

SECOND AMENDMENT TO THE FEE AGREEMENT

This SECOND AMENDMENT TO THE FEE AGREEMENT (the “Second Amendment”) is made and entered into as of _____, 2024, by and among LANCASTER COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (“County”), PROJECT TREE, a _____ Corporation (“Sponsor”), and PROJECT TREE SPONSOR AFFILIATE, a _____ limited liability company (“Sponsor Affiliate”) (Sponsor and Sponsor Affiliate are collectively referred to herein as the “Companies”).

RECITALS

WHEREAS, pursuant to Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “Act”), the County, Sponsor and Sponsor Affiliate, a _____ limited liability company, entered into a Fee Agreement dated as of December 14, 2020 (the “Original Fee Agreement”), for the purpose of, among other things, providing incentives in the form of a fee in lieu of tax arrangement and special source credits in connection with the “Project,” as defined in the Fee Agreement;

WHEREAS, pursuant to the Act and Sections 4-1-175, 4-29-68, and 12-44-70 of the Code of Laws of South Carolina 1976, as amended (the “SSRC Act”), the County is authorized to provide infrastructure improvement credits or special source revenue credits (“SSRCs”) to the Sponsor for the purpose of paying the cost of designing, acquiring, constructing, improving, or expanding certain qualifying infrastructure;

WHEREAS, Sponsor assigned its interest in the Fee Agreement to Sponsor Affiliate, a limited liability company, by that certain Assignment and Assumption of Fee Agreement and Special Source Revenue Credit Agreement dated as of December 29, 2020; and

WHEREAS, said Sponsor Affiliate assigned its interest in the Fee Agreement to Sponsor Affiliate by that certain Assignment of Fee Agreement and Special Source Revenue Credit Agreement dated as of December 30, 2022; and

WHEREAS, the County, Sponsor, and Sponsor Affiliate entered into that certain First Amendment to the Fee Agreement dated February 12, 2024 (the “First Amendment”), which amended certain provisions of the Original Fee Agreement related to SSRCs and Full-Time Jobs (the Original Fee Agreement as amended by the First Amendment is referred to as the “Fee Agreement” hereunder)

WHEREAS, the County, pursuant to the SSRC Act, has previously provided SSRCs to the Sponsor in the Fee Agreement; and

WHEREAS, the Sponsor desires to make an additional investment for the purposes of expanding the Project (the “Expansion”) and, in conjunction therewith, make additional adjustments to the SSRCs under the Fee Agreement; and

WHEREAS, in consideration of the Sponsor’s continued and additional investment at the Project, the County and the Companies desire to amend the Fee Agreement so as to adjust the previously approved SSRCs.

SECOND AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Companies agree:

Section 1. *Incorporation of Recitals.* The above recitals are incorporated into this Second Amendment as if the recitals were set out in this Second Amendment in their entirety.

Section 2. *Recitals.* The second WHEREAS clause in the Recitals is amended to read:

“WHEREAS, Sponsor proposes to expand certain of its business operations in the County in a facility constructed by Sponsor Affiliate and leased to Sponsor, as such facility may be subsequently expanded from time to time (as may be expanded, the “Project”);”

Section 3. *Statutorily Required Recapitulation.* Section 1.01(b)(7)(c) of the Fee Agreement is amended to read:

“Special Source Revenue Credits shall be provided for the Economic Development Property in amounts equal to: (i) fifty-eight percent (58%) of the Negotiated FILOT Payments beginning not later than the Negotiated FILOT Payments due without penalty by January 15, 2022 and ending not later than the Negotiated FILOT Payment due without penalty by January 15, 2024; (ii) forty percent (40%) of the Negotiated FILOT Payments beginning not later than the Negotiated FILOT Payment due without penalty by January 15, 2025 and ending not later than the Negotiated FILOT Payment due without penalty by January 15, 2028; and (iii) twenty-five percent (25%) of the Negotiated FILOT Payments beginning not later than the Negotiated FILOT Payment due without penalty by January 15, 2029 and ending not later than the Negotiated FILOT Payment due without penalty by January 15, 2033.”

Section 4. *Investment by Company in Project.* Section 4.01(b) of the Fee Agreement is amended to read:

“For the Project, Sponsor agrees and commits to the following aggregate Jobs Commitment: the creation and maintenance of the number of Full-Time Jobs, paying an hourly wage rate not less than the Wage Requirement, at the following employment levels and in the designated timeframes:

(1) to have employed in Full-Time Jobs, paying an hourly wage rate not less than the Wage Requirement, an average of not less than sixty-two (62) in calendar year 2020 through calendar year 2022, and

(2) to have employed in Full-Time Jobs, paying an hourly wage rate not less than the Wage Requirement, an average of not less than forty (40) in calendar year 2023 through calendar year 2031.”

Section 5. *Payments in Lieu of Ad Valorem Taxes.*

(a) Section 5.01(d) of the Fee Agreement is amended to read:

“Special Source Revenue Credits shall be provided for the Economic Development Property in amounts equal to:

(i) fifty-eight percent (58%) of the Negotiated FILOT Payments beginning not later than the Negotiated FILOT Payments due without penalty by January 15, 2022 and ending not later than the Negotiated FILOT Payment due without penalty by January 15, 2024;

(ii) forty percent (40%) of the Negotiated FILOT Payments beginning not later than the Negotiated FILOT Payment due without penalty by January 15, 2025 and ending not later than the Negotiated FILOT Payment due without penalty by January 15, 2028; and

(iii) twenty-five percent (25%) of the Negotiated FILOT Payments beginning not later than the Negotiated FILOT Payment due without penalty by January 15, 2029 and ending not later than the Negotiated FILOT Payment due without penalty by January 15, 2033.

Company agrees to maintain a membership in the Lancaster County Chamber of Commerce in any year in which it receives a Special Source Revenue Credit pursuant to this Section 5.01(d). At no time shall the aggregate Special Source Revenue Credits provided pursuant to this Section 5.01(d) exceed the aggregate cost of Infrastructure Improvements incurred by Sponsor and any other Co-Investors. The Special Source Revenue Credit provided in this Section 5.01(d) applies only to the Economic Development Property and does not apply to the Non-Qualifying Property or to any other property.”

(b) Section 5.01(j) of the Fee Agreement is amended to read:

“Notwithstanding any other provision of this Agreement, the Special Source Revenue Credits provided in Section 5.01(d) above are not applicable in any year immediately following a year in which the Company has failed to maintain the Jobs Commitment in Section 4.01(b) above.

In addition, the twenty-five percent (25%) Special Source Revenue Credit set forth in Section 5.01(d)(iii) above to be provided with respect to the Negotiated FILOT Payments due without penalty by January 15, 2029 through January 15, 2033:

(a) shall not be provided in the event the Sponsor, collectively with Sponsor Affiliate and any other Co-Investors, does not invest at least nine million dollars (\$9,000,000) in Economic Development Property by the end of the Investment Period; and

(b) shall not be provided with respect to any year immediately following a year in which the Sponsor, collectively with Sponsor Affiliate and any other Co-Investors, has failed to maintain an investment of at least nine million dollars (\$9,000,000), without regard to depreciation, in Economic Development Property.”

Section 6. *Payment of Expenses.* Upon submission by the County of appropriate documentation of the expenditure, the Sponsor agrees to reimburse the County, not later than sixty (60) days following such submission, for the County's reasonable unreimbursed actual costs incurred related to this Second Amendment. The cost reimbursement is limited to County payments to third-party vendors, including, but not limited to, payments for attorney's fees.

Section 7. *Representations and Warranties; Confirmation.*

(A) Sponsor represents and warrants, as the basis for the undertakings on its part contained in this Second Amendment, that it (i) is a corporation organized and existing and in good standing under the laws of _____, (ii) is authorized to do business in South Carolina, (iii) has all requisite power to enter into this Second Amendment, and (iv) by proper action has been duly authorized to execute and deliver this Second Amendment.

(B) Sponsor Affiliate represents and warrants, as the basis for the undertakings on its part contained in this Second Amendment, that it (i) is a limited liability company organized and existing and in good standing under the laws of _____, (ii) is authorized to do business in South Carolina, (iii) has all requisite power to enter into this Second Amendment, and (iv) by proper action has been duly authorized to execute and deliver this Second Amendment.

(C) County represents and warrants, as the basis for the undertakings on its part contained in this Second Amendment, that it (i) is a body politic and corporate and a political subdivision of the State of South Carolina, (ii) is authorized by the Act and SSRC Act to enter into this Second Amendment, (iii) has approved this Second Amendment in accordance with the procedural requirements of the Act, the SSRC Act and any other applicable state law, and (iv) has authorized its officials to execute and deliver this Second Amendment.

(D) County, Sponsor, and Sponsor Affiliate acknowledge and confirm that (i) the Expansion, including any Equipment, improvements or other assets that constitutes Economic Development Property, is and shall be considered as part of the Project, and (ii) that all investments made by Sponsor, Sponsor, Affiliate, or any other Co-Investor in Economic Developer Property related to the Expansion during the Investment Period shall be included in any determination of whether Sponsor has fulfilled its commitment made in Section 4.01(a) to invest in the Project.

Section 9. *Multiple Counterparts.* 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.

Section 10. *Fee Agreement.* Except as specifically provided in this Second Amendment, the Fee Agreement shall remain unchanged and in full force and effect.

SIGNATURE PAGES FOLLOW ON NEXT PAGE.

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Second Amendment to be effective as of the date first written above.

LANCASTER COUNTY, SOUTH CAROLINA

Steve Harper, Chair, County Council

Billy Mosteller, Secretary, County Council

[SEAL]

ATTEST:

Sherrie Simpson, Clerk to Council

COMPANIES SIGNATURES FOLLOW ON NEXT PAGE.

PROJECT TREE,
a _____ corporation

By: _____

Name: _____

Title: _____

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

PROJECT TREE SPONSOR AFFILIATE,
a _____ limited liability company

By: _____

Name: _____

Title: _____