
**SECOND AMENDMENT TO
FEE IN LIEU OF TAX AGREEMENT**

between

GREENVILLE COUNTY, SOUTH CAROLINA

and

PROJECT DRAGON FIRE

Dated as of [●], 2024

This First Amendment pertains to that certain Fee in Lieu of Tax Agreement, dated as of [●], 20[●], between Greenville County, South Carolina and Project Dragon Fire, as amended by that certain First Amendment to Fee in Lieu of Tax Agreement between Greenville County, South Carolina and Project Dragon Fire, dated as of [●], 20[●].

SECOND AMENDMENT TO FEE IN LIEU OF TAX AGREEMENT

THIS SECOND AMENDMENT TO FEE IN LIEU OF TAX AGREEMENT (this “*Second Amendment*”) is made and entered into as of [●], 2024 by and between **GREENVILLE COUNTY, SOUTH CAROLINA** (the “*County*”), a body politic and corporate and a political subdivision of the State of South Carolina (the “*State*”), acting by and through the Greenville County Council (the “*County Council*”) as the governing body of the County, and a company identified for the time being as **PROJECT DRAGON FIRE** (the “*Company*”).

RECITALS

1. Title 12, Chapter 44 (the “*FILOT Act*”), Code of Laws of South Carolina, 1976, as amended (the “*Code*”), authorizes the County to (a) induce industries to locate in the State; (b) encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (c) enter into a fee agreement with entities meeting the requirements of the FILOT Act, which identifies certain property of such entities as economic development property and provides for the payment of a fee in lieu of tax with respect to such property.

2. The Company and the County are party to that certain Fee in Lieu of Tax Agreement dated as of [●], 20[●], as amended by that certain First Amendment to Fee in Lieu of Tax Agreement dated [●], 20[●] (as amended, the “*FILOT Agreement*”), wherein the County agreed to provide certain incentives with respect to the Project (as defined in the FILOT Agreement) to constitute a facility in the County for warehousing, distribution, assembly, and/or manufacturing and related activities.

3. The Company has committed to further invest, or cause further investment, in the Project and, in consideration of such commitment and in accordance with Section 12-44-40(K) of the FILOT Act, the County has determined to approve certain modifications to the FILOT Agreement, all as memorialized, ratified, and detailed more particularly herein.

4. By enactment of an Ordinance on [●], 2024, the County Council has authorized the County to enter into this Second Amendment with the Company, which modifies the FILOT Agreement as referenced above and as set forth in this Second Amendment.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

Section 1. Definitions. Defined terms utilized herein and not otherwise defined herein shall have the meanings ascribed to them in the FILOT Agreement.

Section 2. Amendment of FILOT Agreement. The FILOT Agreement is hereby amended as follows:

(a) Section 1.01 is hereby amended as follows:

i. The definition of “Administration Expenses” is deleted in its entirety and the following is substituted therefor:

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County with respect to this Fee Agreement, including, without limitation, reasonable attorney’s fees incurred by the County for review of the First Amendment, Second Amendment, and any written joinder agreement prepared in

connection therewith; provided, however, that no such expense shall be considered an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred.

- ii. The definition of “Fee Agreement” is deleted in its entirety and the following is substituted therefor:

“*Fee Agreement*” shall mean this Fee in Lieu of Tax Agreement, as originally executed and from time to time supplemented or amended as permitted herein, including, without limitation, as amended by the First Amendment and the Second Amendment.

- iii. The definition of “Investment Period” is deleted in its entirety and the following is substituted therefor:

“*Investment Period*” shall initially mean, and be equal to, the Standard Investment Period; provided, however, in the event that the Level 1 Minimum Investment Threshold is satisfied by the end of the Standard Investment Period, the Investment Period shall be automatically extended, without further action or proceedings of the County or the County Council, by five (5) years beyond the Standard Investment Period to end ten (10) years after the Commencement Date.

- iv. The definition of “Level 4 Minimum Investment Threshold” is inserted and included to read as follows:

“*Level 4 Minimum Investment Threshold*” shall mean, with respect to the Project, investment by the Company and any Sponsor Affiliates, in the aggregate, of at least \$84,390,100 (without regard to depreciation or other diminution in value) in Economic Development Property subject (non-exempt) to *ad valorem* taxation (in the absence of this Fee Agreement).

- v. The definition of “Level 4 Special Source Credits” is inserted and included to read as follows:

“*Level 4 Special Source Credits*” shall have the meaning ascribed thereto in **Section 4.02(a)** hereof.

- vi. The definition of “Second Amendment” is inserted and included to read as follows:

“*Second Amendment*” shall mean that certain Second Amendment to Fee in Lieu of Tax Agreement, dated as of [●], 2024, by and between the County and the Company.

- vii. The definition of “Special Source Credits” is deleted in its entirety and the following is substituted therefor:

“*Special Source Credits*” shall mean the Level 1 Special Source Credits, the Level 2 Special Source Credits, the Level 3 Special Source Credits, or the Level 4 Special Source Credits, as the case may be, to which a Credit Eligible Entity is entitled under **Section 4.02** hereof.

(b) Section 4.02 is hereby amended as follows:

i. Subsection (a) is deleted in its entirety and the following is substituted therefor:

(a) In accordance with and pursuant to Section 12-44-70 of the FILOT Act and Section 4-1-175 of the MCIP Act, in order to reimburse for qualifying capital expenditures incurred for costs of the Infrastructure and in the event the Level 1 Minimum Investment Threshold is satisfied by the end of the Standard Investment Period, the Company and each Sponsor Affiliate (each, a “**Credit Eligible Entity**”) shall be entitled to receive, and the County agrees to provide, annual special source revenue credits against each FILOT Payment due from each such Credit Eligible Entity with respect to the Project for a period of ten (10) consecutive tax years in an amount equal to twenty-five percent (25%) of such FILOT Payment (that is, with respect to investment made by such Credit Eligible Entity in the Project), calculated and applied after payment of the amount due the non-host county under the MCIP Agreement (the “**Level 1 Special Source Credits**”), beginning with the FILOT Payment due from such Credit Eligible Entity for the tax year corresponding to the property tax year in which the Level 1 Minimum Investment Threshold is satisfied (the “**Special Source Credit Commencement Year**”); provided, however, that in the event that the Level 2 Minimum Investment Threshold is satisfied by the end of the Investment Period, such special source revenue credit percentage shall automatically increase from twenty-five percent (25%) to thirty percent (30%), beginning with the FILOT Payment due from such Credit Eligible Entity for the tax year corresponding to the property tax year in which Level 2 Minimum Investment Threshold is satisfied, and the existing special source revenue credit term of ten (10) tax years shall automatically extend from ten (10) consecutive tax years beginning with the Special Source Credit Commencement Year to fifteen (15) consecutive tax years beginning with the Special Source Credit Commencement Year (the “**Level 2 Special Source Credits**”); provided further, that in the event that the Level 3 Minimum Investment Threshold is satisfied by the end of the Investment Period, such special source revenue credits percentage shall automatically increase from thirty percent (30%) to thirty-five percent (35%) for the remainder of the fifteen tax years comprising the period referenced above (the “**Level 3 Special Source Credits**”), beginning with the FILOT Payment due from such Credit Eligible Entity for the tax year corresponding to the property tax year in which the Level 3 Minimum Investment Threshold is satisfied; provided further, that in the event that the Level 4 Minimum Investment Threshold is satisfied by the end of the Investment Period, such special source revenue credits percentage shall automatically increase from thirty-five percent (35%) to forty percent (40%) for the remainder of the fifteen tax years comprising the period referenced above (the “**Level 4 Special Source Credits**”), beginning with the FILOT Payment due from such Credit Eligible Entity for the tax year corresponding to the property tax year in which the Level 4 Minimum Investment Threshold is satisfied.

ii. Subsection (b) is deleted in its entirety and the following is substituted therefor:

(b) As set forth in Section 4.02(a) hereof, the Special Source Credits to which a Credit Eligible Entity is entitled under this Fee Agreement shall only become due and payable to such Credit Eligible Entity upon the satisfaction of the Level 1 Minimum Investment Threshold, the Level 2 Minimum Investment Threshold, the Level 3 Minimum Investment Threshold, or the Level 4 Minimum Investment Threshold, as the case may be. Notwithstanding the foregoing, for any tax year for

which Special Source Credits are due to a Credit Eligible Entity under this Fee Agreement, application of the Level 1 Special Source Credits, the Level 2 Special Source Credits, the Level 3 Special Source Credits, or the Level 4 Special Source Credits for such tax year shall be the Special Source Credits applicable for the highest investment threshold in the Project (without regard to depreciation or other diminution in value) by the Company and any Sponsor Affiliates (of those set investment thresholds set forth in the Level 1 Minimum Investment Threshold, the Level 2 Minimum Investment Threshold, the Level 3 Minimum Investment Threshold, and the Level 4 Minimum Investment Threshold) met and maintained as of the last day of the property tax year corresponding to such tax year.

- (c) The first sentence of subsection (b) of Section 4.03 is hereby deleted in its entirety and the following is substituted therefor:

As a condition to the FILOT benefit provided herein, the Company agrees to provide the County Administrator, the County Assessor, the County Auditor, the County Treasurer, and the Greenville Area Development Corporation with an annual certification as to investment in the Project.

- (d) The second sentence of Section 6.02(a) is deleted in its entirety and the following is substituted therefor:

In no event shall the Company or any Sponsor Affiliate be liable to the County or otherwise for monetary damages resulting from the Company's (together with any Sponsor Affiliates) failure to meet any investment obligations under this Fee Agreement, including, without limitation, the Contract Minimum Investment Requirement, the Level 1 Minimum Investment Threshold, the Level 2 Minimum Investment Threshold, the Level 3 Minimum Investment Threshold, the Level 4 Minimum Investment Threshold, and, to the extent permitted by law, the FILOT Act Minimum Investment Requirement, other than as expressly set forth in this Fee Agreement.

- (e) Section 7.01 is hereby amended as follows:

- i. The notice address for the Company's copy party is hereby deleted in its entirety and the following is substituted therefor:

With copies to (which shall not constitute notice):

Tushar V. Chikhliker
Maynard Nexsen PC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

- (f) Exhibit A to the FILOT Agreement is hereby deleted in its entirety and the following is substituted therefor:

See Form of Exhibit A to FILOT Agreement attached hereto.

- (g) Exhibit C to the FILOT Agreement is hereby deleted in its entirety and the following is substituted therefor:

See Form of Exhibit C to FILOT Agreement attached hereto.

Section 3. Remaining Terms and Provisions. Except as expressly amended hereby, the terms and provisions of the FILOT Agreement shall remain unchanged and in full force and effect.

Section 4. Entire Understanding. The FILOT Agreement, as amended by this Second Amendment, expresses the entire understanding and all agreements of the parties hereto pertaining to the matters set forth herein and therein and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in the FILOT Agreement, as amended by this Second Amendment, or in certificates delivered in connection with the execution and delivery hereof.

Section 5. Severability. In the event that any clause or provision of this Second Amendment shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 6. Multiple Counterparts; Electronic Signatures. This Second Amendment 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. Signature pages may be delivered with original signatures or by photostatic reproduction, telephonic facsimile transmission, email or other electronic transmission or other similar means whereby each original signature has been reproduced (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com), and all reproduced signatures shall be deemed “electronic signatures” and equivalent to an original signature for all purposes.

[Signature Pages Follow]

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Second Amendment to Fee in Lieu of Tax Agreement to be executed in its name and on its behalf by the Chairman of County Council and the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this Second Amendment to Fee in Lieu of Tax Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

GREENVILLE COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Chairman of County Council

By: _____
County Administrator

ATTEST:

Clerk to County Council of
Greenville County, South Carolina

PROJECT DRAGON FIRE

By: _____

Name: _____

Title: _____

Form of Exhibit A to FILOT Agreement

See attached.

EXHIBIT A

INVESTMENT CERTIFICATION

I _____, the _____ of a company identified for the time being as Project Dragon Fire (the "**Company**"), do hereby certify in connection with Section 4.03 of the Fee in Lieu of Tax Agreement dated as of [●], 20[●] between Greenville County, South Carolina (the "**County**") and the Company, as amended by that certain First Amendment to Fee in Lieu of Tax Agreement dated as of [●], 20[●] between the County and the Company, as amended by that certain Second Amendment to Fee in Lieu of Tax Agreement dated as of [●], 20[●] between the County and the Company (collectively, as amended, the "**Agreement**"), as follows:

(1) The total investment made by the Company and any Sponsor Affiliates in the Project during the calendar year ending December 31, 20__ was \$_____.

(2) The cumulative total investment made by the Company and any Sponsor Affiliates in the Project from the period beginning _____, 20__ (that is, the beginning date of the Standard Investment Period) and ending December 31, 20__, is \$_____.

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__.

PROJECT DRAGON FIRE

By: _____
Name: _____
Its: _____

Form of Exhibit C to FILOT Agreement

See attached.

EXHIBIT C

INFRASTRUCTURE INVESTMENT CERTIFICATION

I _____, the _____ of a company identified for the time being as Project Dragon Fire (the "**Company**"), do hereby certify in connection with Section 4.02 of the Fee in Lieu of Tax Agreement dated as of [●], 20[●], between Greenville County, South Carolina (the "**County**") and the Company, as amended by that certain First Amendment to Fee in Lieu of Tax Agreement dated as of [●], 20[●] between the County and the Company, as amended by that certain Second Amendment to Fee in Lieu of Tax Agreement dated as of [●], 20[●] between the County and the Company (collectively, as amended, the "**Agreement**"), as follows:

(1) As of the date hereof, the aggregate amount of Special Source Credits previously received by each Credit Eligible Entity is \$_____.

(2) As of December 31, 20__, the aggregate amount of investment in costs of Infrastructure incurred by the Company and any Sponsor Affiliates during the Investment Period is not less than \$_____.

(3) **[Use only if expenditures for personal property will be used to account for Special Source Credits.]** Of the total amount set forth in (2) above, \$_____ pertains to the investment in personal property, including machinery and equipment, at the Project. The applicable personal property, and associated expenditures, are listed below:

<u>Personal Property Description</u>	<u>Investment Amount</u>
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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__.

PROJECT DRAGON FIRE

Name: _____

Its: _____