either in the form attached hereto as **Exhibit C** (in the event of an assignment) or in the form attached hereto as **Exhibit D** (in the event there is no assignment).

“Special Source Credits” shall mean the credits to the Fee Payments in respect of the Company’ investment in Cost of the Infrastructure set forth in Section 3.02(a) hereof.

“Special Source Credits Percentage” shall have the meaning set forth in Section 3.02(d) hereof.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the County. The County makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the County Council, the County has been duly authorized to execute and deliver this Agreement and any and all agreements collateral thereto.

(b) The County proposes to provide the Special Source Credits to reimburse the Company for a portion of the Cost of the Infrastructure for the purpose of promoting economic development of the County.

(c) To the best knowledge of the undersigned representatives of the County, the County is not in violation of any of the provisions of the laws of the State of South Carolina, where any such default would affect the validity or enforceability of this Agreement.

(d) To the best knowledge of the undersigned representatives of the County, the authorization, execution and delivery of this Agreement, the enactment of the Ordinance, and performance of the transactions contemplated hereby and thereby do not and will not, to the best knowledge of the County, conflict with, or result in the violation or breach of, or constitute a default or require any consent under, or create any lien, charge or encumbrance under the provisions of (i) the Constitution of the State or any law, rule, or regulation of any governmental authority, (ii) any agreement to which the County is a party, or (iii) any judgment, order, or decree to which the County is a party or by which it is bound.

(e) To the best knowledge of the undersigned representatives of the County, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the creation, organization or existence of the County or its governing body or the power of the County to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the County is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the undersigned representatives of the County is there any basis therefor.

SECTION 2.02. Representations and Covenants by the Company. The Company make the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a _____ duly organized, validly existing, and in good standing under the laws of the State of _____ and qualified to do business in the State of South Carolina, has power to enter into this Agreement and to carry out its obligations hereunder, and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which either of the Company is now a party or by which either is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of either Company, other than as may be created or permitted by this Agreement.

(c) The Company shall use commercially reasonable efforts to cause (i) the Five Year Milestone, the Ten Year Milestone, and the Fifteen Year Milestone to be achieved during the Investment Period and (ii) the Investment Commitment to be achieved by the end of the Investment Period.

(d) To the best knowledge of the Company, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the power of the Company to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which either Company is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the Company is there any basis therefore.

(e) The Company agrees to reimburse the County for all reasonable expenses, including attorney's fees which shall not in any event exceed \$ _____ in the aggregate, to which it might be put in the review of this Agreement and in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions.

(f) The Company agrees to maintain such books and records with respect to the Project as will permit verification of the Company's compliance with the terms of this Agreement and the certifications submitted to the County pursuant to Section 3.02(e) hereof. The Company, may, by clear, written designation, conspicuously marked, designate with respect to any book and records delivered or made available to the County segments thereof that the Company believes contain proprietary, confidential or trade secret matters. The County shall comply with all reasonable written requests made by the Company with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not release information which has been designated as confidential or proprietary by the Company.

SECTION 2.03. Covenants of the County.

(a) To the best of its ability, the County will at all times maintain its corporate existence and will use its best efforts to maintain, preserve, and renew all its rights, powers and privileges; and it will comply with all valid acts, rules, regulations, orders, and directions of any legislative, executive, administrative, or judicial body applicable to this Agreement.

(b) The County acknowledges that the Park Agreement will expire pursuant to its terms on the later of : (i) December _____, [2084] or (ii) December 31 of the year which is sixty (60) years following the date on which the first portion of the Project is placed into service (the "Original Termination Date"). In the event of any early termination of the Park Agreement or the termination of the Park Agreement on the Original Termination Date, the County agrees to use its best reasonable efforts to cause the Project, at the Company's expense, pursuant to Section 4-1-170 of the Act or any successor provision, to be included in a duly authorized, executed and delivered successor joint county industrial park agreement with an adjoining South Carolina county, which successor agreement shall contain a termination date occurring no earlier than the final year as to which any Special Source Credit shall be payable under this Agreement.

(c) The County covenants that it will from time to time, at the request and expense of the Company, execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Agreement; provided, however, that such instruments or actions shall never create or constitute a general obligation or an indebtedness of the County within the meaning of any State constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power or pledge the full faith, credit or taxing power of the State, or any other political subdivision of the State.

ARTICLE III

SPECIAL SOURCE CREDITS

SECTION 3.01. Payment of Costs of Infrastructure.

The Company and any Project Affiliates shall be responsible for payment of all Costs of the Infrastructure with respect to the Project as and when due, other than those Costs of Infrastructure for which any governmental entity or other organization has expressly agreed to pay, such as costs of environmental cleanup or remediation.

SECTION 3.02. Special Source Credits.

(a) Except as otherwise provided in this Section 3.02, in order to reimburse the Company for a portion of the Cost of the Infrastructure with respect to each Phase of the Project, the County shall provide Special Source Credits to the Company and to any Project Affiliate on an annual basis in the amount equal to the Special Source Credits Percentage for a period of thirty (30) consecutive tax years for each Phase of the Project beginning with the tax year immediately following the year in which the applicable Phase of the Project is first placed in service and continuing for each of the twenty-nine (29) tax years thereafter (“Credit Period”). The Special Source Credits granted in this Section 3.02(a) shall be calculated by multiplying the applicable Special Source Credit Percentage set forth in Section 3.02(d) below by the Net Fee Payments with respect to the Project (that is, with respect to investment made by the Company or any Project Affiliates in the Project during the Investment Period) for the respective tax year. The Company may elect, with respect to any parcel of land constituting the Project, to defer the start date of the Credit Period until the improvements upon the land have been placed in service by providing written notice to this effect to the Greenville County Assessor’s office.

(b) Notwithstanding anything herein to the contrary, under no circumstances shall the Company or any Project Affiliates be entitled to claim or receive any abatement of *ad valorem* taxes pursuant to Sections 12-37-220(A)(7), 12-37-220(B)(32), or 12-37-220(B)(34) of the Code for any portion of the investment in the Project for which a Special Source Credit is taken. Each of the Company and any Project Affiliate hereby waive the right, if any, to receive any abatement of *ad valorem* taxes for any portion of the investment in the Project for which a Special Source Credit is taken. The Company and the Company agree that notwithstanding such waiver, if they receive any abatement of *ad valorem* taxes for any portion of the investment in the Project for which a Special Source Credit is taken, the amount of the Special Source Credit that the Company and any Project Affiliate are otherwise eligible to receive shall be reduced by the amount of the abatement *ad valorem* taxes for the portion of the investment in the Project for which a Special Source Credit is taken.

(c) In no event shall the aggregate amount of all Special Source Credits claimed by the Company and any Project Affiliate exceed the amount expended by the Company, any Project Affiliate, and any governmental entity or organization collectively with respect to the Infrastructure at any point in time. The Company shall be responsible for making written annual certification as to compliance with the provisions of the preceding sentence through the delivery of a certification in substantially the form attached hereto as Exhibit B. Further, any amount of reimbursement of the Company or any Project Affiliate for Infrastructure expenditure by way of a Special Source Credit may not be duplicated through a Special Source Credit to any other entity for the same expenditure.

(d) For purposes of this Agreement, Special Source Credits Percentage shall be determined as follows:

(i) until such date as the Company and all Project Affiliates have invested an amount not less than the Five Year Investment, the Special Source Credits Percentage shall be forty percent (40%); and (ii) assuming the Five Year Investment is made by the date of the Five Year Milestone, following the date that the Five Year Investment is made, the Special Source Credits Percentage shall be seventy-five percent (75%);

(ii) in the event that the Five Year Investment is made by the Five Year Milestone, but any or all of the Ten Year Investment, the Fifteen Year Investment and/or the Twenty Year Investment are not made by the Ten Year Milestone, the Fifteen Year Milestone and Twenty Year Milestone, as applicable, then the Special Source Credits Percentage for properties not already placed in service as of the applicable milestone date shall be reduced to forty percent (40%) until such time,

if any, as the Ten Year Investment, the Fifteen Year Investment and/or Twenty Year Investment, as applicable, is reached; and

(iii) in the event that the Company and all Project Affiliates have not made the Minimum Investment by the Five Year Milestone, the Special Credits Percentage shall be zero percent (0%). In such event, this Agreement shall automatically terminate and the Company shall pay to the County upon such termination the difference between the Fee Payments that would have been made by the Company to the County through the Five Year Milestone if the Special Source Credits Percentage had been zero percent (0%) throughout such period and the actual Fee Payments made by the Company to the County during such period, together with interest thereon as would be due pursuant to Section 12-54-85 of the Code.

(iv) As an example of the provisions in Section 3.02(d)(ii), assume that the Company places the first Phase of the Project into service during 2023 with a total investment of \$60,000,000. The Special Source Credits Percentage for the first Phase shall be 75% for all taxable years after December 31, 2023 until the end of taxable year ending December 31, 2028, which would be the Five Year Milestone. Assuming the Project remains in service and the aggregate Project investment remains at or above the \$50,000,000 Five Year Investment, the 75% Special Source Credits Percentage shall continue until the end of the thirty (30) year Credit Period for each Phase placed in service by the end of the Five Year Milestone. Assume the Company's total investment in the Project as of December 31, 2033, which would be the Ten Year Milestone, is \$90,000,000. As such, the Special Source Credits Percentage would remain 75% with respect to all assets placed in service between the Five Year Milestone and the Ten Year Milestone but would be reduced to 40% with respect to all assets placed in service between the Ten Year Milestone and the Fifteen Year Milestone. Assume the Company's total investment in the Project as of December 31, 2035 is \$110,000,000, the Project remains in service, and the aggregate Project investment remains at or above the \$100,000,000 Ten Year Investment. In this case, the Special Source Credit with respect to all assets placed in service between the Ten Year Milestone and the Fifteen Year Milestone would return to 75% for the remaining years of the thirty year Credit Period for each such Phase. The same process would be repeated on the dates of the Fifteen Year Milestone and Twenty Year Milestone.

(e) As provided in Section 4-29-68 of the Code, to the extent any Special Source Credit is taken against fee in lieu of tax payment on personal property, and the personal property is removed from the Project at any time during the term of this Agreement (and not replaced with qualifying replacement property), the amount of the fee in lieu of taxes due on the personal property for the year in which the personal property was removed from the Project shall be due for the two (2) years immediately following such removal.

(f) THIS AGREEMENT AND THE SPECIAL SOURCE CREDITS BECOMING DUE HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS RECEIVED BY THE COUNTY FOR THE PROJECT PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE A GENERAL OBLIGATION OR AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED FOR THE SPECIAL SOURCE CREDITS.

(g) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or of any warranty herein included or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the Fee Payments for the Project in the Park. The County shall not be required to execute or perform any of its duties, obligations, powers, or covenants hereunder except to the extent of the Fee Payments.

ARTICLE IV

CONDITIONS TO DELIVERY OF AGREEMENT; TITLE TO PROJECT

SECTION 4.01. Documents to be Provided by County. Prior to or simultaneously with the execution and delivery of this Agreement, the County shall provide to the Company:

(a) A copy of the Ordinance, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(b) A copy of the Park Agreement, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(c) Such additional related certificates, instruments or other documents as the Company may reasonably request in a form and substance acceptable to the Company and the County.

SECTION 4.02. Transfers of Project; Assignment of Interest in this Agreement by the Company or Any Project Affiliate. The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, or assign its interest, in whole or in part, in this Agreement, to others; provided, however, that any transfer by the Company or any Project Affiliate of any of its interest in this Agreement to any other Person shall require either the prior written consent or the subsequent written ratification of the County, in the form of a County Resolution, enactment of which shall not be unreasonably withheld by the County. No such sale, lease, conveyance, grant or assignment shall relieve the County from the County's obligations to provide Special Source Credits to the Company or any Project Affiliate, as the case may be, or any assignee of the same, under this Agreement as long as such assignee is qualified to receive the Special Source Credits under the Infrastructure Credit Act and enters into a joinder agreement in substantially the form attached hereto as Exhibit C.

SECTION 4.03. Assignment by County. The County shall not assign, transfer, or convey its obligations to provide Special Source Credits hereunder to any other Person, except as may be required by South Carolina law.

ARTICLE V

DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default. If the County or the Company shall fail duly and punctually to perform any covenant, condition, agreement or provision contained in this Agreement on its part to be performed, which failure shall continue for a period of thirty (30) days after written notice by the County or the Company, respectively, specifying the failure and requesting that it be remedied is given to the County by the Company, or to the Company by the County, by first-class mail, the County or the Company, respectively, shall be in default under this Agreement (an “Event of Default”).

SECTION 5.02. Remedies and Legal Proceedings by the Company or the County. Upon the happening and continuance of any Event of Default, then and in every such case the Company or the County, as the case may be, in their discretion may:

- (a) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its or their rights and require the other party to carry out any agreements with or for its benefit and to perform its or their duties under the Act and this Agreement;
- (b) bring suit upon this Agreement;
- (c) exercise any or all rights and remedies provided by applicable laws of the State of South Carolina; or
- (d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

SECTION 5.03. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the County or either Company hereunder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

SECTION 5.04. Nonwaiver. No delay or omission of the County or either Company to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every power and remedy given by this Article V to any party may be exercised from time to time and as often as may be deemed expedient.

ARTICLE VI

MISCELLANEOUS

SECTION 6.01. Termination. Subject to Sections 5.01 and 5.02 above, this Agreement shall terminate on the date upon which all Special Source Credits provided for herein have been credited to the Company and all applicable Project Affiliates.

SECTION 6.02. Successors and Assigns. All the covenants, stipulations, promises, and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County, shall be transferred.

SECTION 6.03. Provisions of Agreement for Sole Benefit of the County and the Company. Except as in this Agreement otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person other than the County, the Company, and any Project Affiliate any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County, the Company, and any Project Affiliate.

SECTION 6.04. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, the illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement, the Special Source Credits shall be construed and enforced as if the illegal or invalid provisions had not been contained herein or therein.

SECTION 6.05. No Liability for Personnel of the County or the Company. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, agent, or employee of the County or its governing body or the Company or any of their officers, employees, or agents in his individual capacity, and neither the members of the governing body of the County nor any official executing this Agreement shall be liable personally on the Special Source Credits or this Agreement or be subject to any personal liability of accountability by reason of the issuance thereof.

SECTION 6.06. Notices. All notices, certificates, requests, or other communications under this Agreement shall be sufficiently given and shall be deemed given, unless otherwise required by this Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States certified mail, return-receipt requested, restricted delivery, postage prepaid, addressed as follows:

(a) if to the County: Greenville County, South Carolina
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
Attn: Deputy County Administrator

with a copy to:
(which shall not
constitute notice
to the County)

Greenville County, South Carolina
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
Attn: County Attorney

(b) if to the Company:

Attn: _____

with a copy to:
(which shall not
constitute notice
to the Company)

Richard Few
Parker Poe Adams & Bernstein LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601
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A duplicate copy of each notice, certificate, request or other communication given under this Agreement to the County or the Company shall also be given to the others. The County and the Company may, by notice given under this Section 6.06, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 6.07. Applicable Law. The laws of the State of South Carolina shall govern the construction of this Agreement.

SECTION 6.08. Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument. This Agreement may be circulated for signature through electronic transmission, including, without limitation, facsimile and email, and all signatures so obtained and transmitted shall be deemed for all purposes under this Agreement to be original signatures and may conclusively be relied upon by any Party to this Agreement.

SECTION 6.09. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

SECTION 6.11. Indemnity.

(a) Notwithstanding the fact that it is the intention of the parties that the County, its members, officers, elected officials, employees, servants and agents (collectively, the ***“Indemnified Parties”***) shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Special Source Credits, by reason of the execution of this Agreement, by the reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or by the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld); provided, however, that such indemnity shall not apply to the extent that any such claim is proximately caused by (i) the grossly negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any breach of this Agreement by the County.

(b) Notwithstanding anything in this Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by the Company, shall survive any termination of this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Greenville County, South Carolina, has caused this Agreement to be executed by the Chairman of Greenville County Council and its corporate seal to be hereunto affixed and attested by the Clerk of its County Council and [PROJECT OTT] has caused this Agreement to be executed by their respective authorized officers, all as of the day and year first above written.

GREENVILLE COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Willis Meadows, Chairman of County Council
Greenville County, South Carolina

By: _____
Joseph M. Kernell, County Administrator
Greenville County, South Carolina

ATTEST:

Regina McCaskill, Clerk to County Council of
Greenville County, South Carolina

[Signature page 1 to Special Source Credit Agreement]

[PROJECT OTT]

By: _____

Name: _____

Title: _____

[Signature page 2 to Special Source Credit Agreement]

EXHIBIT A

REAL PROPERTY DESCRIPTION

EXHIBIT B

INFRASTRUCTURE INVESTMENT CERTIFICATION

I _____, the _____ of _____ (the "**Company**"), do hereby certify in connection with the Special Source Credit Agreement dated as of December [DATE], 2021 (the "**Agreement**") between Greenville County, South Carolina and _____ (the "**Company**") and _____ (the "**Company**"), as follows:

(1) As of December 31, 20__, the total amount of Special Source Credits received by the Company and any Project Affiliate is as follows:

(a)	Company	\$ _____
(b)	Project Affiliate	_____
(c)	Total Special Source Credits received	<u> \$ _____ </u>

(2) As of December 31, 20__, the total amount of investment in Costs of Infrastructure by the Company, any Project Affiliates, and any governmental entity or organization is not less than \$_____.

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this ____ day of _____, 20__.

By: _____
Name: _____
Its: _____

EXHIBIT C

FORM OF JOINDER AGREEMENT [ASSIGNMENT]

Reference is made to that certain SPECIAL SOURCE CREDIT AGREEMENT, dated as of _____, 2021 (the “Agreement”), between the COUNTY OF GREENVILLE, SOUTH CAROLINA (the “County”) and [PROJECT OTT] (the “Company”), a copy of which is attached hereto.

RECITALS:

Section 4.02 of the Agreement allows the Company to assign or transfer any or all of its interest in the Agreement to a Project Affiliate with the consent of the County. Contemporaneously herewith, the Company is assigning its interest to the undersigned assignee as a Project Affiliate (“Assignee”) and Assignee is agreeing to accept such assignment from the Company subject to its agreement to enter into this Joinder Agreement in favor of the County and for the benefit of the Company.

NOW, THEREFORE, in consideration of the assignment of the Company’s interest in the Agreement as set forth herein and the County’s consent to such assignment as set forth below, Assignee hereby agrees as follows:

1. Property [Purchase/Lease]. The property described in the attached Schedule 1 has been [purchased by/leased to] the Assignee (the “Subject Property”) and the Subject Property is currently subject to the Agreement.

2. Joinder to Agreement. The Assignee hereby joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Agreement except the provisions of Section 2.02, Section 3.01 only as it relates to the Company’s obligations thereunder, and Section 6.11, all of which shall remain obligations of the Company, and further acknowledges and agrees that the undersigned shall have all of the rights and obligations as an assignee or successor in interest to the Company as set forth in the Agreement. In addition, the Assignee hereby agrees to indemnify the Company and its members, officers, employees, servants and agents (collectively, the “Company Indemnified Parties”) and hold the Company Indemnified Parties harmless from and against all claims and obligations of the Company to the County and the Indemnified Parties pursuant to Section 6.11 of the Agreement with respect to the Assignee’s performance or failure to perform of its obligations under the Agreement with respect to the Subject Property to the same extent of the Company’s obligations to indemnify the County and the Indemnified Parties under Section 6.11 concerning the Subject Property; provided, however, that such indemnity shall not apply to the extent that any such claim is proximately caused by (i) the grossly negligent acts or omissions or willful misconduct of the Company, its members, agents, officers or employees, or (ii) any breach of the Agreement by the Company.

2. Capitalized Terms. All capitalized terms used but not defined in this Joinder Agreement shall have the meanings set forth in the Agreement.

3. Governing Law. This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to principles of choice of law.

4. Notice. Notices under Section 6.06 of the Agreement shall be sent to Assignee as follows: _____
_____.

5. Counterparts. This Joinder Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument. Facsimile signatures or electronic signatures, including but not limited to signatures circulated by e-mail, may be relied upon by all parties to the Agreement and to this Joinder Agreement as if originals.

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

[Name of Assignee], a _____ organized and existing under the laws of the State of _____ (the "Company")

By: _____
Name: _____
Title: _____

Effective Date:

The foregoing Joinder Agreement is hereby acknowledged, accepted and agreed to by the County as authorized by the Resolution adopted by the County Council for Greenville County, South Carolina on _____, 20__.

GREENVILLE COUNTY, SOUTH CAROLINA

By: _____
Name: _____
Title: County Administrator

EXHIBIT D

FORM OF JOINDER AGREEMENT [NO ASSIGNMENT]

Reference is made to that certain SPECIAL SOURCE CREDIT AGREEMENT, dated as of _____, 2021 (the “Agreement”), between the COUNTY OF GREENVILLE, SOUTH CAROLINA (the “County”) and [PROJECT OTT] (the “Company”), a copy of which is attached hereto.

RECITALS:

Article I of the Agreement allows the Company to designate a Project Affiliate to join the Agreement as a party. Contemporaneously herewith, the Company is designating _____ as a Project Affiliate (“Affiliate”) and Affiliate is agreeing to accept such designation from the Company subject to its agreement to enter into this Joinder Agreement for the benefit of the Company.

NOW, THEREFORE, in consideration of the designation of the Affiliate as set forth herein and the Company’s and County’s consent to such designation as set forth below, Affiliate hereby agrees as follows:

1. **Joinder to Agreement.** The Affiliate hereby joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Agreement except the provisions of Section 2.02, Section 3.01 only as it relates to the Company’s obligations thereunder, and Section 6.11, all of which shall remain obligations of the Company, and further acknowledges and agrees that the undersigned shall have all of the rights and obligations of a Project Affiliate as set forth in the Agreement. In addition, the Affiliate hereby agrees to indemnify the Company and its members, officers, employees, servants and agents (collectively, the “Company Indemnified Parties”) and hold the Company Indemnified Parties harmless from and against all claims and obligations of the Company to the County and the Indemnified Parties pursuant to Section 6.11 of the Agreement with respect to the Affiliate’s performance or failure to perform of its obligations under the Agreement with respect to the Subject Property to the same extent of the Company’s obligations to indemnify the County and the Indemnified Parties under Section 6.11 concerning the Subject Property; provided, however, that such indemnity shall not apply to the extent that any such claim is proximately caused by (i) the grossly negligent acts or omissions or willful misconduct of the Company, its members, agents, officers or employees, or (ii) any breach of the Agreement by the Company.
2. **Capitalized Terms.** All capitalized terms used but not defined in this Joinder Agreement shall have the meanings set forth in the Agreement.
3. **Governing Law.** This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to principles of choice of law.
4. **Notice.** Notices under Section 6.06 of the Agreement shall be sent to Affiliate as follows: _____
_____.
5. **Counterparts.** This Joinder Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument. Facsimile signatures or electronic signatures, including but not limited to signatures circulated by e-mail, may be relied upon by all parties to the Agreement and to this Joinder Agreement as if originals.

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

[Name of Affiliate], a _____ organized and existing under the laws of the State of _____ (the "Company")

By: _____

Name: _____

Title: _____

Effective Date:

The foregoing Joinder Agreement is hereby acknowledged, accepted and agreed to by the County as authorized by the Resolution adopted by the County Council for Greenville County, South Carolina on _____, 20__.

GREENVILLE COUNTY, SOUTH CAROLINA

By: _____

Name: _____

Title: County Administrator