The City of Muskogee encourages participation from all its citizens in public meetings. If participation is not possible due to a disability, notify the City Clerk, in writing, at least forty-eight hours prior to the scheduled meeting and necessary accommodations will be made (ADA 28 CFR/36).

POSTING DATE: APRIL 10, 2025

SPECIAL CALL
AGENDA
MUSKOGEE CITY COUNCIL
APRIL 14, 2025

TO: ALL MEMBERS OF THE MUSKOGEE CITY COUNCIL

Official action can only be taken on items which appear on the agenda. The public body may adopt, approve, ratify, deny, defer, recommend, amend, strike, or continue any agenda item.

When more information is needed to act on an item, the public body may refer the matter to Staff or back to Committee or the recommending body.

Under certain circumstances, items are deferred to a specific date or stricken from the agenda entirely.

By virtue of the authority vested in me as Mayor of the City of Muskogee, Oklahoma, I do hereby issue a call for a Special Call Meeting of the Muskogee City Council to convene:

DATE:	**APRIL 14, 2025**
TIME:	**5:30 P.M.**
PLACE:	**COUNCIL CHAMBERS, THIRD FLOOR MUNICIPAL BUILDING, 229 W. OKMULGEE, MUSKOGEE, OKLAHOMA**

ROLL CALL
PURPOSE:

1. Hold a Second Public Hearing and receive a brief presentation of the proposed Scissortail Data Center Economic Development Project Plan and supporting incentive districts, for the purpose of providing the public an opportunity to be heard in support of or in opposition to the proposed Project Plan, pursuant to 62 O.S. §859, and consider approval of Ordinance No. 4258-A, which approves and adopts the Scissortail Data Center Economic Development Project Plan and supporting incentive districts, and the related tax incentive agreement, providing for severability, and declaring an emergency, or take other

necessary action. (Mayor W. Patrick Cale)

2. Discuss and take possible action on proposing an extension of the City's CIP Tax, as well as regular publication of information to the citizens of Muskogee as to income and expenditure reports related thereto, or take other necessary action. (Mayor W. Patrick Cale)

3. Discuss and consider approval of an Economic Development Agreement between the City of Muskogee ("City") and the Muskogee City-County Port Authority ("Port Authority") and Amendment No. 1 to the Industrial Economic Development Capital Improvement Contract between the City and the Port Authority, and authorize the Mayor to execute the same, or take other necessary action. (Mayor W. Patrick Cale)

4. Discuss and consider approval of an Economic Development Agreement between the City of Muskogee ("City") and the Board of Commissioners of Muskogee County ("County"), and authorize the Mayor to execute the same, or take other necessary action. (Mayor W. Patrick Cale)

5. Consider an Executive Session to discuss and take possible action on the following:

   a. Pursuant to Section 307 B.1, Title 25, Oklahoma Statutes, consider convening in Executive Session to discuss the appointment of a City Manager, as well as, conditions of employment thereto, and, if necessary, take appropriate action in open session, including but not limited to, approval of an Employment Agreement. (Mayor W. Patrick Cale)

   b. Pursuant to Section 307 B.4, Title 25, Oklahoma Statutes, consider convening in Executive Session to discuss a potential lawsuit, and if necessary, take appropriate action in Open Session. (Katrina Bodenhamer)

The City Clerk is hereby authorized to give each member of the Muskogee City Council notice of this Special Call Meeting as provided by the Charter of the City of Muskogee, Oklahoma.

ADJOURN

Special City Council 1.

Meeting Date: 04/14/2025

Initiator: Sarah Winkle, Deputy Director of Planning and Community Development

Information

AGENDA ITEM TITLE:

Hold a Second Public Hearing and receive a brief presentation of the proposed Scissortail Data Center Economic Development Project Plan and supporting incentive districts, for the purpose of providing the public an opportunity to be heard in support of or in opposition to the proposed Project Plan, pursuant to 62 O.S. §859, and consider approval of Ordinance No. 4258-A, which approves and adopts the Scissortail Data Center Economic Development Project Plan and supporting incentive districts, and the related tax incentive agreement, providing for severability, and declaring an emergency, or take other necessary action. (Mayor W. Patrick Cale)

LEGAL DESCRIPTION:

Project Site Legal Description: The Project Site is comprised of 419.183 acres of real property in the City of Muskogee, Muskogee County, State of Oklahoma, and includes all property within the Incentive Districts, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MUSKOGEE, STATE OF OKLAHOMA AND IS DESCRIBED AS FOLLOWS:

Tract 1:

ALL OF THE NORTHEAST QUARTER (NE/4) AND THE NORTHWEST QUARTER (NW/4) LYING EAST OF THE RAILROAD RIGHT OF WAY IN SECTION 16,
TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE I.B&M., MUSKOGEE COUNTY, OKLAHOMA MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: BEGINNING AT THE NE CORNER OF SAID NE/4 SECTION 16, THENCE S01°34'36"E 2644.41 FEET TO THE SE CORNER OF SAID NE/4, THENCE S87°54'36"W ALONG THE SOUTH LINE OF THE NE/4 AND NW/4 OF SECTION 16 3081.54 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, THENCE ALONG SAID RAILROAD RIGHT OF WAY N35°40'11"E 2215.36 FEET TO A POINT OF CURVE, THENCE ON A CURVE TO THE LEFT HAVING A CHORD WHICH BEARS N30°22'05"E 1055.93 FEET AND A RADIUS OF 5548.99 FEET AN ARC DISTANCE OF 1057.53 FEET TO A POINT ON THE NORTH LINE OF SAID NE/4 OF SECTION 16, THENCE N87°50'12"E 1181.82 FEET TO THE POINT OF BEGINNING.

Tract 2:

A TRACT OF LAND BEING A PART OF THE NW/4 NW/4 AND THE SOUTH 276.45 FEET OF THE WEST HALF OF THE WEST HALF OF THE NE/4 OF THE
NW/4 AND THE WEST 121.29 FEET OF THE NORTH 1043.55 FEET OF THE WEST HALF OF THE NE/4 OF THE NW/4 AND THE EAST 208.71 FEET OF THE NORTH 1043.55 FEET OF THE WEST HALF OF THE WEST HALF OF THE NE/4 OF THE NW/4, ALL IN SECTION 15, TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE INDIAN BASE MERIDIAN, MUSKOGEE COUNTY, OKLAHOMA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NW CORNER OF SAID SECTION 15, THENCE N88°48'27"E ALONG THE NORTH

LINE THEREOF 1444.60 FEET, THENCE S01°36'24"E 462.09 FEET, THENCE N54°44'39"E 250.80 FEET TO A POINT ON THE EAST LINE OF SAID W/2 W/2 NE/4 NW/4, THENCE ALONG SAID LINE S01°37'08"E 721.97 FEET, THENCE S88°48'27"W 400.00 FEET, THENCE S01°37'08"E 277.54 FEET TO A POINT ON THE SOUTH LINE OF SAID NW/4 NW/4, THENCE S88°45'27"W ALONG SAID LINE 1254.20 FEET TO A POINT ON THE WEST LINE OF SAID NW/4 NW/4 SECTION 15, THENCE N01°34'56"W 1322.21 FEET TO THE POINT OF BEGINNING.

Tract 3:
SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE INDIAN BASE AND MERIDIAN, MUSKOGEE COUNTY, STATE OF OKLAHOMA.

Tract 4:
SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE INDIAN BASE AND MERIDIAN, MUSKOGEE COUNTY, STATE OF OKLAHOMA, LESS 51 ACRES WEST OF FREEWAY AND LESS 23.15 ACRES EAST OF HIGHWAY.

BACKGROUND:

At a special City Council meeting held on April 3, 2025, the Council conducted the first public hearing, pursuant to 62 O.S. §859, of the proposed Scissortail Data Center Economic Development Project Plan and supporting incentive districts for the purpose of providing information, including an analysis of potential positive and negative impacts, and answering questions regarding the proposed Project Plan and incentive districts. Following the second public hearing, the Council may consider adoption of the attached Ordinance No. 4258-A to approve and adopt the Scissortail Data Center Economic Development Project Plan and supporting incentive districts, and the related tax incentive agreement. This ordinance also ratifies and confirms the findings and recommendations of the Scissortail Review Committee and the Planning Commission. The project plan and tax incentive agreement are attached.

RECOMMENDED STAFF ACTION:

Hold a public hearing and approve Ordinance 4258-A, approving and adopting the Scissortail Data Center Economic Development Project Plan, and supporting incentive districts, and the related tax incentive agreement.

Fiscal Impact

Attachments

Ordinance 4258-A

Scissortail TIA

ORDINANCE NO. 4258-A

AN ORDINANCE APPROVING AND ADOPTING THE SCISSORTAIL DATA CENTER ECONOMIC DEVELOPMENT PROJECT PLAN AND SUPPORTING INCENTIVE DISTRICTS, PURSUANT TO THE OKLAHOMA LOCAL DEVELOPMENT ACT; IDENTIFYING AND ESTABLISHING THREE INCENTIVE DISTRICTS; DESIGNATING AND ADOPTING PROJECT AREA AND INCENTIVE DISTRICT BOUNDARIES; DEFERRING THE NUMERICAL DESIGNATIONS AND EFFECTIVE DATES FOR THE INCENTIVE DISTRICTS; ADOPTING CERTAIN FINDINGS; AUTHORIZING THE CITY OF MUSKOGEE TO CARRY OUT AND ADMINISTER THE PROJECT PLAN; RATIFYING AND CONFIRMING THE ACTIONS, RECOMMENDATIONS AND FINDINGS OF THE REVIEW COMMITTEE AND THE MUSKOGEE PLANNING COMMISSION; APPROVING AND ADOPTING A TAX INCENTIVE AGREEMENT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY

WHEREAS, the City of Muskogee, Oklahoma, a municipal corporation (the "**City**") has caused to be prepared the Scissortail Data Center Economic Development Project Plan and Supporting Incentive Districts ("**Project Plan**"), in accordance with the Oklahoma Local Development Act, 62 O.S. §850, *et seq.* ("**Act**"); and

WHEREAS, the purpose of the Project Plan is to provide the incentives necessary to support at least One Billion Dollars ($1,000,000,000) in initial private investment by Pioneer Trail LLC ("**Company**") in the first Phase (defined herein) of the development of a data center campus (meeting U.S. Industry Number 518210 of the North American Industry Classification System (NAICS) Manual, 2017 Revision), with the potential for three (3) additional Phases of development of similar magnitude, on approximately 419 acres of land within the City's corporate boundaries (the "**Project Site**") to be acquired by the Company (collectively, the "**Project**"); and

WHEREAS, each developed Phase will include a data center comprised of approximately 300,000 square feet (each a "**Data Center**"), together with certain ancillary buildings, structures and infrastructure that support or are related to the data center campus operations, including but not limited to, utility buildings, structures, and appurtenances and office buildings; and

WHEREAS, the Company desires to develop a Data Center in each of the four Phases, however, the Company may construct fewer Data Centers, resulting in fewer Phases; and

WHEREAS, the term "**Phase**" as used herein refers to all new investments in real and personal property within an Incentive District (defined herein); and

WHEREAS, the Project Plan supports the City's objectives to promote economic development, to stimulate private investment, to reverse economic stagnation or decline, to expand employment, and to enhance the tax base, and thereby making possible investment that would be difficult without the adoption of the Project Plan; and

WHEREAS, pursuant to the Act, the City Council previously established the Scissortail Data Center Economic Development Review Committee ("**Review Committee**"), comprised of a representative of the City of Muskogee, a representative of the Muskogee Planning Commission, a representative of each of the affected taxing jurisdictions, namely including Muskogee County, Hilldale Independent School District I-29, Muskogee Independent School District No. I-20**,** Muskogee County Health Department, Muskogee County Emergency Medical Service, Indian Capital Technology Center District No. 4, Eastern Oklahoma District Library System (collectively, the "**Taxing Entities**"), and three members of the public at large, at least one of whom is a representative of the business community in the City of Muskogee; and

WHEREAS, the Review Committee has reviewed the proposed Project Plan, the proposed Project Area and the proposed Incentive Districts (temporarily identified in the Project Plan and this Ordinance as "Incentive Districts "1," "2," and "3") ("**Incentive Districts**") in accordance with the criteria specified in the Act and has determined that the Incentive Districts are eligible for designation as incentive districts and for development under the Act and that the financial impacts on the affected taxing jurisdictions and business activities from implementation of the Project Plan are positive; and

WHEREAS, the Review Committee has adopted a resolution of its findings and recommends to the City Council the approval of the Project Plan, including the proposed Incentive Districts; and

WHEREAS, the Planning Commission has determined that the Project Plan conforms to the 2013 Comprehensive Plan and Future Land Use Map as adopted by the City of Muskogee and amended from time to time ("**Comprehensive Plan**"); and

WHEREAS, the Planning Commission has adopted a resolution recommending to the City Council the approval of the Project Plan; and

WHEREAS, the proposed Incentive Districts are within a state designated enterprise zone and therefore meet the definition of an enterprise area as defined by the Act; and

WHEREAS, the projected investment and development are difficult, but possible, within the proposed Project Area and Incentive Districts if the Project Plan is adopted and implemented; and

WHEREAS, the qualifying tax incentive provided in the Project Plan is a necessary component in generating economic development in the proposed Project Area and Incentive Districts; and

WHEREAS, the implementation of the Project Plan and the establishment of the proposed Incentive Districts will work in conjunction with existing programs and other locally implemented economic development efforts in order to encourage economic development in the proposed Project Area; and

WHEREAS, the Project is expected to generate substantial new investment within the proposed Incentive Districts and to stimulate additional indirect economic benefits outside of the Project Area which would not occur without the Project; and

WHEREAS, the Project Plan provides tools which will supplement and not supplant or replace normal public functions and services; and

WHEREAS, the boundaries of the proposed Incentive Districts do not dissect any similar area nor create an unfair competitive advantage; and

WHEREAS, maximum effort has been made to allow full public knowledge and participation in the application of the Act in the review and approval of the Project Plan; and

WHEREAS, all required notices have been given and all required hearings have been held in connection with the Project Plan, as prescribed by the Act, the Oklahoma Open Meetings Act, 25 O.S. § 301, *et seq.*, and other applicable law; and

WHEREAS, pursuant to published notice, at a special meeting of the City Council held on April 3, 2025, members of the public were provided information, including an analysis of potential positive and negative impacts, and had questions answered regarding the Project Plan; and

WHEREAS, pursuant to published notice, at a special meeting of the City Council held on April 14, 2025, all persons present were given an opportunity to be heard for and against the Project Plan; and

WHEREAS, the City shall be authorized and designated to carry out certain provisions of the Project Plan, pursuant to the Act; and

WHEREAS, Section 856 of the Act authorizes the City to defer determination of the effective dates of the proposed Incentive Districts, provided that the determination is not more than ten (10) years after the date of approval of the Project Plan; and

WHEREAS, the City finds that it is in the best interest of the overall success of the Project to defer the determination of the effective dates of the Incentive Districts until a later date, which date must be determined within ten (10) years of the date of approval of the Project Plan; and

WHEREAS, the City retains the right, pursuant to the Act, to make minor amendments to the Project Plan; and

WHEREAS, as required by Article 10, Section 6C of the Oklahoma Constitution and pursuant to Sections 865 and 866 of the Act, the governing bodies of all taxing entities whose taxes are to be included in the incentives to be provided by the Incentive Districts will be requested to approve and execute a written agreement with the City Council providing for the same; and

WHEREAS, the incentives described in the Project Plan and the Tax Incentive Agreement (defined herein) are designed to grant a one hundred percent (100%) ad valorem tax exemption on all new investment attributable to property qualifying under U.S. Industry Number 518210 of the NAICS Manual, 2017 Revision, within each Incentive District, during the twenty-five year duration of each Incentive District, upon the terms and conditions set forth in the Project Plan ("**Incentive District Exemptions**"); and

WHEREAS, the City has caused to be prepared a written agreement by and among the Taxing Entities, the City, and the Company, as the prospective owner of the Property and the recipient of the Incentive District Exemptions, as required by Sections 865 and 866 of the Act ("**Tax Incentive Agreement**"), setting forth the terms and conditions applicable to the Incentive District Exemptions; and

WHEREAS, in consideration of the Incentive District Exemptions granted for all Incentive Districts, the Company has agreed to make certain direct payments in lieu of taxes ("**PILOT Payments**") to the Taxing Entities for the duration of each Incentive District, as more particularly described in and subject to the terms and conditions of the Tax Incentive Agreement and the Project Plan; and

WHEREAS, in consideration of the Incentive District Exemptions granted for all Incentive Districts, the Company has agreed to make certain direct payments in support of education ("**Stimulus Payments**") to the Indian Capital Technology Center and the Public School in which district the Phase is located (being either Hilldale Public Schools or Muskogee Public Schools), and for the City to receive a franchise fee on the revenues generated from the sale of electric power to the Company ("**Franchise Fees**"), with the understanding that for so long as any Incentive District Exemptions are provided to the Project, the City will apportion the Franchise Fees collected by the City attributable to the Project's use of high-voltage electric power, as follows:

(i) thirty percent (30%) shall be apportioned to the Company (the "**Company Allocation**"),

(ii) twenty-three and one-third percent (23.33%) shall be apportioned to the Muskogee City-County Port Authority, a statutory state agency ("**Port Authority**"),

(iii) twenty-three and one-third percent (23.33%) shall be apportioned to Muskogee County, or a Designated County Trust, and

(iv) twenty-three and one-third percent (23.33%) shall be retained by the City.

WHEREAS, the revenue sources expected to finance eligible Project Costs pursuant to the Project Plan are comprised of the Franchise Fees received and apportioned by the City throughout the duration of the Incentive Districts; and

WHEREAS, the Port Authority is authorized to use the funds apportioned to it for the purposes set forth in Section V.G. and Section XII of the Project Plan and an Economic Development Agreement to be executed by the City and the Port Authority; and

WHEREAS, Muskogee County is authorized to utilize the funds apportioned to it for the purposes set forth in Section V.F. and Section XII of the Project Plan and an Economic Development Agreement to be executed by the City and the Muskogee County Board of Commissioners or a Designated County Trust; and

WHEREAS, the City is authorized to utilize the portion of franchise fee revenues retained by it for the purposes set forth in Section V.E. and Section XII of the Project Plan; and

WHEREAS, one hundred percent (100%) of the Franchise Fees from the Project's medium-voltage electricity usage shall be retained by the City and is specifically excluded from apportionment hereunder; and

WHEREAS, if at any time the Franchise Fee is increased above three percent (3%), then the City will increase the amount of the Company Allocation as necessary to produce a net effective Franchise Fee rate of two and one tenths percent (2.1%); and

WHEREAS, the City deems it appropriate and desirable and in the best interest of the City and its citizens to approve and adopt the Project Plan, including the establishment of the Incentive Districts, and to approve and adopt the Tax Incentive Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MUSKOGEE, OKLAHOMA THAT:

SECTION 1. In order to develop the Project Area, the City of Muskogee elects to utilize Article 10, Section 6C of the Constitution of the State of Oklahoma and the Act, which authorize the use of incentives, exemptions, and other forms of relief from taxation for historic preservation, reinvestment, or enterprise areas that are exhibiting economic stagnation or decline.

SECTION 2. The Project Plan is hereby approved and adopted, as recommended by the Planning Commission and by the Review Committee. As used herein the "**Project Plan**" shall mean the document titled "**Scissortail Data Center Economic Development Project Plan**" with a cover page indicating the Review Committee recommended approval on March 12, 2025, and the Planning Commission recommended approval on April 8, 2025, and comprised of a cover sheet, a table of contents, thirteen (13) pages of text, and four (4) exhibits labeled Exhibits A, B, C, and D, together with a Financial Projections Appendix, which is comprised of a cover page and nine (9) pages of revenue projections that illustrate the potential financial impacts of the Project on the City and the Taxing Entities.

SECTION 3. All actions taken and all recommendations and findings made in connection with the Project Plan by the Planning Commission and the Review Committee are hereby ratified and confirmed, including, but not limited to, the designation and selection of representatives to the Review Committee by the City and each Taxing Entity, the selection of the three members of the public at large who serves on the Review Committee, the findings of conformance with the City's Comprehensive Plan, eligibility of the proposed Incentive Districts, and positive financial impacts on the affected taxing jurisdictions, and the recommendations for approval.

SECTION 4. The City Council hereby adopts the following findings:

A. Findings Regarding the Project Plan; Eligibility of the Project Area and Incentive Districts:

1. The proposed Incentive Districts "1", "2", and "3", City of Muskogee ("**Incentive Districts**") proposed in the proposed Scissortail Data Center Economic Development Project Plan are entirely within a state designated enterprise zone and therefore meet the definition of an "enterprise area" under the Local Development Act (62 O.S. § 853(5), (6)). Enterprise Areas qualify for use of the tools of the

Local Development Act pursuant to 62 O.S. §856(B)(4)(a).

2. The improvement of the Project Site is likely to enhance the value of other real property in the area and to promote the general public interest.

3. The level of investment, development, and economic growth desired by the City is difficult, but possible, within the Project Area and Incentive Districts if the provisions of the Local Development Act are utilized.

4. The incentives to be provided by virtue of the Incentive Districts are a necessary component in stimulating the proposed investment in the Incentive Districts, which would not have occurred without the provision of the incentive pursuant to the Act.

5. The incentives to be provided by virtue of the Incentive Districts will be used in conjunction with existing programs and efforts and other locally implemented economic development efforts.

B. Findings Regarding Financial Impacts on the Affected Taxing Jurisdictions and Business Activities within the Project Area and Incentive Districts:

1. As described in Section X of the Project Plan, substantial public costs that may arise will be funded directly by the private development within the Incentive Districts.

2. The Project, as described in the Project Plan, may result in a modest increase in demand for services by or in costs to the affected taxing jurisdictions, but the PILOT Payments and Stimulus Payments to be paid by the Company to the affected taxing jurisdictions, as described in Section X.B. of the Project Plan and other anticipated positive impacts of the Project are likely to offset any increased costs for additional service demands upon those affected taxing jurisdictions.

3. The public revenue anticipated to result from the development of the Project described in the Project Plan includes increased tax revenue from economic growth and benefits outside of the Incentive Districts.

4. The economic benefits of the Project Plan for the affected taxing jurisdictions and the community as a whole are expected to be positive.

5. The aggregate impacts on the affected taxing jurisdictions and on business activities from implementation of the Project Plan are expected to be positive and include the achievement of the objectives set forth in Section V of the Project Plan and the economic impacts described in Section X of the Project Plan.

SECTION 5. For identification purposes and until such time that the City Council officially numbers, designates, and makes effective each of the Incentive Districts established under this Ordinance, the Incentive Districts shall be identified temporarily as Incentive Districts No. "1", "2", and "3", City of Muskogee, as shown on Exhibit A of the Project Plan, and may be commonly referred to as Incentive Districts No. 1, 2, and 3, as depicted on Exhibit A of the Project Plan.

SECTION 6. The designation, naming, and effective dates of each Incentive District are deferred pending the fulfillment of the conditions set forth in the Project Plan, provided that such deferred action shall be made within ten (10) years of the City Council's adoption of this Ordinance approving the Project Plan, as follows:

A. The effective date for the Incentive Districts shall be the earlier of: (i) January 1 following the completion of a Data Center within that Incentive District as evidenced by the issuance of the final, unrestricted certificate of occupancy for the Data Center ("**Certificate of Occupancy**"), or in lieu of a Certificate of Occupancy, the Company may deliver notice of substantial completion to the City to trigger the effective date, which shall be January 1 immediately following delivery of the notice of substantial completion, or (ii) January 1 of the year in which the tenth anniversary of approval of the Project Plan occurs ("**Exemption Activation Condition**") with the date of activation being the "**Exemption Effective Date**."

B. Phase 1 of the Project shall commence within two (2) years of the approval of the Project Plan. If the Company has completed Phase 1 but has not commenced Phase 2 or 3 within 10 years of adoption of this Ordinance, the Incentive Districts for Phases 2 and 3 shall terminate.

C. Upon the occurrence of an Exemption Activation Condition, the City Council will, by resolution, confirm the Exemption Effective Date and designation of the Incentive District. The City Manager shall thereafter promptly provide written notice to each of the Taxing Entities, the Muskogee County Assessor, and the Company identifying the Incentive District activated and the Exemption Effective Date.

D. In accordance with Section 856(B)(2) of the Act, no Incentive District Exemptions may become effective more than ten (10) years after the City Council's adoption of this Ordinance approving the Project Plan.

SECTION 7. Once an Incentive District is made effective pursuant to Section 6 of this Ordinance, the Incentive District shall be effective for a period of twenty-five (25) fiscal years from its effective date (the "**Incentive District Term**").

SECTION 8. The boundaries of the Project Area are depicted on Exhibit A of the Project Plan and are hereby designated and adopted as follows:

The Project Area encompasses the jurisdictional boundaries of the City of Muskogee, Muskogee County, and the Muskogee City-County Port Authority. The City's jurisdictional boundaries align with the city limits of Muskogee, Oklahoma, as modified from time to time. Muskogee County's jurisdictional boundaries correspond to the territorial limits of Muskogee County, Oklahoma, as modified from time to time. The Muskogee City-County Port Authority's jurisdictional boundaries encompass the combined jurisdictional areas of both the City of Muskogee and Muskogee Count, as modified from time to time.

SECTION 9. The boundaries of the Project Site are depicted on Exhibit A of the Project Plan and are hereby designated and adopted as follows:

The Project Site is comprised of 419.183 acres of real property in the City of Muskogee, Muskogee County, State of Oklahoma, and includes all property within the Incentive Districts, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MUSKOGEE, STATE OF OKLAHOMA AND IS DESCRIBED AS FOLLOWS:

Tract 1:

ALL OF THE NORTHEAST QUARTER (NE/4) AND THE NORTHWEST QUARTER (NW/4) LYING EAST OF THE RAILROAD RIGHT OF WAY IN SECTION 16, TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE I.B&M., MUSKOGEE COUNTY, OKLAHOMA MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: BEGINNING AT THE NE CORNER OF SAID NE/4 SECTION 16, THENCE S01°34'36"E 2644.41 FEET TO THE SE CORNER OF SAID NE/4, THENCE S87°54'36"W ALONG THE SOUTH LINE OF THE NE/4 AND NW/4 OF SECTION 16 3081.54 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, THENCE ALONG SAID RAILROAD RIGHT OF WAY N35°40'11"E 2215.36 FEET TO A POINT OF CURVE, THENCE ON A CURVE TO THE LEFT HAVING A CHORD WHICH BEARS N30°22'05"E 1055.93 FEET AND A RADIUS OF 5548.99 FEET AN ARC DISTANCE OF 1057.53 FEET TO A POINT ON THE NORTH LINE OF SAID NE/4 OF SECTION 16, THENCE N87°50'12"E 1181.82 FEET TO THE POINT OF BEGINNING.

Tract 2:

A TRACT OF LAND BEING A PART OF THE NW/4 NW/4 AND THE SOUTH 276.45 FEET OF THE WEST HALF OF THE WEST HALF OF THE NE/4 OF THE NW/4 AND THE WEST 121.29 FEET OF THE NORTH 1043.55 FEET OF THE WEST HALF OF THE NE/4 OF THE NW/4 AND THE EAST 208.71 FEET OF THE NORTH 1043.55 FEET OF THE WEST HALF OF THE WEST HALF OF THE NE/4 OF THE NW/4, ALL IN SECTION 15, TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE INDIAN BASE MERIDIAN, MUSKOGEE COUNTY, OKLAHOMA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NW CORNER OF SAID SECTION 15, THENCE N88°48'27"E ALONG THE NORTH LINE THEREOF 1444.60 FEET, THENCE S01°36'24"E 462.09 FEET, THENCE N54°44'39"E 250.80 FEET TO A POINT ON THE EAST LINE OF SAID W/2 W/2 NE/4 NW/4, THENCE ALONG SAID LINE S01°37'08"E 721.97 FEET, THENCE S88°48'27"W 400.00 FEET, THENCE S01°37'08"E 277.54 FEET TO A POINT ON THE SOUTH LINE OF SAID NW/4 NW/4, THENCE S88°45'27"W ALONG SAID LINE 1254.20 FEET TO A POINT ON THE WEST LINE OF SAID NW/4 NW/4 SECTION 15, THENCE N01°34'56"W 1322.21 FEET TO THE POINT OF BEGINNING.

Tract 3:

SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE INDIAN BASE AND MERIDIAN, MUSKOGEE COUNTY, STATE OF OKLAHOMA.

Tract 4:

SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE INDIAN BASE AND MERIDIAN, MUSKOGEE COUNTY, STATE OF OKLAHOMA, LESS 51 ACRES WEST OF FREEWAY AND LESS 23.15 ACRES EAST OF HIGHWAY.

SECTION 10. Incentive District No. “1”, whose boundaries are set forth below, is hereby created, but is to be effective at a later date as determined by Council, in accordance with the Project Plan. The boundaries of Incentive District No. “1”, City of Muskogee are hereby designated and adopted as follows:

A Tract of land lying in Northwest Quarter (NW/4) of Section Fifteen (15), AND a portion lying in the Northeast Quarter (NE/4) of Section Sixteen (16), Township Fourteen (14) North, Range Eighteen (18) East of the Indian Base & Meridian (I.B.&M.), Muskogee County, Oklahoma, being more particularly described by Darrel Ray Mason, OKLS #1690 on March 4, 2025 as follows:

BEGINNING at the Northwest Quarter (NW/4) of said Section Fifteen (15) Thence along the North line of said Northwest Quarter as the *Basis of Bearings*, N 88° 47' 47" E, a distance of 1,444.60 feet; Thence departing said North line, S 01° 46' 20" E, a distance of 461.82 feet; Thence N 54° 46' 38" E, a distance of 250.81 feet; Thence S 01° 36' 04" E, a distance of 721.99 feet; Thence S 88° 49' 30" W, a distance of 399.81 feet; Thence S 01° 37' 19" E, a distance of 277.60 feet; Thence S 88° 44' 22" W, a distance of 1,254.97 feet to a point on the West line of said Northwest Quarter; Thence along said West line S 01° 36' 27" E, a distance of 1,321.95 feet to the Southwest Corner of said Northwest Quarter also being the Southeast Corner of the Northeast Quarter of said Section Sixteen (16); Thence along the South line of said Northeast Quarter S 87° 56' 43" W, a distance of 787.07 feet; Thence departing said South line N 01° 27' 08" W, a distance of 813.81 feet; Thence S 88° 32' 52" W, a distance of 297.06 feet; Thence N 01° 27' 08" W, a distance of 420.08 feet; Thence S 88° 32' 52" W, a distance of 292.99 feet; Thence S 01° 27' 08" E, a distance of 17.36 feet; Thence S 88° 32' 52" W, a distance of 764.11 feet to a point on the East Railroad Right-of-Way line; Thence along said East Right-of-Way line N 35° 40' 12" E, a distance of 657.60 feet to a non-tangent curve to the left; Thence continuing along said East Right-of-Way line and along said curve having a radius of 5548.99 feet, a delta angle of 10° 55' 24", an arc length of 1,057.91 feet, and having a chord bearing of N 30° 21' 19" E, a length of 1056.31 feet to a point of non-tangency; Thence N 87° 52' 43" E, a distance of 1180.47 feet to the POINT OF BEGINNING.

Said tract contains 5,377,718 sq. ft. or 123.455 acres, more or less.

<u>Basis of Bearings:</u> Grid North based on NAD 83 Oklahoma State Plane Coordinate System North Zone with the North line of the Northwest Quarter of Section 15, T-14-N, R-18-E bearing N 88°47'47" E.

SECTION 11. Incentive District No. “2”, whose boundaries are set forth below, is hereby created, but is to be effective at a later date as determined by Council, in accordance with the Project Plan. The boundaries of Incentive District No. “2”, City of Muskogee are hereby designated and adopted as follows:

A Tract of land lying in Northwest Quarter (NW/4) AND Northeast Quarter (NE/4) of Section Sixteen (16), Township Fourteen (14) North, Range Eighteen (18) East of the Indian Base & Meridian (I.B.&M.), Muskogee County, Oklahoma, being more particularly described by Darrel Ray Mason, OKLS #1690 on March 4, 2025 as follows:

BEGINNING at the Southeast Corner of the Northwest Quarter (NW/4) of said Section Sixteen (16) Thence along the South line of said Northwest Quarter as the *Basis of Bearings*, S 87° 44' 19"

W, a distance of 436.89 feet to a point on the East Railroad Right-of-Way line; Thence along said East Right-of-Way line N 35° 40' 12" E, a distance of 1,557.96 feet; Thence departing said East line N 88° 32' 52" E, a distance of 764.11 feet; Thence N 01° 27' 08" W, a distance of 17.36 feet; Thence N 88° 32' 52" E, a distance of 292.99 feet; Thence S 01° 27' 08" E, a distance of 420.08 feet; Thence N 88° 32' 52" E, a distance of 297.06 feet; Thence S 01° 27' 08" E, a distance of 813.81 feet to a point on the South line of the Northeast Quarter (NE/4) of said Section Sixteen (16); Thence along said South line S 87° 56' 43" W, a distance of 1,857.66 feet to the POINT OF BEGINNING.

Said tract contains 2,120,688 sq. ft. or 48.684 acres, more or less.

Basis of Bearings: Grid North based on NAD 83 Oklahoma State Plane Coordinate System North Zone with the South line of the Northwest Quarter of Section 16, T-14-N, R-18-E bearing S 87°44'19" W.

SECTION 12. Incentive District No. "3", whose boundaries are set forth below, is hereby created, but is to be effective at a later date as determined by Council, in accordance with the Project Plan. The boundaries of Incentive District No. "3", City of Muskogee are hereby designated and adopted as follows:

A Tract of land lying in Southwest Quarter (SW/4) AND Southeast Quarter (SE/4) of Section Sixteen (16), Township Fourteen (14) North, Range Eighteen (18) East of the Indian Base & Meridian (I.B.&M.), Muskogee County, Oklahoma, being more particularly described by Darrel Ray Mason, OKLS #1690 on March 4, 2025 as follows:

BEGINNING at the Southeast Corner of the Southeast Quarter (SE/4) of said Section Sixteen (16) Thence along the South line of said Southeast Quarter as the *Basis of Bearings*, S 88° 04' 16" W, a distance of 2,650.89 feet to the Southeast Corner of the Southwest Quarter of said Section Sixteen; Thence along the South line of said Southwest Quarter S 88° 04' 22" W, a distance of 2,366.43 feet to a point on the East line of a Railroad Right-of-Way; Thence along said East Right-of-Way line N 29° 41' 26" E, a distance of 139.83 feet to a non-tangent curve to the right; Thence continuing along said East Right-of-Way line and along said curve having a radius of 8948.26 feet, a delta angle of 05° 37' 21", an arc length of 878.11 feet, and having a chord bearing of N 32° 39' 15" E, a length of 877.76 feet to a point of non-tangency; Thence continuing along said East Right-of-Way line N 35° 38' 02" E, a distance of 2,261.74 feet to a point on the North line of said Southwest Quarter;

Thence along said North line of said Southwest Quarter N 87° 44' 19" E, a distance of 436.89 feet to the Northwest Corner of the Southeast Quarter of said Section Sixteen; Thence along the North line of said Southeast Quarter N 87° 56' 43" E, a distance of 2,644.73 feet to the Northeast Corner of said Southeast Quarter; Thence along the East line of said Southeast Quarter S 01° 36' 43" E, a distance of 2,643.04 feet to the POINT OF BEGINNING.

Said tract contains 10,761,230 sq. ft. or 247.044 acres, more or less.

Basis of Bearings: Grid North based on NAD 83 Oklahoma State Plane Coordinate System North Zone with the South line of the Southeast Quarter of Section 16, T-14-N, R-18-E bearing S 88°04'16" W.

SECTION 13. The following Project and Incentive District authorizations are hereby approved:

A. The City, Muskogee County, and the Muskogee City-County Port Authority (a statutory state agency) are designated and authorized as the principal public entities to carry out and administer the provisions of this Project Plan. The City is designated and authorized to exercise all powers necessary or appropriate thereto pursuant to 62 O.S. § 854, including the power to make minor amendments to the Project Plan in accordance with Section 858(D) of the Act.

B. The City Manager, or his or her successor in office, shall be the person in charge of implementation of the Project Plan in accordance with the provisions, authorizations, and respective delegations of responsibilities contained in the Project Plan, subject to any approval, authorization or ratification by the City Council of the City of Muskogee, as may be required.

SECION 14. The revenue sources to the City, as described in Section XII of the Project Plan, comprised of a portion of the Franchise Fees generated from sale of high-voltage electric power to the Company throughout the Incentive District Term of the Incentive Districts shall: (a) be used to pay eligible Project Costs for the purposes set forth in Sections V.E. and XII of the Project Plan, (b) constitute special funds of the City, subject to annual appropriation by the City.

SECTION 15. The revenue sources to the Muskogee City-County Port Authority, as described in Section XII of the Project Plan, comprised of a portion of the Franchise Fees generated from sale of high-voltage electric power to the Company throughout the Incentive District Term of the Incentive Districts shall: (a) be used to pay eligible Project Costs for the purposes set forth in Sections V.G. and XII of the Project Plan and an Economic Development Agreement between the City and the Muskogee City-County Port Authority.

SECTION 16. The revenue sources to Muskogee County, or a or a Designated County Trust, as described in Section XII of the Project Plan, comprised of a portion of the Franchise Fees generated from sale of high-voltage electric power to the Company throughout the Incentive District Term of the Incentive Districts shall: (a) be used to pay eligible Project Costs for the purposes set forth in Sections V.F. and XII of the Project Plan and an Economic Development Agreement between the City and Muskogee County, or a Designated County Trust.

SECTION 17. The Tax Incentive Agreement is hereby adopted and approved. As used herein the "Tax Incentive Agreement" shall mean the document by and among the Company, the City and the Taxing Entities, comprised of nineteen (19) pages of text, signature pages, an Exhibit Table of Contents, 18 exhibits labeled Exhibits A.1, A.2, B, C, D.1, D.2, D.3, D.4, D.5, D.6, D.7, E, F, G, H, I, J.1, and J.2, and titled "Local Development Act Tax Incentive Agreement."

SECTION 18. Subject to the terms of the Tax Incentive Agreement, the incentive to be provided within an Incentive District shall be a one hundred percent (100%) ad valorem tax exemption on all new investment attributable to property qualifying under U.S. Industry Number 518210 of the North American Industry Classification System (NAICS) Manual, 2017 Revision, within each Incentive District, for the duration of the Incentive District Term, during which the Incentive District Exemptions shall be in effect. The Incentive District Exemptions shall not include Public Service Property, if any, located within each Incentive District; provided that "Public Service Property" shall be defined as property of all railroads, air carriers and public service corporations assessed annually by the State Board of Equalization pursuant to 68 O.S. § 2847 and Article 10, § 21 of the Oklahoma Constitution.

SECTION 19. In demonstration of compliance with the requirements of Section 6C of Article X of the Constitution of the State of Oklahoma and the requirements of Section 865 of the Act, the City directs the Tax Incentive Agreement be submitted to the Taxing Entities for their review, consideration, and adoption within sixty (60) days of City Council's approval of this Ordinance.

SECTION 20. The Project Plan is determined to be feasible and desirable and is hereby approved.

SECTION 21. **REPEALER.** All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed to the extent of the conflict only.

SECTION 22. **SEVERABILITY**. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall not affect the validity of the remaining portions of this Ordinance.

SECTION 23. **EMERGENCY CLAUSE**. It being immediately necessary for the preservation of the peace, health, safety, and public good of the City of Muskogee, and the citizens thereof, that the provisions of this Ordinance take effect and be put into full force and effect, an emergency is declared to exist by reason whereof this Ordinance shall take effect immediately and be put in full force and effect from and after the date of its enactment, as provided by law.

PASSED AND APPROVED in an open meeting of the City Council of Muskogee, Oklahoma on the 14th day of April , 2025, with the Emergency Clause voted on and approved separately.

CITY OF MUSKOGEE

By: ______________________________

ATTEST: W. Patrick Cale, Mayor

____

Tammy L. Tracy, City Clerk

(SEAL)

Approved as to form and legality this ___ day of April, 2025:

____

Katrina Bodenhamer, City Attorney

EMERGENCY CLAUSE

THE EMERGENCY CLAUSE IS HEREBY PASSED, APPROVED AND ADOPTED THIS 14th DAY OF APRIL, 2025.

____
W. Patrick Cale, Mayor

ATTEST:

____
Tammy L. Tracy, City Clerk

(SEAL)

Approved as to form and legality this ___ day of April, 2025:

____
Katrina Bodenhamer, City Attorney

LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of __________, 2025, by and among Pioneer Trail, LLC, a Delaware limited liability company (the "**Company**"), Ferdinand Technologies, LLC, a Texas limited liability company (the "**Developer**"), the City of Muskogee (the **"City"**), the Board of Commissioners of Muskogee County (the "**County**"), the Board of Education of Hilldale Independent School District No. I-29 (the "**Hilldale Public Schools**"), the Board of Education of Muskogee Independent School District No. I-20 (the "**Muskogee Public Schools**"), the Board of Education of the Indian Capital Technology Center District No. 4 ("**Technology Center**"), the Board of Trustees of the Eastern Oklahoma District Library System (the "**Library District**"), the Board of the Muskogee County Emergency Medical Service (the "**County EMS**"), and the Board of Trustees of the Muskogee County Health Department (the "**Health Department**") (collectively, the County, Hilldale Public Schools, Muskogee Public Schools, Indian Capital Technology Center, the Library District, County EMS, and the Health Department are the "**Taxing Entities**") (the Company, the Developer, the City, and the Taxing Entities are collectively referred to as the "**Parties**", each a "**Party**").

WITNESSETH:

WHEREAS, the Company intends to develop on certain parcels of property within the County, as more particularly described in the legal description in Exhibit A.1 and the map in Exhibit A.2 attached hereto, (the "**Property**", the combined boundaries of which constitute the "**Project Site**", as described in the Project Plan defined herein), one or more data center facilities and may develop certain ancillary buildings, structures and infrastructure that support or are related to the data center operations, including but not limited to, utility buildings, structures, and appurtenances and office buildings, all of which are part of the computer infrastructure, data processing, hosting and related services classification (collectively the "**Project**"); and

WHEREAS, on March 12, 2025, the Scissortail Data Center Economic Development Project Plan Review Committee by its Resolution, a true and correct copy of which is attached hereto as Exhibit B, recommended the approval of a project plan (the "**Project Plan"**) pursuant to the Oklahoma Local Development Act, 62 O.S. § 851, et seq. (the "**Act**") in order to provide a one hundred percent (100%) ad valorem property tax abatement for the Project; and

WHEREAS, on April 8, 2025, the City of Muskogee Planning and Zoning Commission by its Resolution, a true and correct copy of which is attached hereto as Exhibit C, recommended the approval of the Project Plan, without any amendments thereto, in accordance with Section 858 of the Act; and

WHEREAS, after the public hearings required by the Act, the City adopted and approved the Project Plan by Ordinance No. [project plan approval ordinance], approved on [project plan approval date], a true and correct copy of which is attached hereto as Exhibit D (the "**Project Plan Ordinance**"), and created three (3) tax incentive districts, Incentive Districts "1", "2", and "3", City of Muskogee (the "**Incentive Districts**" and each an **"Incentive District"**); and

WHEREAS, the City and each of the Taxing Entities have determined that it is appropriate and desirable, in order to ensure the economic viability of the Project, that the Taxing Entities, which would otherwise share in the ad valorem taxes applicable to the Property, provide each Phase (as defined below) a one hundred percent (100%) ad valorem property tax exemption for a term of twenty-five (25) years on all new investment attributable to property qualifying under U.S. Industry Number 518210 of the North American Industry Classification System (NAICS) Manual, 2017 revision within each Incentive District, upon the terms and conditions as provided for herein (collectively, the "**Incentive District Exemptions**"), all as authorized by Article 10, §6(C) of the Oklahoma Constitution, Section 860(B) of the Act, the Project Plan, the Project Plan Ordinance, and other applicable authorizations; and

WHEREAS, the Company desires to develop the Project in one or more phases (each a "**Phase**") with the term Phase as used herein referring to all structures developed or improved within an Incentive District, as well as all new investment in personal property located or installed within an Incentive District, at any time after approval of the Project Plan that would be subject to ad valorem taxation but for the Incentive District Exemption; and

WHEREAS, the Company anticipates that each Phase will include an approximately 300,000 square foot data center (each, a "**Data Center**") (with the potential for more than one Data Center to be constructed as part of the Phase built within Incentive District 3); the precise number, location, and size of Data Centers is subject to change in the Company's sole discretion as a result of market and other business conditions; and

WHEREAS, the Company anticipates that the Phases may include ancillary buildings, structures and infrastructure that support or are related to the data center campus operations, including but not limited to, utility buildings, structures, and appurtenances and office buildings; and

WHEREAS, the City has created the Incentive Districts, in order to promote economic development within the Project Site (as defined in the Project Plan) on Property which is within an existing enterprise zone as defined by Section 853(6) of the Act; and

WHEREAS, the City, the Taxing Entities and Company are entering into this Agreement to, among other things, satisfy the requirements of Sections 865 and 866 of the Act, which provide, respectively that (i) each Taxing Entity must enter into an agreement with the City in order for tax incentives or exemptions to be granted under the Act for that Taxing Entity's portion of the ad valorem tax, and (ii) the City must enter into an agreement with the Company as the prospective owner of the Property and the recipient of the Incentive District Exemptions to set forth the terms and conditions applicable to the Incentive District Exemptions; and

WHEREAS, in consideration of the Incentive District Exemptions to be provided under this Agreement, the Company has agreed to make payments in lieu of taxes to the Taxing Entities and certain stimulus payments to the Technology Center, and either the Hilldale Public Schools or Muskogee Public Schools, depending upon the location of a given Data Center, in such amounts and at such times as further described in Section 5 of this Agreement; and

WHEREAS, the City and Taxing Entities have determined that it is appropriate, desirable, and in the public interest to approve the Incentive District Exemptions, pursuant to the terms of this Agreement, and that the Incentive District Exemptions will assist in strengthening the economic viability of the City of Muskogee, Oklahoma, as a whole, and more particularly in relation to the Project Plan; and

WHEREAS, the City, through the Project Plan Ordinance, has approved the adoption of this Agreement; and

WHEREAS, the County through Resolution ____ adopted on ____(a true and correct copy of which is attached hereto as Exhibit E.1), the Hilldale Public Schools through Resolution ________ adopted on ________ (a true and correct copy of which is attached hereto as Exhibit E.2), the Muskogee Public Schools through Resolution ____ adopted on ____ (a true and correct copy of which is attached hereto as Exhibit E.3), Indian Capital Technology Center through Resolution ________ adopted on ________ (a true and correct copy of which is attached hereto as Exhibit E.4), the Health Department through Resolution ________ adopted on ________ (a true and correct copy of which is attached hereto as Exhibit E.5), the County EMS through Resolution ________ adopted on ________ (a true and correct copy of which is attached hereto as Exhibit E.6), and the Library District through Resolution ________ adopted on ________ (a true and correct copy of which is attached hereto as Exhibit E.7) have approved the adoption of this Agreement (collectively, the "**Taxing Entity Approvals**" and each a "**Taxing Entity Approval**"); and

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions contained herein, the parties agree as follows:

1. **Incorporation of Recitals.**

The Parties acknowledge and agree that the recitals set forth above are a material part of this Agreement and are incorporated herein by reference.

2. **Project.**

a. Purpose.

The objectives of this Agreement are:

(i) To attract the Project and the accompanying investment and development to the City, which would not occur without the tax incentives and franchise fee apportionment described in this Agreement.

(ii) To generate new revenues for each of the Taxing Entities in the form of annual payments in lieu of taxes ("**PILOT Payments**") and to generate for the Technology Center and either Hilldale Public Schools or Muskogee Public Schools, depending on the location of the Data Center, certain stimulus payments ("**Stimulus Payments**") as described herein for each Data Center constructed as part of the Project, all in accordance with Section 5 of this Agreement.

(iii) To generate for the City, the County, the Muskogee City-County Port Authority (a statutory state agency) (the **"Port Authority"**) revenues from franchise fees on the Company's use of electric power ("**Franchise Fees**"), in accordance with Section 6 of this Agreement.

b. Project Scope.

The Project will consist of one (1) or more Phases within the Project Site (as defined in the Project Plan), with each Phase of the Project estimated to consist of at least one billion dollars ($1,000,000,000) in private investment by the Company.

The Parties further acknowledge that the Company retains complete control and discretion over the number of Phases developed as well as the rate, timing, and order of development of the Project, and that nothing herein shall be construed to require the Company to construct or develop any particular Phase, Data Center, structure, building, or facility, or to develop the Incentive District in any particular order or according to any particular timeline. Except as expressly provided otherwise in Section 4 herein, the Taxing Entities and City shall have no right to condition the amount or term of the Incentive District Exemptions provided herein based on the rate, timing, or order of development of the Project.

3. Approval of the Tax Abatement.

Pursuant to Section 865 of the Act, the City and each of the Taxing Entities hereby (i) agree to the Incentive District Exemptions, subject to the terms and conditions of this Agreement; (ii) approve the form of the Project Plan Ordinance, the creation of the Incentive Districts pursuant to the Project Plan Ordinance, and the Incentive District Exemptions provided pursuant to the Project Plan Ordinance and this Agreement; (iii) waive any defects within or relating to the Project Plan Ordinance and this Agreement; and (iv) agree to relinquish for the duration of the Incentive District Term (defined below) one hundred percent (100%) of ad valorem tax revenues attributable to new investment in the Project after approval of the Project Plan, which, for the avoidance of doubt, includes all ad valorem revenues attributable to increases in property value in excess of the Base Value, as defined herein.

Each of the Taxing Entities and the City represents and warrants that, in accordance with Sections 857 and 865 of the Act, its respective Taxing Entity Approval was made by a majority vote of its governing body, and that no member of the governing body was ineligible under Section 857 of the Act to vote on the Taxing Entity Approval.

4. Tax Exemption Terms.

a. The Incentive District Exemption.

In accordance with Section 860(B) of the Act and the Project Plan Ordinance, all new value attributable to investment by the Company and its Affiliates qualifying under U.S. Industry Number 518210 of the North American Industry Classification System (NAICS) Manual, 2017 revision within an Incentive District, made after the effective date of the Project Plan, shall be afforded a one hundred percent (100%) ad valorem property tax exemption for the duration of the Incentive District Term. The incentive provided under the Act and this Agreement shall not include Public Service Property, if any, located within each Incentive District, "Public Service Property" shall be defined as property of all railroads, air carriers and public service corporations assessed annually by the State Board of Equalization pursuant to 68 O.S. § 2847 and Article 10, § 21 of the Oklahoma Constitution.

b. Activation of the Incentive District Exemption.

In accordance with the Project Plan Ordinance, the Incentive District shall become effective and provide the Incentive District Exemption upon the earlier of (a) January 1 of the year immediately following the completion of a Data Center within that Incentive District, as evidenced by the issuance of a certificate of occupancy or delivery of written notice by the Company to the City of substantial completion, or (b) January 1 of the year in which the tenth anniversary of the Project Plan Ordinance occurs, which the Parties anticipate to be January 1, 2035 (each an "**Exemption Activation Condition**" with the date of activation being the "**Exemption Effective Date**"). In accordance with Section 856(B)(2) of the Act, the Incentive District Exemption may not become effective more than ten years after approval of the Project Plan.

Upon the occurrence of an Exemption Activation Condition, the City will, in accordance with the Project Plan Ordinance, confirm the Exemption Effective Date and designation of the Incentive District by resolution and the City Manager shall promptly deliver written notice to the Muskogee County Assessor ("**County Assessor**"), each of the other Taxing Entities, and the Company identifying the Incentive District activated, and the Exemption Effective Date (the "**Incentive District Commencement Notice**").

If the Company does not commence development of Phase 1 of the Project within two years of final approval of the Project Plan, the Incentive Districts shall terminate. If the Company has completed Phase 1 but has not commenced Phase 2 or 3 within 10 years after adoption of the Project Plan, the Incentive Districts for Phases 2 and 3 shall terminate.

c. Exemption Term.

In accordance with the Project Plan Ordinance, the Incentive District Exemption for each Incentive District shall be effective for a period of twenty-five (25) tax years following the applicable Exemption Effective Date (the "**Incentive District Term**").

d. Exemption Calculation.

Pursuant to an assessment performed by the County Assessor promptly after adoption of the Project Plan (in no event later than the assessment performed for tax year 2026 setting the assessed value as of January 1, 2026), the County Assessor shall determine the base value of each Incentive District (the "**Base Value**"). The Base Value shall be the total market value of real and personal property within an Incentive District multiplied by the assessment ratio. When determined, the Base Value shall be provided on Exhibit F and deemed approved by all Parties to this Agreement. The Base Value shall not include any value attributable to (a) construction-in-process, (b) any personal property owned by contractors or other, unrelated entities on this site (even if subject to taxation), or (c) any personal property owned by the Company or its Affiliates that will be used in Data Center operations qualifying under U.S. Industry Number 518210 of the North American Industry Classification System (NAICS) Manual, 2017 that was placed on the site after adoption of the Project Plan (even if subject to taxation prior to the Exemption Effective Date). The Taxing Entities waive any defect or irregularities with respect to the determination of the Base Value. The Base Value shall be subject to ad valorem taxation. Upon receipt of an

Incentive District Commencement Notice, the County Assessor shall ensure that, as of the applicable Exemption Effective Date and for the duration of the applicable Incentive District Term, the Incentive District Exemption shall apply to all value attributable to new investment qualifying under U.S. Industry Number 518210 of the North American Industry Classification System (NAICS) Manual, 2017 revision made in the Incentive District above the applicable Base Value, in accordance with Section 860(B) of the Act and the Project Plan, including land value above the Base Value in that Incentive District, provided the use of the land remains eligible for the exemption. For clarity, if any improvements qualifying under U.S. Industry Number 518210 of the North American Industry Classification System (NAICS) Manual, 2017 are constructed within the Incentive District prior to the construction of a Data Center, such improvements shall be subject to property taxation until such time as the construction of a Data Center triggers the Exemption Commencement Date for the Incentive District. On and after the Exemption Commencement Date, such improvements shall be exempt throughout the Incentive District Term.

e. Company Discretion to Develop Data Centers.

The Parties acknowledge and agree that the site plan, including the anticipated size, location, and number of Data Centers, is subject to change at the Company's sole discretion.

f. Treatment of Additional Buildings and Data Centers.

The Parties acknowledge and agree that, in accordance with Section 4(a) of this Agreement, any buildings, including Data Centers, that are subsequently constructed within the Incentive District after the Exemption Effective Date will be subject to the Incentive District Exemption for the remaining Incentive District Term. In accordance with Section 5 of this Agreement, the Company will pay one annual PILOT Payment and one annual Stimulus Payment for each Data Center constructed on the Property for the remainder of the Incentive District Term in effect after the new Data Center is constructed.

5. Payments Associated with the Incentive Districts.

A. Payments in Lieu of Taxes ("PILOT Payments").

For each Data Center constructed on the Property, the Company will make an annual PILOT Payment for each year that a Data Center is subject to the Incentive District Exemption (each, an "**Exemption Year**"), commencing in the year immediately following the year in which a certificate of occupancy is issued for the Data Center or in the year immediately following the year in which the Company provides written notice to the City of substantial completion (the "**PILOT Commencement Year**") until the last year of the applicable Incentive District Term.

(i) Phase 1. The initial annual PILOT Payment for the first Data Center will total One Million Two Hundred Fifty Thousand and No/100 Dollars ($1,250,000.00). This amount will be disbursed to the Taxing Entities as follows, with the "Share of Total PILOT Payments" based on the proportional share of property tax levies corresponding to the Taxing Entities in effect for tax year 2023-2024 in the applicable Incentive District:

Taxing Entity	Initial Annual Payment for Phase 1	Share of Total PILOT Payments
Hilldale Public Schools	$891,864.00	71.35%
Indian Capital Technology Center	$121,416.00	9.71%
Muskogee County	$121,416.00	9.71%
County Health Department	$30,324.00	2.43%
Eastern Oklahoma District Library	$48,543.00	3.88%
County EMS	$36,437.00	2.91%
Total	**$1,250.000**	**100%**

After the first annual payment, the PILOT Payments to each Taxing Entity will increase by one percent (1.00%) each year, as illustrated in Exhibit G.

(ii) Additional Phases. For each subsequent Data Center of the Project, the Company shall make annual PILOT payments to the Taxing Entities beginning in the year immediately following the year in which a Certificate of Occupancy or notice of substantial completion is issued for a Data Center per Section 4(b) of this Agreement (each a "**PILOT Commencement Year**"). The initial PILOT Payment for each Data Center will be the product of $1,250,000 and the quotient of the CPI in the year preceding the PILOT Commencement Year for the applicable Data Center divided by the CPI in the year 2025, calculated as follows:

$1,250,000 **x** (CPI in the year immediately preceding PILOT Commencement Year for applicable Phase/CPI in 2025)

Thereafter, the initial PILOT Payment for each Data Center will increase by one percent (1.00%) each year.

For purposes of this Agreement, CPI refers to the annual average of United States Department of Labor, Bureau of Labor Statistics, Revised Consumer Price Index for All Urban Consumers (CPI-U): U.S. Cities Average, all items index (Reference Base 1982-84 equal 100) ("CPI").

The payments for each subsequent Data Center located within the Hilldale Public Schools district will be allocated to the Taxing Entities in the same proportion as established above for Phase 1.

The payments for each subsequent Data Center located within the Muskogee Public Schools District will be allocated to the Taxing Entities in the following proportions, with the "Share of Total PILOT Payments" based on the proportional share of property tax levies corresponding to the Taxing Entities in effect for tax year 2023-2024 in the applicable Incentive District:

Taxing Entity	Share of Total PILOT Payments
Muskogee Public Schools	70.47%
Indian Capital Technology Center	10.01%
Muskogee County	10.01%
County Health Department	2.50%
Eastern Oklahoma District Library	4.00%
County EMS	3.00%
Total	**100%**

B. Stimulus Payments.

Pursuant to the Project Plan and this Agreement, the Company shall make annual payments (the "**Stimulus Payments"** to the Indian Capital Technology Center and the public school district in which the Phase is located (either Hilldale Public Schools or Muskogee Public Schools) as follows:

i. Phase 1. For the first Data Center, the Company shall make annual Stimulus Payments beginning in the year immediately following the year in which a Certificate of Occupancy or notice of substantial completion is issued for a Data Center per Section 4(b). The initial annual Stimulus Payment for the first Data Center will total Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00). For Phase 1, the Incentive District will be located within the jurisdictional boundaries of the Hilldale Public School District. The Stimulus Payment will be disbursed as follows:

Taxing Entity	Initial Annual Payment per Phase	Share of Total Stimulus Payments
Hilldale Public Schools	$70,000	28%
Indian Capital Technology Center	$180,000	72%

After the first annual payment, the Stimulus Payments to each Taxing Entity will increase by one percent (1.00%) each year, as illustrated in Exhibit G.

b. Additional Phases. For each subsequent Data Center, the Company shall make annual Stimulus Payments to the Indian Capital Technology Center and the public school district in which the Data Center is located (Hilldale Public Schools or Muskogee Public Schools) commencing in the PILOT Commencement Year. The initial Stimulus Payment amount will be the product of $250,000 and the quotient of the CPI in the year preceding the PILOT Commencement Year and the CPI in 2025. More particularly, the initial Stimulus Payment for each Data Center shall be calculated as follows:

$250,000 x (CPI in the year immediately preceding the PILOT Commencement Year for the applicable Data Center/CPI in 2025)

These payments will be allocated in the same proportions established above for Phase 1, with the school district share allocated to the respective school district in which the Data Center is located.

C. PILOT Payments and Stimulus Payments for Data Centers Completed After the Activation of an Incentive District.

For the avoidance of doubt, the Company shall not be obligated to make an annual PILOT Payment or Stimulus Payment associated with the Incentive District unless or until the completion of a Data Center within that Incentive District triggers the PILOT Commencement Year. The Parties agree that, in the event the Incentive District becomes effective before a Data Center is completed within that Incentive District, all increases in assessed property value within the Incentive District, if any, will remain taxable until the PILOT Commencement Year as though the Incentive District Exemption had not commenced. In this circumstance, the City Manager will promptly, upon issuance of a certificate of occupancy for a Data Center or upon receipt from the Company of notice of substantial completion of a Data Center, provide written notice of the PILOT Commencement Year to the County Assessor, each of the Taxing Entities, and the Company and thereafter, all value within the Incentive District attributable to property qualifying under U.S. Industry Number 518210 of the North American Industry Classification System (NAICS) Manual, 2017 revision in excess of Base Value shall be subject to the Incentive District Exemption.

D. Payment Mechanics for PILOT Payments and Stimulus Payments

The Company shall make the PILOT Payments and Stimulus Payments described in this Section 5 to the applicable Taxing Entities by January 1 of each Exemption Year for the duration of the Incentive District Term of the Incentive District (the "**Payment Date**") delivered to the Taxing Entities at their respective notice addresses provided in Section 14 below, unless written payment instructions are otherwise provided to the Company by the Taxing Entities no later thirty (30) days prior to the Payment Date.

Neither the PILOT Payments nor the Stimulus Payments constitute ad valorem taxes and therefore do not create offsets to state school aid. As these payments are not classified as taxes, they should not be reported as such.

Furthermore, since the exempt improvements will not appear on the tax rolls, they will not contribute to taxable valuation for the purposes of state school aid calculations. Instead, the new revenues received by the taxing jurisdictions from the PILOT Payments and the Stimulus Payments should be categorized and reported as "other income" or "other revenue."

However, all ad valorem tax revenue attributable to the Base Value shall be treated as taxes for reporting purposes.

E. Franchise Fees

i. Rate and Apportionment. The Company or an Affiliate will pay the City's franchise fee on the Company's use of electric power, calculated as three percent (3%) of the Company's electricity costs (the "**Franchise Fees**"). For so long as any Incentive District Exemptions are provided to the Project, the City will apportion the Franchise Fees collected by the City attributable to the Project's use of high-voltage electric power, as follows:

(i) thirty percent (30%) shall be apportioned to the Company (the "**Company Allocation**"),

(ii) twenty-three and one-third percent (23.33%) shall be apportioned to the Muskogee City-County Port Authority (the "**Port Allocation**"),

(iii) twenty-three and one-third percent (23.33%) shall be apportioned to Muskogee County, or a Designated County Trust (the "**County Allocation**"), and

(iv) twenty-three and one-third percent (23.33%) shall be retained by the City.

For clarity, the Franchise Fees apportioned hereunder shall be calculated on a campus-wide basis and shall apply to all Franchise Fees paid by the Company relating to the Project's high-voltage electricity consumption. While the City will also receive Franchise Fees on medium-voltage electricity usage, such amounts shall be excluded from apportionment hereunder.

If the Franchise Fee is increased above three percent (3%), then the City will increase the amount of the Company Allocation as necessary to produce a net effective Franchise Fee rate of two and one tenths percent (2.1%). If, for example, the Franchise Fees are increased to 3.5%, the Company Allocation will automatically increase to 40%, resulting in a net effective Franchise Fee rate of 2.1%.

ii. Reporting Obligations and Payment Mechanics. As a condition to receiving its apportionment of the Franchise Fee, the Company shall provide the City with monthly reports in the form attached hereto as Exhibit H reporting the amount of Franchise Fees paid by the Company or an Affiliate attributable to the Project's use of high-voltage electric power for the previous monthly period (the "**Monthly Reports**" and each a "**Monthly Report**"). Each Monthly Report shall specify the total Franchise Fees invoiced by OG&E and paid by the Company or Affiliate to OG&E (or any other provider if applicable) for high-voltage electricity consumption, identify the reporting period, and affirm that the reported amounts correspond directly to the Project's high-voltage power usage. The City shall pay the Company Allocation, the Port Allocation, and the County Allocation at least quarterly.

In addition to the Monthly Reports, by no later than February 1 following each year in which Tax Exemptions are provided to the Project, the Company shall deliver to the City a sworn report, in the form attached hereto as Exhibit I, certifying, under penalty of perjury, the amount of campus-wide Franchise Fees paid by the Company or an Affiliate attributable to the Project's use of high-voltage electric power for the previous year and affirm that the reported amounts correspond directly to the Project's high-voltage power usage for that year (the "**Sworn Annual Report**").

The Company shall engage an independent third-party auditor, at its expense, to verify the accuracy of the Franchise Fees paid to OG&E for high-voltage electricity consumption attributable to the Project. The results of such audit shall be included in the Sworn Annual Report. However, a third-party audit shall be required only if: (a) the Sworn Annual Report reflects a discrepancy of more than 5% from the cumulative Monthly Reports; (b) the City identifies inconsistencies or irregularities in the Company's reported Franchise Fees and requests verification; (c) the City reasonably determines that the reported Franchise Fees do not align with overall franchise fees collected from OG&E; or (d) the City has reason to believe that the Company has materially misrepresented the Franchise Fees attributable to the Project.

If a third-party audit is required under this provision, the Company shall provide the City with a copy of the audit report within 30 days of completion. If the audit reveals that Franchise Fees were underreported by more than 5%, the Company shall: (x) reimburse the City for any reasonable out-of-pocket costs incurred in reviewing, analyzing, or verifying the audit findings; (y) immediately pay any amounts owed to the City, Port Authority, and County; and (z) be subject to penalties for misrepresentation, including potential adjustments to future franchise fee allocations.

The Company shall be responsible for remedying any discrepancies between the Sworn Annual Report and the Monthly Reports associated with the previous year, as follows: If the amount of Franchise Fees in the Sworn Annual Report is lower than the cumulative Franchise Fees reported in the Monthly Reports, the Company shall within thirty (30) days of delivery of the Sworn Annual Report reimburse the City for any overpayment of the Company Allocation, the Port Allocation, and the County Allocation in order to put the City in the same position it would have been in had the Company not overreported the amount of Franchise Fees in the Monthly Reports (the "**Overpayment Reimbursement**"); provided, however, that the Overpayment Reimbursement shall be limited to the amount of actual overpayment by the City. The City shall provide to the Company, promptly upon Company request and in no event later than ten (10) business days following such request, records demonstrating to the Company's reasonable satisfaction the amount of the Port Allocation and County Allocation payments actually paid to the Port Authority and the County, respectively, for the previous year (the "**Allocation Records**") so that the Company may verify the amount of Overpayment Reimbursement. Failure by the City to deliver such records within the above time frame shall not relieve the Company of the obligation to make the Overpayment Reimbursement payment, but shall extend the deadline for the Company to make the Overpayment Reimbursement payment by the same amount of time as the delay in delivery of the records.

If the amount of Franchise Fees in the Sworn Annual Report is higher than the cumulative Franchise Fees in the Monthly Reports for the previous year, then the Company shall reimburse the City for any underpayments of the Port Allocation and County Allocation (and the City shall, pursuant to its Economic Development Agreement with the Port Authority and the County, reimburse the Port Authority and the County, respectively, for such underpayments) ("**Underpayment Reimbursement**"); provided, however, that the Company's obligation to make the Underpayment Reimbursement payment shall be limited to the amount of actual underpayment by the City as of the date of the Sworn Annual Report. If the amount of Franchise Fees in the Sworn Annual Report is higher than the cumulative Franchise Fees in the Monthly Reports for the previous year, the City shall within ten (10) business days of receipt of the Sworn Annual Report provide the Company with records of all Port Allocation payments and County Allocation payments actually made to the Port Authority and the County, respectively, associated with the previous year as of the date of receipt of the Sworn Annual Report (the "**Allocation Records**"). Upon receipt of the Allocation Records, the Company shall deliver to the City a calculation of the amount of the Underpayment Reimbursement within ten (10) business days, and shall deliver the Underpayment Reimbursement within thirty (30) days of receipt of the Allocation Records.

The City may verify the accuracy of the reports by obtaining confirmation from OG&E regarding total Franchise Fees collected, without requiring disclosure of usage data. Any material misrepresentation may result in suspension or adjustment of the Company's allocation under the Franchise Fee apportionment. If any discrepancy is identified between OG&E's records and the Company's reports, the City shall notify the Company, and the Company shall provide supporting documentation within ten (10) business days. If discrepancies remain unresolved, the City reserves the right to engage an independent auditor, at the Company's expense, to verify the accuracy of reported Franchise Fees.

6. **Job Creation**.

For the first Data Center of the Project, the Company shall create no fewer than fifty (50) full-time jobs at the Project, with a minimum average annual salary of $75,000, exclusive of benefits. For each subsequent Data Center, the Company will create no fewer than thirty-five (35) full-time jobs at the Project. The Company shall have five years from the issuance of the building certificate of occupancy for the associated Data Center to ramp to the applicable job creation total. The Company shall provide the City with certified copies of the Company's quarterly reports submitted to the Oklahoma Employment Security Commission (OESC) with personally identifiable information omitted. These reports shall include the name, position, and number of full-time and part-time employees employed at the Project, along with the total and average annual employee compensation, distinguishing between wages and employee benefits. This reporting obligation shall continue for the duration of each Incentive District, beginning from the first year in which the Company receives any Exemptions. The Company shall submit the report for each Exemption Year no later than March 1 of the following year in accordance with Section 7 (the "**Employment Reporting**"). For purposes of satisfying the job creation requirements of this Agreement, a full-time employee works 32 hours or more per week and "Company", as used in this section, shall include jobs created at the Project by an Affiliate. Independent contractors shall not be counted toward job totals. If the Company fails to create fifty (50) full-time jobs at the Project within five years of the issuance of the certificate of occupancy for the first Data Center, or for any Exemption Year thereafter during the applicable Incentive District Term fails to maintain the 50 full-time jobs, or the Company fails to create thirty five (35) jobs within five years of the issuance of certificate of occupancy for any subsequent Data Center, or fails to maintain such 35 jobs in any subsequent Exemption Year for the applicable Incentive District (the "**Job Creation Metrics**"), then the City may proportionately reduce the applicable Incentive District Exemption for the next Exemption Year and for so long as Job Creation Metric shortfall continues. For purposes of this paragraph, proportionate reduction shall mean the percentage by which the Company failed to achieve the applicable Job Creation Metric multiplied by 1/2. Job Creation Metrics shall be measured on a campus-wide basis but shortfalls shall be allocated on a per-Data Center basis to the most recently constructed Data Center. For the avoidance of doubt, no proportionate reduction in an Incentive District Exemption shall apply once any Jobs Creation Metric shortfall has been corrected.

By way of example, if the Company has constructed two Data Centers, and the certificate of occupancy for the second Data Center was issued seven (7) years prior, and the total full-time jobs associated with the Project for the last Exemption Year was 80, then the Incentive District

Exemption shall remain 100% for the first Data Center, as the requirement for the creation for 50 full-time jobs has been met. The remaining 30 full-time jobs created would be attributed to the second Data Center, which equates to a shortfall of five full-time jobs from the target creation of 35, resulting in a reduction of the Incentive District Exemption to 92.8% for the second Data Center. If the Employment Reporting for the next Exemption Year shows an increase in full-time jobs to 85, then the full 100% exemption would be restored for the second Data Center.

If the Company's average annual salary for full-time employees falls below $75,000 (the "Average Salary Requirement") at any time after five years following the issuance of a certificate of occupancy for the first Data Center, then the Incentive District Exemptions for all Incentive Districts will be reduced proportionately for the next Exemption Year and for so long as the Average Salary Requirement continues. For purposes of this Paragraph, proportionate reduction shall mean the percentage by which the Company failed to achieve the Average Salary Requirement multiplied by 1/2. Average Annual Salary shall be measured on a campus-wide basis and shortfalls shall also be applied on a campus-wide basis. For the avoidance of doubt, no reduction in an Incentive District Exemption shall apply once an Average Salary Requirement shortfall has been corrected.

The remedies set forth in this Section shall be the exclusive remedies available in the event the Company fails to achieve or maintain the Jobs Creation Metric or the Average Salary Requirement.

7. Annual Report.

Pursuant to Section 860(F) and Section 867(B) of the Act (collectively, the "**Reporting Statutes**"), on or before the ninetieth (90^{th}) day following the end of each fiscal or tax year, the City Manager or his or her designee shall prepare and submit the reports required by those sections (the "**Annual Reports**") for the Incentive District to the Oklahoma Department of Commerce and the chief executive officer of each Taxing Entity. For the Incentive District, commencing in the year following the Exemption Commencement Year and each year thereafter during the Incentive District Term, the Company shall provide to the City by no later than March 1 a report in the form attached hereto as Exhibit J to assist the City with its Annual Reports.

Pursuant to Section 860(F) of the Act, a copy of each Annual Report shall be provided to any member of the public by the Oklahoma Department of Commerce upon request. The City shall also publish a summary of the Annual Report in a newspaper of general circulation in the City of Muskogee, as required by Section 867(C) of the Act.

8. Term.

This Agreement shall be effective upon execution by the City and the Company, and shall be effective with respect to each Taxing Entity upon execution by that Taxing Entity (with the provisions hereof effective as to each portion of the Property upon the Company closing on and accepting fee simple title to that portion of the Property), and shall remain in effect, unless terminated earlier subject to its terms, until the final Payment Date for the final Exemption Year of any Incentive District Term. The Company reserves the right to terminate this Agreement at any time at its sole discretion; provided, however, that the Company shall remain liable for any PILOT Payments and Stimulus Payments owed for any Exemption Years in which a Data Center was exempted pursuant to this Agreement.

9. <u>Default.</u>

a. <u>Default by the Company.</u>

The Company shall be in default of this Agreement only if it breaches an obligation under this Agreement and such breach or failure is not cured within ninety (90) days after the date of written notice by the City or any of the Taxing Entities. If such breach is not susceptible to cure within ninety (90) days, the Company shall not be in default so long as it commences curative action within ninety (90) days and continues to diligently pursue cure thereafter.

b. <u>Default by the City or Taxing Entities.</u>

The City or any of the other Taxing Entities shall be in default of this Agreement if it breaches an obligation under this Agreement, and such breach or failure is not cured within ninety (90) days after the date of written demand by the Company (the City or any other Taxing Entity, as applicable). If the breach is not susceptible to cure within ninety (90) days, the City or the Taxing Entity shall not be in default so long as it commences curative action within ninety (90) days and continues to diligently pursue cure thereafter. Notwithstanding anything herein to the contrary, neither the City nor any Taxing Entity shall be permitted to terminate this Agreement or take any action that would decrease the amount or term of the Incentive District Exemptions provided herein based on the breach of the City or another Taxing Entity without the consent of the Company.

10. <u>Remedies.</u>

After the passage of applicable notice and cure periods as provided herein, the non-defaulting Party shall have the right to terminate this Agreement and to pursue all remedies available hereunder at law and in equity, and to terminate, dissolve or modify the Incentive Districts, provided that any such action must not be disproportionate to the event of default.

The rights and remedies of the Parties, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, or of any of its remedies for any other default or breach by the other Party.

11. <u>Force Majeure.</u>

For the purpose of any of the provisions of the Agreement, none of the City, the Taxing Entities or the Company, as the case may be, or any successor in interest, shall be considered in breach of, or default in, its obligations under an event of force majeure in the performance of such obligations due to unforeseeable causes beyond a Party's control and without its fault or negligence, including, but not restricted to, acts of God, acts of public enemies, acts of terrorism, acts of the federal government, acts of any of the other persons or entities not Parties to this Agreement, fires, floods, tornadoes, epidemics, pandemics, quarantine restrictions, strikes, industrial disputes, freight, embargoes, and unusually severe weather or delays of contractors or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the Taxing Entities or the City, as the case may be, shall be extended for the period of the force majeure as reasonably determined by the Parties; provided, that a Party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such forced delay, have first notified the other Parties thereof in writing, and of the cause or causes thereof, and requested an extension for the anticipated period of the forced delay.

12. <u>Successors and Assigns.</u>

a. Assignment by Developer

In the event the Company does not purchase the Property, the Developer may not assign this Agreement without the prior written consent of the City, which may be granted or withheld in the City's sole discretion. The City may condition its approval on evidence that the proposed assignee meets the following criteria: The assignee must be a data center developer that is a top 5 U.S.-based technology company with: (i) a dominant global market presence, a widely recognized household name, (ii) direct ownership and operation of its own hyperscale data center infrastructure, and (iii) comparable in financial stability, economic impact, and long-term investment potential to the Company.

b. Assignment by the Company

This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. The Company may assign or partially assign this Agreement at its sole discretion, without the express approval of the City or any other Taxing Entity, to another entity (each a "**Successor**"), including to any Successor controlling, controlled by, or under common control with the Company or Company's parent company (each an "**Affiliate**"). After any assignment, all references to Company herein shall thereafter be a reference to such Successor with respect to any rights, entitlements, and obligations occurring or arising after the date of such assignment and within the scope of such assignment.

Provided, however, that as a condition to the right to receive tax exemptions as set forth in this Agreement, any Successor shall execute and deliver to the City and all other Taxing Entities, a full or partial assignment agreement (each an "**Assignment**") in substantially the forms attached hereto as <u>Exhibit K.1</u> and <u>Exhibit K.2, as applicable,</u> pursuant to which such Successor assumes all or a portion of the rights, entitlements, and obligations of the Company under this Agreement as provided therein; provided that the Company may reasonably modify or supplement the form of the Assignments to accurately reflect the rights, entitlements, or obligations being assigned, so long as such assignment does not purport to assign any rights, entitlements, or obligations beyond those provided in this Agreement. Upon the receipt by the City and all other Taxing Entities of an Assignment, the Successor shall have all or a portion of the rights and entitlements, including without limitation, rights to tax exemptions, and obligations as the "Company" under this Agreement, in the same manner and with like effect as if the Successor had been the original Company and a signatory to this Agreement, all as specified in the Assignment.

In the event the Company transfers fee ownership by a total or partial sale of the Project Site, or any portion thereof, to a third party ("**Third Party Purchaser**") without a corresponding full or partial assignment of this Agreement to the Third Party Purchaser in accordance with the terms of this Section 11, the City shall be entitled to terminate, dissolve, or modify the Incentive

District and amend this Agreement.

13. Cooperation.

The Parties agree to reasonably cooperate with one another and take all actions necessary to effectuate the intent of this Agreement and the Project Plan. The City Manager shall reasonably accommodate requests by the Company for minor amendments as permitted in the Act.

14. Estoppel Certificate.

Within thirty (30) days after a request from the Company, the City and any Taxing Entities shall execute and deliver to Company a certificate stating: (i) that this Agreement is in full force and effect, if the same is true; (ii) that Company is not in default under any of the terms, covenants or conditions of the Agreement, or, if Company is in default, specifying same; and (iii) such other matters as Company reasonably requests.

15. Notice.

Any and all notices required by this Agreement shall be addressed to the following, or other such party or address as any party designates in writing, by certified mail, postage prepaid, or by hand or overnight delivery:

If to the City:

City of Muskogee
Attn: City Manager
229 W. Okmulgee Ave.
Muskogee, OK 74401
Email address:

With a copy to:

City of Muskogee
Attn: Katrina Bodenhamer, City Attorney
229 W. Okmulgee Ave.
Muskogee, OK 74401
Email address: Kbodenhamer@muskogeeonline.org

and

Center for Economic Development Law
301 N. Harvey Ave., Suite 200
Oklahoma City, OK 73102
Attention: Dan Batchelor and Lisa M. Harden
Email address: danbatchelor@econlaw.com
lisaharden@econlaw.com

and

The Public Finance Law Group PLLC
5657 N. Classen Blvd., Ste 100
Oklahoma City, OK 73118
Attention: Nathan D. Ellis
Email address: nellis@okpublicfinancelaw.com

If to the County:

Muskogee County Board of Commissioners
Attn: Board Chair
PO Box 2307
Muskogee, OK 74402

If to Hilldale Public Schools:

Board of Education of Hilldale Public Schools
Attn: Board President
313 E. Peak Blvd.
Muskogee, OK 74403

If to Muskogee Public Schools:

Board of Education of Muskogee Public Schools
Attn: Board President
202 W. Broadway St.
Muskogee, OK 74401

If to Indian Capital Technology Center:

Board of Education of Indian Capital Technology Center
Attn: Board President
2403 N. 41st St. East
Muskogee, OK 74403

If to the Muskogee County Health Department:

Muskogee County Health Department
Attn: Director
530 S. 34th St.
Muskogee, OK 74401

If to Muskogee County Emergency Medical Service:

Muskogee County EMS
Attn: Director
200 Callahan St.
Muskogee, OK 74403

If to the Eastern Oklahoma District Library System:

Eastern Oklahoma District Library System
Attn: Board President
14 E. Shawnee
Muskogee, OK 74403

If to the Company

Pioneer Trail LLC
McAfee & Taft
Attn: Tony Mastin for Pioneer Trail, LLC
211 N. Robinson, 8th Floor
Oklahoma City, OK 73102

If to the Developer:

Ferdinand Technologies, LLC
2001 Ross Avenue, Suite 400
Dallas, Texas 75201
Attention: Michael Lebow

With a copy to:

Vorys, Sater, Seymour and Pease LLP
Attn: R. Elissa Wilson
52 E. Gay St.
Columbus, OH 43215
Email: rewilson@vorys.com

16. Amendment.

This Agreement may not be supplemented or modified except in a written agreement properly executed by the Parties. All Exhibits and documents referenced in this Agreement are incorporated into this Agreement by reference and are an integral part of this Agreement.

17. Severability.

If any provision of this Agreement is determined to be to any extent invalid, illegal, or unenforceable, it will be deemed stricken from this Agreement. All other provisions of this Agreement will remain in full force and effect. The stricken provision will then be deemed replaced with one that is valid and enforceable and that comes closest to expressing the Parties' original intent.

18. Applicable Law.

The laws of the State of Oklahoma (excluding its conflict of laws rules that would apply to the laws of another jurisdiction) exclusively apply to this Agreement.

19. Authority.

Each Party represents and warrants to the other that: (1) it has full authority and power to enter into and perform its obligations under this Agreement; (2) the person executing this Agreement is fully empowered to do so; and (3) no consent or authorization is necessary from any third party.

20. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall constitute an original of this instrument. It shall not be necessary for the signature of more than one party to appear on any single counterpart. The exchange of executed counterparts of this Agreement or of signature pages by facsimile or other electronic transmission shall constitute effective execution and delivery of this Agreement, and such counterparts may be used in lieu of the original for all purposes.

21. Entire Agreement

This Agreement, including its Exhibits and documents delivered by its terms and incorporated in it, constitute the entire agreement between the Parties pertaining to its subject matter. All prior and contemporaneous written or oral agreements and communications between the Parties are superseded by this Agreement.

22. Section Headings

Section and subsection headings are included herein for the convenience of the Parties and shall not affect the meaning or interpretation of this Agreement.

[Signatures follow on separate pages.]

CITY SIGNATURE PAGE FOR
LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

"CITY"

City of Muskogee

By: ________________________________
Mayor W. Patrick Cale

ATTEST:

____
Tammy L. Tracy, City Clerk

(SEAL)

Approved as to form and legality this ___ day of ________, 2025.

____
City Attorney

COUNTY SIGNATURE PAGE FOR
LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

“**COUNTY**”

Board of County Commissioners, Muskogee County

By: ______________________________
Ken Doke, District 1 Commissioner, Chairman

By: ______________________________
Keith Hyslop, District 2 Commissioner, Vice-Chairman

By: _______________________________
Kenny Payne, District 3 Commissioner

ATTEST:
____
Polly Irving, County Clerk
(SEAL)

Approved as to form and legality this ___ day of ________, 2025.

____
[Name], District Attorney

HILLDALE PUBLIC SCHOOLS SIGNATURE PAGE FOR
LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

"**HILLDALE PUBLIC SCHOOLS**"

Board of Education of Independent School District Number 29 of Muskogee County, Oklahoma

By: ________________________________
Ron Allen, Board President

(SEAL)

ATTEST:

By: ____________________________________
Secretary

MUSKOGEE PUBLIC SCHOOLS SIGNATURE PAGE FOR
LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

"**MUSKOGEE PUBLIC SCHOOLS**"

Board of Education of Independent School District Number 20 of Muskogee County, Oklahoma

By: ________________________________
Danny Shiew, Board President

(SEAL)

ATTEST:

By: ________________________________
Secretary

INDIAN CAPITAL TECHNOLOGY CENTER SIGNATURE PAGE FOR
LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

"**INDIAN CAPITAL TECHNOLOGY CENTER**"

Board of Education of the Indian Capital Technology Center

By: ______________________________
Monte Madewell, Board President

(SEAL)

ATTEST:

By: ______________________________
Secretary

HEALTH DEPARTMENT SIGNATURE PAGE FOR
LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

“**HEALTH DEPARTMENT**”

Muskogee County Health Department

By: ______________________

___________________, Member

(SEAL)

ATTEST:

By: ____________________________________
Secretary

LIBRARY DISTRICT SIGNATURE PAGE FOR
LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

"**LIBRARY DISTRICT**"

Eastern Oklahoma District Library System

By: ______________________
Reggie Cotton, President

(SEAL)

ATTEST:

By: ______________________
Secretary

COUNTY EMS SIGNATURE PAGE FOR
LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

"**COUNTY EMS**"

Muskogee County Emergency Medical Service

By: ________________________
Laurel Havens, Director

(SEAL)

ATTEST:

By: ______________________________________
Secretary

COMPANY SIGNATURE PAGE FOR
LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

“**COMPANY**”

Pioneer Trail, LLC
a Delaware limited liability company

By: ________________________
Name: ___________________
Title:_____________________

DEVELOPER SIGNATURE PAGE FOR
LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

"**DEVELOPER**"

Ferdinand Technologies, LLC
a Texas limited liability company

By: ________________________
Name: ___________________
Title:_____________________

COUNTY ASSESSOR ACKNOWLEDGEMENT FOR
LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

Acknowledged and Agreed:

"**COUNTY ASSESSOR**"

By: ______________________________
Ron Dean
Muskogee County Assessor

Exhibit Table of Contents

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Legal Description of the Property

Exhibit A.2
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Exhibit C

Copy of Muskogee Planning and Zoning Commission Resolution

Exhibit D

Copy of Project Plan Approval Ordinance

Exhibit E.1

Copy of County Agreement Adoption Resolution

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Copy of Hilldale Public Schools Agreement Adoption Resolution

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Copy of Muskogee Public Schools Agreement Adoption Resolution

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Copy of Indian Capital Technology Center Agreement Adoption Resolution

Exhibit E.5

Copy of Health Department Agreement Adoption Resolution

Exhibit E.6

Copy of County EMS Agreement Adoption Resolution

Exhibit E.7

Copy of Library District Agreement Adoption Resolution

Exhibit F

Incentive District Base Value Assessments

The Base Value for each Incentive District is equal to the total market value of real and personal property within the Incentive District multiplied by the assessment ratio. The County Assessor has certified the Base Value for the Incentive District, as set forth in the table below.

Parcel	**Acreage**	**Percentage of Total Project Site Acreage**	**TID Base Value**
Incentive District 1			
Incentive District 2			
Incentive District 3			

Exhibit G

Schedule of Payments Associated with the Incentive Districts

PILOT Payment Schedule (per Data Center)

The following tables illustrate the estimated PILOT Payment schedule for one Phase of the Project assuming that 2028 is the first PILOT Commencement Year for the first Data Center.

Projected PILOT Revenues - Phase 1

Beginning Annual PILOT Payment $ 1,250,000

**Increases 1% annually*

Year	Hilldale Public Schools	Indian Capital Technology Center	County	County Health	County Library	County EMS	Total
2028	$ 891,864	$ 121,416	$ 121,416	$ 30,324	$ 48,543	$ 36,437	**$ 1,250,000**
2029	$ 900,783	$ 122,630	$ 122,630	$ 30,627	$ 49,028	$ 36,801	**$ 1,262,500**
2030	$ 909,791	$ 123,857	$ 123,857	$ 30,934	$ 49,518	$ 37,169	**$ 1,275,125**
2031	$ 918,888	$ 125,095	$ 125,095	$ 31,243	$ 50,013	$ 37,541	**$ 1,287,876**
2032	$ 928,077	$ 126,346	$ 126,346	$ 31,555	$ 50,514	$ 37,916	**$ 1,300,755**
2033	$ 937,358	$ 127,610	$ 127,610	$ 31,871	$ 51,019	$ 38,296	**$ 1,313,763**
2034	$ 946,732	$ 128,886	$ 128,886	$ 32,190	$ 51,529	$ 38,678	**$ 1,326,900**
2035	$ 956,199	$ 130,175	$ 130,175	$ 32,512	$ 52,044	$ 39,065	**$ 1,340,169**
2036	$ 965,761	$ 131,476	$ 131,476	$ 32,837	$ 52,565	$ 39,456	**$ 1,353,571**
2037	$ 975,419	$ 132,791	$ 132,791	$ 33,165	$ 53,090	$ 39,850	**$ 1,367,107**
2038	$ 985,173	$ 134,119	$ 134,119	$ 33,497	$ 53,621	$ 40,249	**$ 1,380,778**
2039	$ 995,024	$ 135,460	$ 135,460	$ 33,832	$ 54,157	$ 40,651	**$ 1,394,585**
2040	$ 1,004,975	$ 136,815	$ 136,815	$ 34,170	$ 54,699	$ 41,058	**$ 1,408,531**
2041	$ 1,015,024	$ 138,183	$ 138,183	$ 34,512	$ 55,246	$ 41,469	**$ 1,422,617**
2042	$ 1,025,175	$ 139,565	$ 139,565	$ 34,857	$ 55,798	$ 41,883	**$ 1,436,843**
2043	$ 1,035,426	$ 140,960	$ 140,960	$ 35,205	$ 56,356	$ 42,302	**$ 1,451,211**
2044	$ 1,045,781	$ 142,370	$ 142,370	$ 35,557	$ 56,920	$ 42,725	**$ 1,465,723**
2045	$ 1,056,239	$ 143,794	$ 143,794	$ 35,913	$ 57,489	$ 43,152	**$ 1,480,381**
2046	$ 1,066,801	$ 145,232	$ 145,232	$ 36,272	$ 58,064	$ 43,584	**$ 1,495,184**
2047	$ 1,077,469	$ 146,684	$ 146,684	$ 36,635	$ 58,645	$ 44,020	**$ 1,510,136**
2048	$ 1,088,244	$ 148,151	$ 148,151	$ 37,001	$ 59,231	$ 44,460	**$ 1,525,238**
2049	$ 1,099,126	$ 149,632	$ 149,632	$ 37,371	$ 59,823	$ 44,904	**$ 1,540,490**
2050	$ 1,110,117	$ 151,129	$ 151,129	$ 37,745	$ 60,422	$ 45,354	**$ 1,555,895**
2051	$ 1,121,218	$ 152,640	$ 152,640	$ 38,122	$ 61,026	$ 45,807	**$ 1,571,454**
2052	$ 1,132,431	$ 154,166	$ 154,166	$ 38,504	$ 61,636	$ 46,265	**$ 1,587,168**
Total	**$ 25,189,094**	**$ 3,429,183**	**$ 3,429,183**	**$ 856,450**	**$ 1,370,996**	**$ 1,029,093**	**$ 35,303,999**

Notes:

1. These projections assume a payment commencement year of 2028. The actual commencement year will be determined in accordance with the project plan.

Stimulus Payment Schedule (per Data Center)

The following tables illustrate the estimated Stimulus Payment schedule for one Phase of the Project assuming that 2028 is the year immediately following the year in which a Certificate of Occupancy or notice of substantial completion is issued for a Data Center per Section 4(b) of this Agreement.

Economic Development Stimulus Payments - Phase 1

Beginning Stimulus Payment $ 250,000

**increases by 1% per year*

Year	Hilldale Public Schools	Indian Capital Technology Center	Total
2028	$ 70,000	$ 180,000	**$ 250,000**
2029	$ 70,700	$ 181,800	**$ 252,500**
2030	$ 71,407	$ 183,618	**$ 255,025**
2031	$ 72,121	$ 185,454	**$ 257,575**
2032	$ 72,842	$ 187,309	**$ 260,151**
2033	$ 73,571	$ 189,182	**$ 262,753**
2034	$ 74,306	$ 191,074	**$ 265,380**
2035	$ 75,049	$ 192,984	**$ 268,034**
2036	$ 75,800	$ 194,914	**$ 270,714**
2037	$ 76,558	$ 196,863	**$ 273,421**
2038	$ 77,324	$ 198,832	**$ 276,156**
2039	$ 78,097	$ 200,820	**$ 278,917**
2040	$ 78,878	$ 202,829	**$ 281,706**
2041	$ 79,667	$ 204,857	**$ 284,523**
2042	$ 80,463	$ 206,905	**$ 287,369**
2043	$ 81,268	$ 208,974	**$ 290,242**
2044	$ 82,081	$ 211,064	**$ 293,145**
2045	$ 82,901	$ 213,175	**$ 296,076**
2046	$ 83,730	$ 215,307	**$ 299,037**
2047	$ 84,568	$ 217,460	**$ 302,027**
2048	$ 85,413	$ 219,634	**$ 305,048**
2049	$ 86,267	$ 221,831	**$ 308,098**
2050	$ 87,130	$ 224,049	**$ 311,179**
2051	$ 88,001	$ 226,289	**$ 314,291**
2052	$ 88,881	$ 228,552	**$ 317,434**
Total	**$ 1,977,024**	**$ 5,083,776**	**$ 7,060,800**

Notes:

1. These projections assume a payment commencement year of 2028. The actual commencement year will be determined in accordance with the project plan.

Exhibit H

Form of Monthly Report (Franchise Fees)

FORM OF FRANCHISE FEE MONTHLY REPORT
(Pursuant to Franchise Fee Reporting Obligations under the Tax Incentive Agreement)

TO: **City of Muskogee**
DATE: Month/Day/Year
REPORTING PERIOD: Month/Day/Year to Month/Day/Year
PAYMENT PERIOD: Month/Year

The undersigned, on behalf of Pioneer Trail, LLC (the "Company"), submits this Monthly Report in accordance with Section 5.E.ii. of the Tax Incentive Agreement dated _____, 2025 by and among Company, Ferdinand Technologies, LLC, a Texas limited liability company, the City of Muskogee (the "City"), the Board of Commissioners of Muskogee County, the Board of Education of Hilldale Independent School District No. I-29, the Board of Education of Muskogee Independent School District No. I-20, the Board of Education of the Indian Capital Technology Center District No. 4, the Board of Trustees of the Eastern Oklahoma District Library System, the Board of the Muskogee County Emergency Medical Services, and the Board of Trustees of the Muskogee County Health Department.

Franchise Fee Summary for the Reporting Period

Item	**Amount (USD)**
Total Franchise Fees paid by the Company to OG&E for high-voltage electricity consumption for the Reporting Period	$[amount]

Authorized Representative:

Signature: ___________________________
Name: _______________________________
Title: ________________________________
Date: _______________________________

Exhibit I

Form of Sworn Annual Report (Franchise Fees)

FORM OF SWORN ANNUAL REPORT
(Pursuant to Franchise Fee Reporting Obligations under the Tax Incentive Agreement)

TO: City of Muskogee
DATE: Month/Day/Year
REPORTING PERIOD: Month/Day/Year to Month/Day/Year
PAYMENT PERIOD: Year

The undersigned, on behalf of Pioneer Trail, LLC (the "Company"), submits this Sworn Annual Report in accordance with Section 5.E.ii. of the Tax Incentive Agreement dated _____, 2025 by and among Company, Ferdinand Technologies, LLC, a Texas limited liability company, the City of Muskogee (the "City"), the Board of Commissioners of Muskogee County, the Board of Education of Hilldale Independent School District No. I-29, the Board of Education of Muskogee Independent School District No. I-20, the Board of Education of the Indian Capital Technology Center District No. 4, the Board of Trustees of the Eastern Oklahoma District Library System, the Board of the Muskogee County Emergency Medical Services, and the Board of Trustees of the Muskogee County Health Department ("Tax Incentive Agreement").

Franchise Fee Summary for the Annual Reporting Period

Item	**Amount (USD)**
Total Franchise Fees paid by the Company to OG&E for high-voltage electricity consumption	$[amount]
Total Franchise Fees reported in Monthly Reports During Payment Period	$[amount]
Difference Between Sworn Report and Monthly Reports	$[amount]

Reconciliation of Underpayment or Overpayment

- If the total Franchise Fees in this Sworn Annual Report are lower than the cumulative Franchise Fees reported in the Monthly Reports, the Company shall reimburse the City for the overpayment of the Company, Port, and County Allocations within 30 days.
- If the total Franchise Fees in this Sworn Annual Report are higher than the cumulative Franchise Fees reported in the Monthly Reports, the City shall reimburse the Company, Port, and County for the underpayment within 30 days.

I, [Authorized Representative's Name], do hereby declare under penalty of perjury under the laws of the State of [State] that the information contained in this Sworn Annual Report, including all amounts stated herein, is true, correct, and complete to the best of my knowledge. I further affirm that the Franchise Fees reported correspond directly to the Project's high-voltage electricity usage for the Reporting Period.

Authorized Representative:

Signature: ____________________________
Name: ________________________________

Title: _______________________________
Date: ______________________________

ACKNOWLEDGEMENT

STATE OF ______________
COUNTY OF ______________

Subscribed and sworn before me on this ___ day of ________**, 20__**, by [Authorized Representative's Name], in their capacity as [Title] of [Company Name].

Notary Public: ______________________
My Commission Expires: _____________

Exhibit J

Annual Reporting Form

City of Muskogee, Oklahoma – TID Annual Reporting Form

Project Name:_______________________________________

Project Location:____________________________________

Incentive District: #__________________________________

Reporting Period:________________ to ________________

Reporting Criteria	
Entities receiving exemptions	
Description of exempted property and improvements	
Fair market value of property exempted	
Exemption term remaining	

EXHIBIT K.1

TO LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

Form of Assignment and Assumption Agreement to be utilized if all or a portion of the Project Site and all development thereon is transferred

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (the "**Assignment Agreement**") is made and entered into by and between Pioneer Trail, LLC, a Delaware limited liability company (the "**Company**") and ________________________________, a __________________________ (the "**Successor**"). Except as otherwise provided herein, capitalized terms used herein shall have the same meanings as in the Local Development Act Tax Incentive Agreement between Pioneer Trail, LLC, a Delaware limited liability company ("**Company**"), Ferdinand Technologies, LLC, a Texas limited liability company (the "Developer"), the City of Muskogee (the "**City**"), the Board of Commissioners of Muskogee County (the "**County**"), the Board of Education of Independent School District Number 29 of Muskogee County, Oklahoma (the "**Hilldale Public Schools**"), the Board of Education of Muskogee Independent School District No. I-20 (the "**Muskogee Public Schools**"), the Board of Education of the Indian Capital Technology Center ("**Technology Center**"), the Board of Trustees of the Eastern Oklahoma District Library System (the "**Library District**"), the Board of the Muskogee County Emergency Medical Service (the "**County EMS**") and the Board of Trustees of the Muskogee County Health Department (the "**Health Department**") (collectively, the County, Hilldale Public Schools, Muskogee Public Schools, Indian Capital Technology Center, the Library District, County EMS, and the Health Department are the "**Taxing Entities**") (the Company, the Developer, the City, and the Taxing Entities are collectively referred to as the "**Parties**", each a "**Party**"), dated __________, 2025 (the "**Tax Incentive Agreement**," a copy of which is attached hereto as Exhibit A and incorporated herein).

WITNESSETH:

WHEREAS, on__________, 2025, the City adopted the Project Plan Ordinance, approving the Scissortail Data Center Economic Development Project Plan in order to provide ad valorem property tax abatements for the Project on the Property (both as defined in the Tax Incentive Agreement), and at the same time approved three (3) Incentive Districts on the Property, all as specified in the Project Plan Ordinance and the Tax Incentive Agreement; and

WHEREAS, on _______________, 2025, the Company, the Developer, the City and the Taxing Entities entered into the Tax Incentive Agreement setting forth the terms and conditions of the Incentive District Exemption; and

WHEREAS, by virtue of a transfer of [a portion of] the Property, the Successor on _______, 20__ (the "**Transfer Date**") has or will succeed to the interest of the Company (or a successor to the Company) in [all of the Property] [a portion of the Property] as identified on Exhibit B, including all personal and real property thereon (the "**Transferred Property**"); and

WHEREAS, the Successor wishes to obtain all of the benefits and incur all of the obligations of the Tax Incentive Agreement with respect to the Transferred Property, as well as any additional property later developed, located or installed within or on the Transferred Property, and, as agreed in the Tax Incentive Agreement, the City and the Taxing Entities shall make these benefits available to the Successor on the terms set forth in the Tax Incentive Agreement as long as the Successor executes this Assignment Agreement.

NOW, THEREFORE, in consideration of the circumstances described above, the covenants contained in the Tax Incentive Agreement, and the benefit to be derived by the Successor from the execution hereof, the Parties hereto agree as follows:

1. From and after the Transfer Date, the Company hereby assigns (a) all of the obligations, agreements, covenants and restrictions set forth in the Tax Incentive Agreement to be performed and observed by the Company with respect to the Transferred Property, and (b) all of the benefits, rights and entitlements of the Tax Incentive Agreement with respect to the Transferred Property. From and after the Transfer Date, the Successor hereby (i) agrees to be bound by, assume and perform, or ensure the performance of, all of the obligations, agreements, covenants and restrictions set forth in the Tax Incentive Agreement to be performed and observed by the Company with respect to the Transferred Property; and (ii) certifies to the validity, as to the Successor as of the Transfer Date, of all of the representations, warranties and covenants made by or required of the Company that are contained in the Tax Incentive Agreement; provided, however, that to the extent such representations, warranties and covenants are related to the Property, the Successor's certification is limited to the Transferred Property (if less than the Property). Such obligations, agreements, covenants, restrictions, representations, and warranties include, but are not limited to, those contained in the following Sections of the Tax Incentive Agreement: Section 2 ("Project"), Section 4 ("Tax Exemption Terms"), Section 5 ("Payments Associated with the Incentive Districts"), Section 7 ("Annual Report"), Section 9 ("Default"), Section 10 ("Remedies"), and Section 12 ("Successors and Assigns").

2. Pursuant to Section 12 of the Tax Incentive Agreement, the Company and Successor acknowledge that the City and the Taxing Entities have permitted this assignment to Successor as provided herein, such that Successor shall have all of the benefits, rights, and entitlements, including without limitation the right to utilize Incentive District Exemption for all Transferred Property and any other property within or on the Transferred Property, in the same manner and with like effect as if the Successor had been an original signatory (i.e., the Company) to the Tax Incentive Agreement.

3. The City, on behalf of each of the Taxing Entities, acknowledges through the Transfer Date that the Tax Incentive Agreement is in full force and effect, confirms the Company has complied with the Tax Incentive Agreement with respect to the Transferred Property, and releases the Company from liability for any defaults occurring after the Transfer Date with respect to the Transferred Property.

4. Notices to the Successor with respect to the Tax Incentive Agreement shall be given as stated in Section 15 thereof, addressed as follows:

> [Successor Name
> Successor Mailing Address
> Successor Email Address]

IN WITNESS WHEREOF, the parties have caused this Assignment Agreement to be executed by their duly authorized representatives to be effective as of _________________.

COMPANY

Pioneer Trail, LLC a Delaware limited liability company

By:_____________________________________

Print Name: ______________________________

Title:____________________________________

SUCCESSOR

[Name of Successor]

By:_____________________________________

Print Name: ______________________________

Title:____________________________________

ACKNOWLEDGED AND AGREED

City of Muskogee, Oklahoma

By:_____________________________________

Print Name: ______________________________

Title: [***]

EXHIBIT A
TO ASSIGNMENT AND ASSUMPTION AGREEMENT

Copy of the Tax Incentive Agreement

EXHIBIT B
TO ASSIGNMENT AND ASSUMPTION AGREEMENT

Description of the Transferred Property

EXHIBIT K.2
TO LOCAL DEVELOPMENT ACT TAX INCENTIVE AGREEMENT

Form of Partial Assignment and Assumption Agreement to be utilized for any Successor that will own exempt property within the Project Site

PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT

This PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT (the "**Partial Assignment Agreement**") is made and entered into by and between Pioneer Trail, LLC, a Delaware limited liability company (the "**Company**") and ________________________________, a __________________________ (the "**Successor**"), effective this ____ day of ____, [Year] (the "**Effective Date**"). Except as otherwise provided herein, capitalized terms used herein shall have the same meanings as in the Local Development Act Tax Incentive Agreement between Pioneer Trail, LLC, a Delaware limited liability company ("**Company**"), Ferdinand Technologies, LLC, a Texas limited liability company (the "**Developer**"), the City of Muskogee (the "**City**"), the Board of Commissioners of Muskogee County, Oklahoma (the "**County**"), the Board of Education of Independent School District Number 29 of Muskogee County, Oklahoma (the "**Hilldale Public Schools**"), the Board of Education of Muskogee Independent School District No. I-20 (the "**Muskogee Public Schools**"), the Board of Education of the Indian Capital Technology Center ("**Technology Center**"), the Board of Trustees of the Eastern Oklahoma District Library System (the "**Library District**"), the Board of the Muskogee County Emergency Medical Service (the "**County EMS**") and the Board of Trustees of the Muskogee County Health Department (the "**Health Department**") (collectively, the County, Hilldale Public Schools, Indian Capital Technology Center, the Library District, County EMS, and the Health Department are the "**Taxing Entities**") (the Company, the Developer, the City, and the Taxing Entities are collectively referred to as the "**Parties**", each a "**Party**"), dated __________, 2025 (the "**Tax Incentive Agreement**," a copy of which is attached hereto as Exhibit A and incorporated herein).

WITNESSETH:

WHEREAS, on__________, 2025, the City adopted the Project Plan Ordinance, approving the Scissortail Data Center Economic Development Project Plan in order to provide ad valorem property tax abatements for the Project on the Property (both as defined in the Tax Incentive Agreement), and at the same time approved three (3) Incentive Districts on the Property, all as specified in the Project Plan Ordinance and the Tax Incentive Agreement; and

WHEREAS, on _______________, 2025, the Company, the Developer, the City and the Taxing Entities entered into the Tax Incentive Agreement setting forth the terms and conditions of the Incentive District Exemptions; and

WHEREAS, the Successor will own certain real or personal property constituting a portion of the Project, as described more particularly on Exhibit B attached hereto and incorporated herein, and which property may be supplemented or replaced from time to time ("Successor Property"); and

WHEREAS, the Successor wishes to obtain a portion of the benefits of the Tax Incentive Agreement, and, as agreed in the Tax Incentive Agreement, the City and the Taxing Entities shall make these benefits available to the Successor on the terms set forth in the Tax Incentive Agreement as long as the Successor executes this Partial Assignment Agreement.

NOW, THEREFORE, in consideration of the circumstances described above, the covenants contained in the Tax Incentive Agreement, and the benefit to be derived by the Successor from the execution hereof, the Parties hereto agree as follows:

1. From and after the Effective Date, the Company hereby assigns a portion of the benefits of the Tax Incentive Agreement, including without limitation, the right to utilize Incentive District Exemptions for all Successor Property, subject to the terms and conditions of the Tax Incentive Agreement.

2. From and after the Effective Date, the Company hereby (i) agrees to remain bound by and perform all obligations, agreements, covenants and restrictions set forth in the Tax Incentive Agreement to be performed and observed by the Company; and (ii) certifies to the validity of all of the representations, warranties and covenants made by or required of the Company that are contained in the Tax Incentive Agreement. Such obligations, agreements, covenants, restrictions, representations, and warranties of the Company include, but are not limited to, those contained in the following Sections of the Tax Incentive Agreement: Section 2 (“Project”), Section 4 (“Tax Exemption Terms”), Section 5 (“Payments Associated with the Incentive Districts”), Section 7 (“Annual Report”), Section 9 (“Default”), Section 10 (“Remedies”), and Section 12 (“Successors and Assigns”).

3. Pursuant to Section 12 of the Tax Incentive Agreement, the Company and Successor acknowledge that the City and the Taxing Entities have permitted this assignment to Successor, such that Successor shall have certain, benefits, entitlements, and rights as provided herein, including without limitation, the right to Incentive District Benefits for all Successor Property, in the same manner and with like effect as if the Successor had been an original signatory (i.e., the Company) to the Tax Incentive Agreement.

4. Notices to the Successor with respect to the Tax Incentive Agreement shall be given as stated in Section 15 thereof, addressed as follows:

> [Successor Name
> Successor Mailing Address
> Successor Email Address]

IN WITNESS WHEREOF, the parties have caused this Partial Assignment Agreement to be executed by their duly authorized representatives to be effective as of _________________.

COMPANY

Pioneer Trail, LLC, a Delaware limited liability company

By:_______________________________________

Print Name: _______________________________

Title:______________________________________

SUCCESSOR

[Name of Successor]

By:_______________________________________

Print Name: _______________________________

Title:______________________________________

ACKNOWLEDGED AND AGREED

City of Muskogee, Oklahoma

By:_______________________________________

Print Name: _______________________________

Title: [***]

EXHIBIT A
TO PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT

Copy of the Tax Incentive Agreement

EXHIBIT B
TO PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT

Description of Successor Property

Special City Council 2.

Meeting Date:	04/14/2025
Submitted For:	Katrina Bodenhamer, City Attorney
Initiator:	Katrina Bodenhamer, City Attorney
Department:	City Attorney
Staff Information Source:	

Information

AGENDA ITEM TITLE:

Discuss and take possible action on proposing an extension of the City's CIP Tax, as well as regular publication of information to the citizens of Muskogee as to income and expenditure reports related thereto, or take other necessary action. (Mayor W. Patrick Cale)

BACKGROUND:

Mayor Cale would like to discuss extending the City's CIP tax, projects and costs, and establish this Council's desires in relation to the City's needs, as well as citizens' access to CIP information.

RECOMMENDED ACTION:

Discuss and consider priorities and take appropriate action.

Fiscal Impact

Attachments

No file(s) attached.

Special City Council 3.

Meeting Date:	04/14/2025
Submitted For:	Katrina Bodenhamer, City Attorney
Initiator:	Katrina Bodenhamer, City Attorney
Department:	City Attorney
Staff Information Source:	

Information

AGENDA ITEM TITLE:

Discuss and consider approval of an Economic Development Agreement between the City of Muskogee ("City") and the Muskogee City-County Port Authority ("Port Authority") and Amendment No. 1 to the Industrial Economic Development Capital Improvement Contract between the City and the Port Authority, and authorize the Mayor to execute the same, or take other necessary action. (Mayor W. Patrick Cale)

BACKGROUND:

In July 2024, the City and the Port Authority entered into the Industrial Economic Development Capital Improvement Contract to support industrial development efforts, including the sharing of franchise fee revenues. In connection with the Scissortail Data Center Project, and the anticipated approval of the Scissortail Data Center Economic Development Project Plan and related Tax Incentive Agreement, the attached Economic Development Agreement ("EDA") between the City and Port Authority has been negotiated. Consistent with the Project Plan and Tax Incentive Agreement, the EDA provides that a fixed portion (23.33%) of the franchise fees generated by Project Scissortail's high-voltage electricity over the 25-year term of each incentive district will be apportioned to the Port Authority. These funds may be used by the Port Authority for lawful purposes consistent with its statutory mission to promote economic development, industrial expansion, and job creation, including public infrastructure improvements and support for economic development initiatives. To align with this structure, Amendment No. 1 to the Industrial Economic Development Capital Improvement Contract has been prepared to remove the Project Site from the revenue-sharing provisions of the original agreement and confirm that revenue allocations related to the Project Site will be governed exclusively by the EDA.

RECOMMENDED ACTION:

Approve the Economic Development Agreement between the City and the Port Authority and Amendment No. 1 to the Industrial Economic Development Capital Improvement Contract between the City and the Port Authority, and authorize the Mayor to execute the same.

Fiscal Impact

Attachments

City-Port EDA

Am 1 EDA City-Port

ECONOMIC DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF MUSKOGEE AND MUSKOGEE CITY-COUNTY PORT AUTHORITY

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into as of April __, 2025 (the "**Effective Date**") between the City of Muskogee, Oklahoma, a municipal corporation (the "**City**") and the Muskogee City-County Port Authority, an agency of the State of Oklahoma, duly organized and existing under the laws of the State of Oklahoma (the "**Port Authority**").

RECITALS:

WHEREAS, Article X, Section 6C of the Oklahoma Constitution grants the Legislature the authority to enact laws allowing cities the ability to use local taxes and fees for specific public investments, assistance in development financing, or as specific revenue source for other public entities in the area in which improvements take place; and

WHEREAS, pursuant to this authority, the Oklahoma Legislature enacted the Local Development Act, 62 O.S. §850 *et seq*., to provide the process by which cities can grant incentives and exemptions from taxation and apportion increments of local taxes and fees through the adoption of a Project Plan; and

WHEREAS, on February 10, 2025, the City adopted Resolution No. 3024, declaring its intention to consider the approval of a project plan and the creation of one or more tax incentive districts pursuant to the Local Development Act, 62 O.S. §850 *et seq*; and

WHEREAS, on February 24, 2025, the City adopted Ordinance Nos. 4248-A, 4249-A, and 4250-A annexing approximately 420.84 acres of land located in the City of Muskogee (said land being the same property identified in the Project Plan as the Project Site) into the city limits of the City of Muskogee and zoning the Project Site I-2 Light Industrial Zoning Classification as approved in the 2013 City of Muskogee Comprehensive Plan and Land Use Map adopted June 25, 2013; and

WHEREAS, on February 24, 2025, the City approved an Economic Development Agreement with Ferdinand Technologies, LLC (the "**Developer**") and Pioneer Trail, LLC (the "**Company**") with respect to the Project ("**Project EDA**"); and

WHEREAS, the Scissortail Data Center Economic Development Project Plan ("Project Plan"), approved by City Council by its adoption of Ordinance No. __ on April 14, 2025, supports the development of a data center campus in Muskogee that will consist of at least one (1) phase and may consist of up to four (4) phases, with each phase of the development estimated to have a private investment of at least $1 billion (the "**Project**"), on approximately 420.84 acres of land located in the City of Muskogee, as more particularly described therein ("**Project Site**") where the Project will be developed; and

WHEREAS, pursuant to the Local Development Act, the Project Plan created three Incentive Districts, with the effective date of each Incentive District being deferred until a date determined by the City Council provided such determination is made within ten (10) years of the date of adoption of the Project Plan; and

WHEREAS, the Project Plan provides that the effective date for the Incentive Districts shall be the earlier of: (i) January 1 following the completion of a Data Center within that Incentive District as evidenced by the issuance of the final, unrestricted certificate of occupancy for the Data Center, or in lieu of a Certificate of Occupancy, the Company may deliver notice of substantial completion to the City to trigger the effective date, which shall be January 1 immediately following delivery of the notice of substantial completion; and

WHEREAS, pursuant to the Project Plan, each Incentive District shall have a term of twenty-five (25) years from its effective date; and

WHEREAS, the Project Plan authorizes the apportionment of a portion of the franchise fees generated by the Project's high-voltage electricity consumption to the Port, subject to the terms and conditions of an Economic Development Agreement between the City and the Port; and

WHEREAS, the Project EDA contemplates the approval and execution of a tax incentive agreement between the City, the Company and each taxing entity that will memorialize the property tax exemptions contained in the Project Plan (the "**Tax Incentive Agreement**"); and

WHEREAS, Oklahoma Gas and Electric will provide electricity to the Project Site pursuant to a voter-approved franchise agreement with the City, as it may be extended or renewed (the "**Franchise Agreement**"); and

WHEREAS, the Franchise Agreement imposes a three percent (3%) franchise fee on all gross revenues from the sale of electricity within the City's limits with Oklahoma Gas & Electric collects from its customers and remits to the City; and

WHEREAS, the Project Plan and the Project EDA include terms related to the apportionment of certain franchise fees generated by high-voltage electricity use by the Project which are to be more specifically set forth in the Project EDA and in separate agreements between the City and Muskogee County (the "**County**"), and the City and the Port Authority.

NOW, THEREFORE, in exchange for the consideration, covenants, agreements and premises set forth herein, the City and the Port Authority agree as follows:

1. **Company Payment of Franchise Fees.** Pursuant to the Project Plan, the Project EDA, and the Tax Incentive Agreement, the Company is obligated to pay the City's franchise fee on the Company's use of electric power, calculated as three percent (3%) of the Company's electricity costs (the "**Franchise Fees**").

2. **Apportionment of Franchise Fees**.
   a. **Apportionment**. For so long as the ad valorem property tax exemptions are provided to the Project ("**Franchise Fee Apportionment Period**"), the City will apportion the Franchise Fees collected by the City attributable to the Project's use of high-voltage electric power, as follows:

i. Thirty percent (30%) shall be apportioned to the Company (the "**Company Allocation**");
ii. Twenty-three and one third percent (23.33%) shall be apportioned to the Port Authority ("**Port Allocation**");
iii. Twenty-three and one third percent (23.33%) shall be apportioned to the County ("**County Allocation**"); and
iv. Twenty-three and one third percent (23.33%) shall be retained by the City.

For clarity, the Franchise Fees apportioned hereunder shall be calculated on a campus-wide basis and shall apply to all Franchise Fees paid by the Company relating to the Project's high-voltage electricity consumption. While the City will also receive Franchise Fees on medium-voltage electricity usage, such amounts shall be excluded from apportionment hereunder.

Consistent with the Project Plan, Project EDA and the Tax Incentive Agreement, if the Franchise Fee is increased during the Franchise Fee Apportionment Period above three percent (3%), then the City will increase the amount of the Company's apportionment of Franchise Fees as necessary to produce a net effective Franchise Fee rate of 2.1% and the apportionment to the County and the Port Authority, and the amount to be retained by the City will all be reduced equally as needed to apportion the remainder of the applicable Franchise Fee. The City shall provide notice to all affected parties of any adjustments made under this provision.

b. **Franchise Fee Reports; Payments**. Pursuant to the Project EDA and the Tax Incentive Agreement, the Company shall provide the City with the monthly reports (each a "**Monthly Report**") and sworn annual reports (each a "**Sworn Annual Report**") reporting the amount of Franchise Fees paid by the Company or an Affiliate attributable to the Project's use of high-voltage electric power. The content, format and frequency of such reports shall be as specified in the Tax Incentive Agreement. The City shall, upon receipt of each Monthly Report and Sworn Annual Report from the Company, and within five (5) days thereafter, provide the Port Authority and the County with a copy of the report as received from the Company.

The City shall pay the Company Allocation, the Port Allocation, and the County Allocation on a quarterly basis, consistent with the Tax Incentive Agreement. If the Company fails to provide a Monthly Report or Sworn Annual Report to the City, the City shall use the most recent available data to estimate apportionment amounts due to the Port Authority and the County, subject to reconciliation upon receipt of the actual report. If the City fails to disburse the Port Allocation and the County Allocation, the City shall pay interest on the outstanding amount at the rate of 5% per annum, calculated from the date the payment was due until the date the payment is made.

c. **Underpayment Reimbursement**. As provided in the Tax Incentive Agreement, if the amount of Franchise Fees in the Sworn Annual Report is higher than the cumulative Franchise Fees reported in the Monthly Reports for the previous year, the

Company shall, within thirty (30) days of receipt of the Allocation Records, reimburse the City for any underpayments of the Port Allocation and the County Allocation ("**Underpayment Reimbursement**"). The Company's obligation to make the Underpayment Reimbursement payment shall be limited to the amount of actual underpayment by the City as of the date of the Sworn Annual Report.

Upon receipt of the Underpayment Reimbursement from the Company, the City shall, within ten (10) business days, disburse the corresponding amounts to the Port Authority and the County. The City's reimbursement to the Port Authority and County shall reflect the actual underpayment amounts as verified by the Allocation Records and the Company's calculation.

The City shall promptly notify the Port Authority and the County of any discrepancies identified between the Sworn Annual Report and the cumulative Monthly Reports for the previous year and shall provide copies of relevant documents to facilitate verification.

d. **Reconciliation of Overpayments**. If the amount of Franchise Fees in the Sworn Annual Report is lower than the cumulative Franchise Fees reported in the Monthly Reports for the previous year, the Company shall, within thirty (30) days of delivery of the Sworn Annual Report, reimburse the City for any overpayment of the Company Allocation, Port Allocation, and County Allocation ("**Overpayment Reimbursement**"), to put the City in the same position it would have been had the Company not overreported the amount of Franchise Fees in the Monthly Reports.

Upon receipt of the Overpayment Reimbursement from the Company, the City shall, within ten (10) business days, notify the Port Authority and County of the overpayment and the amount to be adjusted. The City shall deduct the full amount of the overpayment from the immediately following quarterly allocation to the Port Authority and County. The adjustment shall be made in a single, complete deduction from the next payment due to each entity. This adjustment method shall serve as the sole means of reconciling overpayments, thereby avoiding the need for direct reimbursement from the Port Authority or the County.

3. **Port Authority's Use of Franchise Fee Apportionment Funds**. The Port Authority may utilize the Port Allocation for any lawful purpose, as determined solely by the Port Authority, in furtherance of its statutory mission to promote economic development, industrial expansion, and job creation within the region. Such purposes may include, but are not limited to, acquiring land, funding public infrastructure improvements that support industrial and economic growth, facilitating the retention, expansion, and recruitment of industries, implementing workforce development initiatives, supporting technical training programs, and fostering partnerships with industry-aligned educational institutions. The Port Authority shall retain full discretion in allocating its respective portion of the funds, provided that such expenditures align with its statutory responsibilities to enhance regional economic development and industrial advancement.

4. **Term.** The term of this Agreement shall commence on the effective date of Incentive District No. 1, City of Muskogee, as determined pursuant to the Project Plan, and shall continue until all Incentive Districts created under the Project Plan have terminated. Apportionment of Franchise Fees shall begin as of the effective date of Incentive District No. 1, with payments made in accordance with Section 2(b).

5. **Notices.** All notices and other communications required, permitted, or contemplated by this Agreement ("**Notices**" and each a "**Notice**") must be in writing, signed by the party giving the Notice, and sent using the contact information below. Notices must be sent by: (1) hand-delivery in return for a receipt; (2) United States mail with postage prepaid; or (3) nationally recognized overnight courier service. A Notice is effective on the earlier of: (1) the date of actual delivery; or (2) for mailed Notices (without a return receipt), three business days after the date of mailing. However, if the receipt of Notice is refused, the Notice is effective upon attempted delivery. Either party may change its contact information by notifying the other party as required by this Section.

   Notices to the City will be addressed as follows:

   City of Muskogee
   229 W. Okmulgee Avenue
   Muskogee, Oklahoma 74401
   Attn: City Manager

   with a copy to:

   City of Muskogee
   229 W. Okmulgee Avenue
   Muskogee, Oklahoma 74401
   Attn: City Attorney

   Notices to the Port Authority will be addressed as follows:

   Muskogee City-County Port Authority
   5201 Three Forks Road
   Fort Gibson, Oklahoma 74434
   Attn: Kimbra Scott, Director

6. **Discrepancies; Audit Rights; Records.**

   a. **Right to Identify Discrepancies.** If the Port Authority identifies a discrepancy through routine monitoring, financial reviews, or other means outside of a formal audit, it may issue a written notice of correction to the City. The City shall respond within thirty (30) days, either correcting the issue or providing a rationale for disputing the claim.

b. **Audit Rights**. The Port Authority shall have the right to audit, inspect, and review all records and documentation maintained by the City relating to the calculation, apportionment, and payment of the Franchise Fees. Such audits may be conducted at any reasonable time, upon written request, and shall include the right to receive copies of any Franchise Fee Reports**,** Sworn Annual Reports, or related documents. The City shall retain all records relating to the Franchise Fees for a minimum period of seven (7) years from the date of each payment.

c. **Costs of Audit**. In the event that an audit reveals any discrepancies, the City shall promptly correct such discrepancies, including making any necessary payments to the Port Authority or adjusting future allocations. The Port Authority shall bear the costs of any routine audit it initiates unless the audit reveals a material discrepancy of more than 5% between the reported and actual allocations. If the audit reveals a material discrepancy of more than 5% that results in an underpayment to the Port Authority, the City shall bear the reasonable costs of the audit and shall promptly correct the discrepancy, including making any necessary payments to the Port Authority or adjusting future allocations. The City shall complete the correction and make any necessary payments within thirty (30) days of the audit's conclusion. If both the City and the Port Authority mutually agree to conduct an audit, the costs shall be shared equally unless otherwise specified in writing.

7. Miscellaneous Provisions.

a. **Entire Agreement; Modification**. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter. This Agreement may not be supplemented or modified except in a written agreement properly executed by the parties.

b. **Waiver**. The terms of this Agreement may be waived only by a written document executed and delivered by the waiving party to the other party. No course of dealing between the parties, delay in the exercise of any rights under this Agreement, or failure to object to any action or omission constitutes a waiver of any terms of this Agreement. A waiver of any term of this Agreement will not constitute a continuing waiver of that term.

c. **Severability**. If any provision of this Agreement is determined to be to any extent invalid, illegal, or unenforceable, it will be deemed stricken from this Agreement. All other provisions of this Agreement will remain in full force and effect. The stricken provision will then be deemed replaced with one that is valid and enforceable and that comes closest to expressing the parties' original intent.

d. **Headings**. The headings in this Agreement are for convenience of reference only and do not constitute a part of it or affect its interpretation.

e. **Survival**. All provisions that may reasonably be interpreted as surviving the expiration of this Agreement shall survive such expiration, including but not limited to the payment for amounts owed hereunder with respect to the period prior to such expiration.

f. **Compliance with Laws**. Each party shall comply with all applicable federal, state, and local laws, ordinances, and regulations in carrying out their obligations under this Agreement.

g. **Governing Law**. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Oklahoma.

h. **Damages Waiver**. Neither party shall be liable to the other party for exemplary, punitive, treble, indirect, or consequential damages arising from or related to this Agreement and each party waives any and all claims they may have to recover such damages from the other.

i. **Disputes; Mediation and Venue**. In the event of any dispute arising under this Agreement, the parties shall first engage in good-faith negotiations to resolve the dispute. If the dispute remains unresolved after thirty (30) days, the parties shall submit the matter to mediation before proceeding with litigation. The mediation shall be conducted by a mutually agreed-upon mediator in Muskogee County, Oklahoma, and the costs of mediation shall be split equally between the parties. If mediation fails to resolve the dispute within sixty (60) days from the initial request for mediation, either party may pursue relief in the District Court of Muskogee County, Oklahoma, which shall have exclusive jurisdiction and venue.

j. **Counterpart Execution**. This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

This Economic Development Agreement is hereby approved by City as of the Effective Date**.**

CITY OF MUSKOGEE,
a municipal corporation

By: ______________________
W. Patrick Cale, Mayor

ATTEST:

____
Tammy L. Tracy, City Clerk

(SEAL)

APPROVED as to form and legality this ______ of ______________________, 2025.

____
Katrina Bodenhamer, City Attorney

This Development Agreement is hereby approved by the Port Authority as of the Effective Date**.**

MUSKOGEE CITY-COUNTY PORT AUTHORITY,
an agency of the State of Oklahoma

By: ______________________________
Earnie Gilder, Chairman

INDUSTRIAL ECONOMIC DEVELOPMENT CAPITAL IMPROVEMENT CONTRACT

AMENDMENT NO. 1

THIS AMENDMENT NO.1 TO THE INDUSTRIAL ECONOMIC DEVELOPMENT CAPITAL IMPROVEMENT CONTRACT (this "**Amendment**") is entered into as of April ___, 2025 ("**Effective Date**") by and between the Muskogee City-County Port Authority, an agency of the State of Oklahoma, duly organized and existing under the laws of the State of Oklahoma (the "**Port Authority**") and the City of Muskogee, a charter city organized under the Constitution of the State of Oklahoma (the "**City**").

RECITALS

WHEREAS, the City and the Port Authority entered into the Industrial Economic Development Capital Improvement Contract on July 1, 2024 to combine their respective efforts to encourage, promote and foster industrial development of the City through the sharing of certain revenues and responsibilities (the "**Agreement**"); and

WHEREAS, among other things, the Agreement provides for a sharing of revenues received by the City from the payment of franchise fees for new customers or expanded services developed by the Port Authority, outside of the Port of Muskogee boundaries, and within the City of Muskogee; and

WHEREAS, on February 24, 2025, the City adopted Ordinance Nos. 4248-A, 4249-A, and 4250-A annexing approximately 419.183 acres of land (said land being the same property identified in the Project Plan as the Project Site) into the city limits of the City of Muskogee and zoning the Project Site I-2 Light Industrial Zoning Classification as approved in the 2013 City of Muskogee Comprehensive Plan and Land Use Map adopted June 25, 2013; and

WHEREAS, the Scissortail Data Center Economic Development Project Plan ("**Project Plan**"), approved by City Council by its adoption of Ordinance No. __ on April _, 2025, supports the development of a data center campus in Muskogee that will consist of at least one (1) phase and may consist of up to four (4) phases, with each phase of the development estimated to have a private investment of at least $1 billion (the "**Project**"), on approximately 419.183 acres of land located in the City of Muskogee, as more particularly depicted on Exhibit A attached hereto and described on Exhibit A-1 attached hereto ("**Project Site**"); and

WHEREAS, pursuant to the Local Development Act, the Project Plan created three Incentive Districts, with the effective date of each Incentive District being deferred until a date determined by the City Council provided such determination is made within ten (10) years of the date of adoption of the Project Plan; and

WHEREAS, the Project Plan provides that the effective date for the Incentive Districts shall be the earlier of: (i) January 1 following the completion of a Data Center within that Incentive District as evidenced by the issuance of the final, unrestricted certificate of occupancy for the Data Center, or in lieu of a Certificate of Occupancy, the Company may deliver notice of substantial completion to the City to trigger the effective date, which shall be January 1 immediately following delivery of the notice of substantial completion; and

WHEREAS, pursuant to the Project Plan, each Incentive District shall have a term of twenty-five (25) years from its effective date; and

WHEREAS, the Project Plan authorizes the apportionment of a portion of the franchise fees generated by the Project's high-voltage electricity consumption to the Port Authority, subject to the terms and conditions of an economic development agreement between the City and the Port Authority and a tax incentive agreement between the City, the Company and each taxing entity that memorializes the property tax exemptions contained in the Project Plan (the "**Tax Incentive Agreement**"); and

WHEREAS, concurrently with the execution of this Amendment No. 1, the City and Port Authority have executed that certain Economic Development Agreement ("**City-Port Authority EDA**") which governs the apportionment of the franchise fees generated by the Project's high-voltage electricity consumption for the twenty-five-year term of each incentive district created under the Project Plan, all as authorized by and pursuant to the Project Plan and the Tax Incentive Agreement; and

WHEREAS, in consideration of the apportionment of franchise fees to the Port Authority under the Project Plan, the Tax Incentive Agreement, and the City-Port Authority EDA, the City and the Port Authority desire to amend the Agreement to clarify and confirm that the City's obligation to pay the Port fifty percent (50%) of the franchise fee tax revenue received from OG&E with respect to the Project and Project Site is replaced by the terms of this Amendment.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein stated and in consideration of the mutual benefits which will accrue to each of the parties hereof, the parties have agreed and do hereby agree to amend Section 4.2(c) of the Agreement and Exhibits B and C attached thereto as follows:

1. <u>OG&E Franchise Fee Revenue</u>. As of the effective date of Incentive District No. 1, City of Muskogee, as determined pursuant to the Project Plan, Section 4.2(c) of the Agreement shall be amended by the addition of the following provision at the end thereof:

> "Notwithstanding anything in this Agreement to the contrary, the City's obligations under this Section 4.2(c) shall not apply to the Project and Project Site, as described in the Project Plan and the City-Port EDA, commencing on the date Incentive District No. 1, City of Muskogee is made effective. The allocation of franchise fees related to the Project Site shall be governed exclusively by the City-Port Authority EDA and the Tax Incentive Agreement. Any franchise fee revenue not related to the Project Site shall continue to be governed by this Amendment."

2. <u>Replacement Exhibits</u>. Upon the effective date of Incentive District No. 1, Exhibit B (Port Lands - OGE Revenue) and Exhibit C (OGE Revenue – Pre-Existing New Users) shall be replaced with the updated versions attached hereto, reflecting the removal of the Project and Project Site from revenue-sharing obligations under the original Agreement.

Until such effective date, the existing versions of Exhibit B and Exhibit C shall remain in effect.

3. Binding Effect. Except as expressly modified by this Amendment, all other terms and provisions of the Agreement shall remain in full force and effect. In the event of any conflict between this Amendment and any prior or future amendments, the terms of this Amendment shall control with respect to the Project and Project Site, unless otherwise explicitly stated in a future amendment executed by both parties.

4. Counterparts. This Amendment may be executed in multiple counterparts, each of which together shall constitute one and the same agreement. A photocopy, facsimile or electronic copy of this Amendment shall have the same legal effect as an original signed document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Amendment No. 1 to the Agreement as of the Effective Date.

CITY: **CITY OF MUSKOGEE, OKLAHOMA**, a municipal corporation

By: ________________________________
W. Patrick Cale, Mayor

ATTEST:

____
Tammy L. Tracy, City Clerk

(SEAL)

Approved as to form this ____ day of ______________________, 2025.

By: _____________________________________
Katrina Bodenhamer, City Attorney

PORT AUTHORITY: **MUSKOGEE CITY-COUNTY PORT AUTHORITY**, an agency of the State of Oklahoma

By: ________________________________
Earnie Gilder, Chairman

EXHIBIT A

Depiction of Project Site

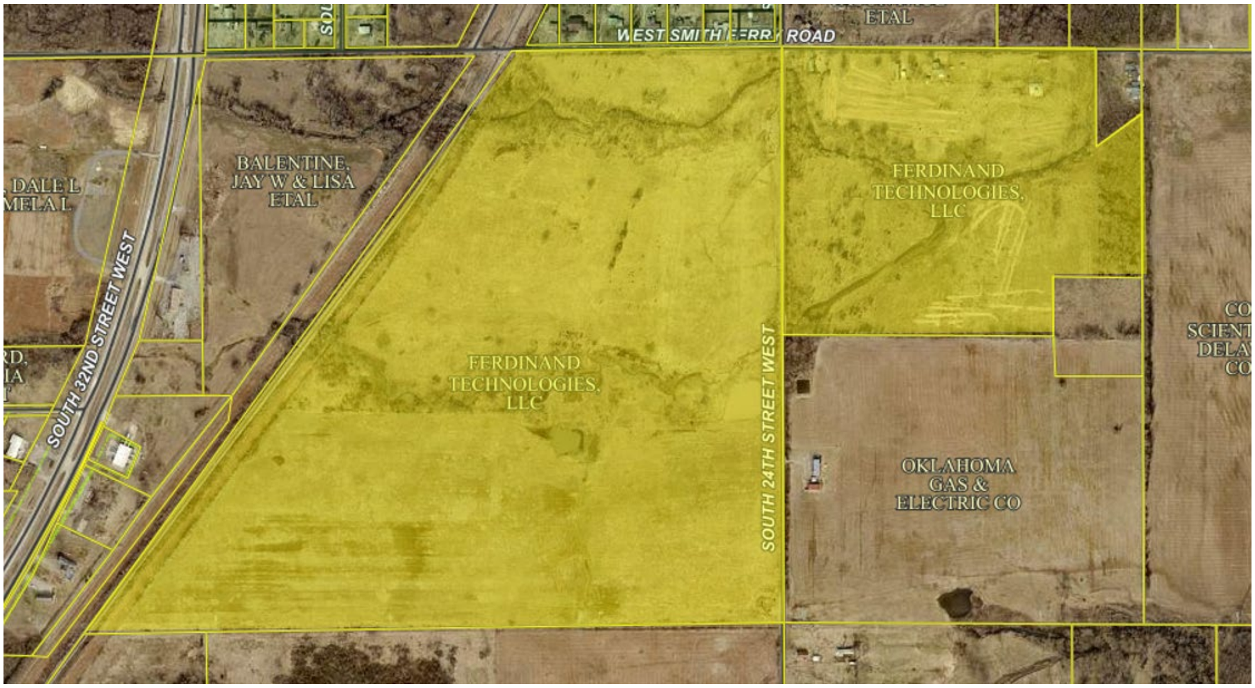

EXHIBIT A-1

Legal Description of Project Site

The Project Site is comprised of 419.183 acres of real property in the City of Muskogee, Muskogee County, State of Oklahoma, and includes all property within the Incentive Districts, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MUSKOGEE, STATE OF OKLAHOMA AND IS DESCRIBED AS FOLLOWS:

Tract 1:

ALL OF THE NORTHEAST QUARTER (NE/4) AND THE NORTHWEST QUARTER (NW/4) LYING EAST OF THE RAILROAD RIGHT OF WAY IN SECTION 16, TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE I.B&M., MUSKOGEE COUNTY, OKLAHOMA MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: BEGINNING AT THE NE CORNER OF SAID NE/4 SECTION 16, THENCE S01°34'36"E 2644.41 FEET TO THE SE CORNER OF SAID NE/4, THENCE S87°54'36"W ALONG THE SOUTH LINE OF THE NE/4 AND NW/4 OF SECTION 16 3081.54 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, THENCE ALONG SAID RAILROAD RIGHT OF WAY N35°40'11"E 2215.36 FEET TO A POINT OF CURVE, THENCE ON A CURVE TO THE LEFT HAVING A CHORD WHICH BEARS N30°22'05"E 1055.93 FEET AND A RADIUS OF 5548.99 FEET AN ARC DISTANCE OF 1057.53 FEET TO A POINT ON THE NORTH LINE OF SAID NE/4 OF SECTION 16, THENCE N87°50'12"E 1181.82 FEET TO THE POINT OF BEGINNING.

Tract 2:

A TRACT OF LAND BEING A PART OF THE NW/4 NW/4 AND THE SOUTH 276.45 FEET OF THE WEST HALF OF THE WEST HALF OF THE NE/4 OF THE NW/4 AND THE WEST 121.29 FEET OF THE NORTH 1043.55 FEET OF THE WEST HALF OF THE NE/4 OF THE NW/4 AND THE EAST 208.71 FEET OF THE NORTH 1043.55 FEET OF THE WEST HALF OF THE WEST HALF OF THE NE/4 OF THE NW/4, ALL IN SECTION 15, TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE INDIAN BASE MERIDIAN, MUSKOGEE COUNTY, OKLAHOMA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NW CORNER OF SAID SECTION 15, THENCE N88°48'27"E ALONG THE NORTH LINE THEREOF 1444.60 FEET, THENCE S01°36'24"E 462.09 FEET, THENCE N54°44'39"E 250.80 FEET TO A POINT ON THE EAST LINE OF SAID W/2 W/2 NE/4 NW/4, THENCE ALONG SAID LINE S01°37'08"E 721.97 FEET, THENCE S88°48'27"W 400.00 FEET, THENCE S01°37'08"E 277.54 FEET TO A POINT ON THE SOUTH LINE OF SAID NW/4 NW/4, THENCE S88°45'27"W ALONG SAID LINE 1254.20 FEET TO A POINT ON THE WEST LINE OF SAID NW/4 NW/4 SECTION 15, THENCE N01°34'56"W 1322.21 FEET TO THE POINT OF BEGINNING.

Tract 3:

SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE INDIAN BASE AND MERIDIAN, MUSKOGEE COUNTY, STATE OF OKLAHOMA.

Tract 4:

SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 18 EAST OF THE INDIAN BASE AND MERIDIAN, MUSKOGEE COUNTY, STATE OF OKLAHOMA, LESS 51 ACRES WEST OF FREEWAY AND LESS 23.15 ACRES EAST OF HIGHWAY.

EXHIBIT B

Port Lands - OGE Revenue

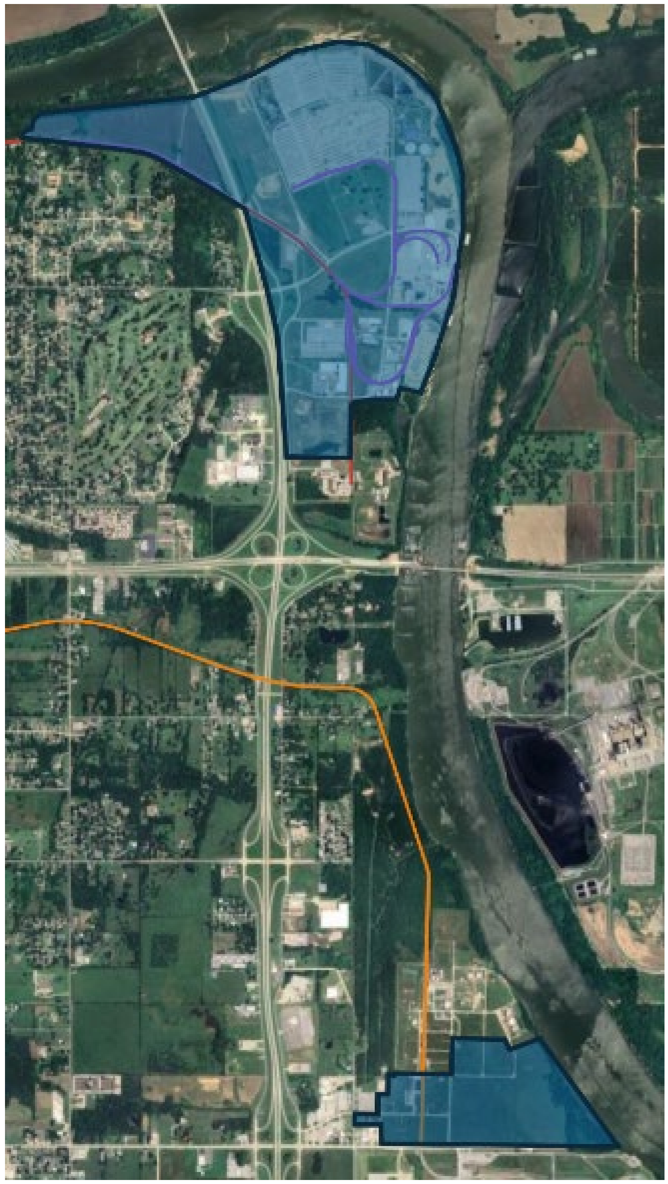

EXHIBIT C

OGE Revenue – Pre-Existing New Users

Special City Council 4.

Meeting Date: 04/14/2025

Submitted For: Katrina Bodenhamer, City Attorney

Initiator: Katrina Bodenhamer, City Attorney

Department: City Attorney

Staff Information Source:

Information

AGENDA ITEM TITLE:

Discuss and consider approval of an Economic Development Agreement between the City of Muskogee ("City") and the Board of Commissioners of Muskogee County ("County"), and authorize the Mayor to execute the same, or take other necessary action. (Mayor W. Patrick Cale)

BACKGROUND:

In connection with the Scissortail Data Center Project, and the anticipated approval of the Scissortail Data Center Economic Development Project Plan and related Tax Incentive Agreement, the attached Economic Development Agreement (EDA) between the City and the County has been negotiated. Consistent with the Project Plan and Tax Incentive Agreement, the EDA provides that a fixed portion (23.33%) of the franchise fees generated by Project Scissortail's high-voltage electricity usage over the 25-year term of each incentive district will be apportioned to the County. These funds may be used by the County for lawful purposes consistent with the objectives of the Project Plan, including infrastructure, essential public services, and economic development initiatives.

RECOMMENDED ACTION:

Approve the Economic Development Agreement between the City and the County, and authorize the Mayor to execute the same.

Fiscal Impact

Attachments

City County EDA

ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MUSKOGEE AND BOARD OF COUNTY COMMISSIONERS OF MUSKOGEE COUNTY

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into as of April __, 2025 (the "**Effective Date**") between the City of Muskogee, Oklahoma, a municipal corporation (the "**City**") and the Muskogee County Board of Commissioners of Muskogee County, Oklahoma, a political subdivision of the State of Oklahoma (the "**County**").

RECITALS:

WHEREAS, Article X, Section 6C of the Oklahoma Constitution grants the Legislature the authority to enact laws allowing cities the ability to use local taxes and fees for specific public investments, assistance in development financing, or as specific revenue source for other public entities in the area in which improvements take place; and

WHEREAS, pursuant to this authority, the Oklahoma Legislature enacted the Local Development Act, 62 O.S. §850 *et seq*., to provide the process by which cities can grant incentives and exemptions from taxation and apportion increments of local taxes and fees through the adoption of a Project Plan; and

WHEREAS, on February 10, 2025, the City adopted Resolution No. 3024, declaring its intention to consider the approval of a project plan and the creation of one or more tax incentive districts pursuant to the Local Development Act, 62 O.S. §850 *et seq*; and

WHEREAS, on February 24, 2025, the City adopted Ordinance Nos. 4248-A, 4249-A, and 4250-A annexing approximately 420.84 acres of land located in the City of Muskogee (said land being the same property identified in the Project Plan as the Project Site) into the city limits of the City of Muskogee and zoning the Project Site I-2 Light Industrial Zoning Classification as approved in the 2013 City of Muskogee Comprehensive Plan and Land Use Map adopted June 25, 2013; and

WHEREAS, on February 24, 2025, the City approved an Economic Development Agreement with Ferdinand Technologies, LLC (the "**Developer**") and Pioneer Trail, LLC (the "**Company**") with respect to the Project ("**Project EDA**"); and

WHEREAS, the Scissortail Data Center Economic Development Project Plan ("Project Plan"), approved by City Council by its adoption of Ordinance No. __ on April 14, 2025, supports the development of a data center campus in Muskogee that will consist of at least one (1) phase and may consist of up to four (4) phases, with each phase of the development estimated to have a private investment of at least $1 billion (the "**Project**"), on approximately 420.84 acres of land located in the City of Muskogee, as more particularly described therein ("**Project Site**") where the Project will be developed; and

WHEREAS, pursuant to the Local Development Act, the Project Plan created three Incentive Districts, with the effective date of each Incentive District being deferred until a date determined by the City Council provided such determination is made within ten (10) years of the date of adoption of the Project Plan; and

WHEREAS, the Project Plan provides that the effective date for the Incentive Districts shall be the earlier of: (i) January 1 following the completion of a Data Center within that Incentive District as evidenced by the issuance of the final, unrestricted certificate of occupancy for the Data Center, or in lieu of a Certificate of Occupancy, the Company may deliver notice of substantial completion to the City to trigger the effective date, which shall be January 1 immediately following delivery of the notice of substantial completion; and

WHEREAS, pursuant to the Project Plan, each Incentive District shall have a term of twenty-five (25) years from its effective date; and

WHEREAS, the Project Plan authorizes the apportionment of a portion of the franchise fees generated by the Project's high-voltage electricity consumption to the Port, subject to the terms and conditions of an Economic Development Agreement between the City and the Port; and

WHEREAS, the Project EDA contemplates the approval and execution of a tax incentive agreement between the City, the Company and each taxing entity that will memorialize the property tax exemptions contained in the Project Plan (the "**Tax Incentive Agreement**"); and

WHEREAS, Oklahoma Gas and Electric will provide electricity to the Project Site pursuant to a voter-approved franchise agreement with the City, as it may be extended or renewed (the "**Franchise Agreement**"); and

WHEREAS, the Franchise Agreement imposes a three percent (3%) franchise fee on all gross revenues from the sale of electricity within the City's limits with Oklahoma Gas & Electric collects from its customers and remits to the City; and

WHEREAS, the Project Plan and the Project EDA include terms related to the apportionment of certain franchise fees generated by high-voltage electricity use by the Project which are to be more specifically set forth in the Project EDA and in separate agreements between the City and the County, and the City and the Muskogee City-County Port Authority, an agency of the State of Oklahoma (the "**Port Authority**").

NOW, THEREFORE, in exchange for the consideration, covenants, agreements and premises set forth herein, the City and the County agree as follows:

1. **Company Payment of Franchise Fees.** Pursuant to the Project Plan, the Project EDA, and the Tax Incentive Agreement, the Company is obligated to pay the City's franchise fee on the Company's use of electric power, calculated as three percent (3%) of the Company's electricity costs (the "**Franchise Fees**").

2. **Apportionment of Franchise Fees**.
   a. **Apportionment**. For so long as the ad valorem property tax exemptions are provided to the Project ("**Franchise Fee Apportionment Period**"), the City will

apportion the Franchise Fees collected by the City attributable to the Project's use of high-voltage electric power, as follows:

i. Thirty percent (30%) shall be apportioned to the Company (the "**Company Allocation**");
ii. Twenty-three and one third percent (23.33%) shall be apportioned to the Port Authority ("**Port Allocation**");
iii. Twenty-three and one third percent (23.33%) shall be apportioned to the County ("**County Allocation**"); and
iv. Twenty-three and one third percent (23.33%) shall be retained by the City.

For clarity, the Franchise Fees apportioned hereunder shall be calculated on a campus-wide basis and shall apply to all Franchise Fees paid by the Company relating to the Project's high-voltage electricity consumption. While the City will also receive Franchise Fees on medium-voltage electricity usage, such amounts shall be excluded from apportionment hereunder.

Consistent with the Project Plan, Project EDA and the Tax Incentive Agreement, if the Franchise Fee is increased during the Franchise Fee Apportionment Period above three percent (3%), then the City will increase the amount of the Company's apportionment of Franchise Fees as necessary to produce a net effective Franchise Fee rate of 2.1% and the apportionment to the County and the Port Authority, and the amount to be retained by the City will all be reduced equally as needed to apportion the remainder of the applicable Franchise Fee. The City shall provide notice to all affected parties of any adjustments made under this provision.

b. **Franchise Fee Reports; Payments**. Pursuant to the Project EDA and the Tax Incentive Agreement, the Company shall provide the City with the monthly reports (each a "**Monthly Report**") and sworn annual reports (each a "**Sworn Annual Report**") reporting the amount of Franchise Fees paid by the Company or an Affiliate attributable to the Project's use of high-voltage electric power. The content, format and frequency of such reports shall be as specified in the Tax Incentive Agreement. The City shall, upon receipt of each Monthly Report and Sworn Annual Report from the Company, and within five (5) days thereafter, provide the Port Authority and the County with a copy of the report as received from the Company.

The City shall pay the Company Allocation, the Port Allocation, and the County Allocation on a quarterly basis, consistent with the Tax Incentive Agreement. If the Company fails to provide a Monthly Report or Sworn Annual Report to the City, the City shall use the most recent available data to estimate apportionment amounts due to the Port Authority and the County, subject to reconciliation upon receipt of the actual report. If the City fails to disburse the Port Allocation and the County Allocation, the City shall pay interest on the outstanding amount at the rate of 5% per annum, calculated from the date the payment was due until the date the payment is made.

c. **Underpayment Reimbursement**. As provided in the Tax Incentive Agreement, if the amount of Franchise Fees in the Sworn Annual Report is higher than the cumulative Franchise Fees reported in the Monthly Reports for the previous year, the Company shall, within thirty (30) days of receipt of the Allocation Records, reimburse the City for any underpayments of the Port Allocation and the County Allocation ("**Underpayment Reimbursement**"). The Company's obligation to make the Underpayment Reimbursement payment shall be limited to the amount of actual underpayment by the City as of the date of the Sworn Annual Report.

Upon receipt of the Underpayment Reimbursement from the Company, the City shall, within ten (10) business days, disburse the corresponding amounts to the Port Authority and the County. The City's reimbursement to the Port Authority and County shall reflect the actual underpayment amounts as verified by the Allocation Records and the Company's calculation.

The City shall promptly notify the Port Authority and the County of any discrepancies identified between the Sworn Annual Report and the cumulative Monthly Reports for the previous year and shall provide copies of relevant documents to facilitate verification.

d. **Reconciliation of Overpayments**. If the amount of Franchise Fees in the Sworn Annual Report is lower than the cumulative Franchise Fees reported in the Monthly Reports for the previous year, the Company shall, within thirty (30) days of delivery of the Sworn Annual Report, reimburse the City for any overpayment of the Company Allocation, Port Allocation, and County Allocation ("**Overpayment Reimbursement**"), to put the City in the same position it would have been had the Company not overreported the amount of Franchise Fees in the Monthly Reports.

Upon receipt of the Overpayment Reimbursement from the Company, the City shall, within ten (10) business days, notify the Port Authority and County of the overpayment and the amount to be adjusted. The City shall deduct the full amount of the overpayment from the immediately following quarterly allocation to the Port Authority and County. The adjustment shall be made in a single, complete deduction from the next payment due to each entity. This adjustment method shall serve as the sole means of reconciling overpayments, thereby avoiding the need for direct reimbursement from the Port Authority or the County.

3. **County's Use of Franchise Fee Apportionment Funds**. The County may utilize the County Allocation for any lawful purpose, as determined solely by the County, in furtherance of County priorities. Such purposes may include, but are not limited to, financing public infrastructure improvements, supporting the development and operation of public services - including public education, public health, emergency response, and public library services - funding economic development initiatives, and covering implementation and administrative costs. The County shall retain full discretion in allocating its respective portion of funds, provided that such expenditures align with the objectives of the Project Plan and contribute to economic growth, public infrastructure improvements, workforce expansion, essential public services, or broader public benefits.

4. **Term.** The term of this Agreement shall commence on the effective date of Incentive District No. 1, City of Muskogee, as determined pursuant to the Project Plan, and shall continue until all Incentive Districts created under the Project Plan have terminated. Apportionment of Franchise Fees shall begin as of the effective date of Incentive District No. 1, with payments made in accordance with Section 2(b).

5. **Notices.** All notices and other communications required, permitted, or contemplated by this Agreement ("**Notices**" and each a "**Notice**") must be in writing, signed by the party giving the Notice, and sent using the contact information below. Notices must be sent by: (1) hand-delivery in return for a receipt; (2) United States mail with postage prepaid; or (3) nationally recognized overnight courier service. A Notice is effective on the earlier of: (1) the date of actual delivery; or (2) for mailed Notices (without a return receipt), three business days after the date of mailing. However, if the receipt of Notice is refused, the Notice is effective upon attempted delivery. Either party may change its contact information by notifying the other party as required by this Section.

   Notices to the City will be addressed as follows:

   City of Muskogee
   229 W. Okmulgee Avenue
   Muskogee, Oklahoma 74401
   Attn: City Manager

   with a copy to:

   City of Muskogee
   229 W. Okmulgee Avenue
   Muskogee, Oklahoma 74401
   Attn: City Attorney

   Notices to the County will be addressed as follows:

   Muskogee County Board of County Commissioners
   400 W. Broadway, Suite 100
   Muskogee, Oklahoma 74401
   Attn: Chairman

   With a copy to

   General Counsel to the Muskogee County
   Board of County Commissioners
   400 W. Broadway
   Muskogee, Oklahoma 74401

6. Discrepancies; Audit Rights; Records.

a. **Right to Identify Discrepancies.** If the County identifies a discrepancy through routine monitoring, financial reviews, or other means outside of a formal audit, it may issue a written notice of correction to the City. The City shall respond within thirty (30) days, either correcting the issue or providing a rationale for disputing the claim.

b. **Audit Rights**. The County shall have the right to audit, inspect, and review all records and documentation maintained by the City relating to the calculation, apportionment, and payment of the Franchise Fees. Such audits may be conducted at any reasonable time, upon written request, and shall include the right to receive copies of any Franchise Fee Reports, Sworn Annual Reports, or related documents. The City shall retain all records relating to the Franchise Fees for a minimum period of seven (7) years from the date of each payment.

c. **Costs of Audit**. In the event that an audit reveals any discrepancies, the City shall promptly correct such discrepancies, including making any necessary payments to the County or adjusting future allocations. The County shall bear the costs of any routine audit it initiates unless the audit reveals a material discrepancy of more than 5% between the reported and actual allocations. If the audit reveals a material discrepancy of more than 5% that results in an underpayment to the County, the City shall bear the reasonable costs of the audit and shall promptly correct the discrepancy, including making any necessary payments to the County or adjusting future allocations. The City shall complete the correction and make any necessary payments within thirty (30) days of the audit's conclusion. If both the City and the County mutually agree to conduct an audit, the costs shall be shared equally unless otherwise specified in writing.

7. Miscellaneous Provisions.

a. **Entire Agreement; Modification**. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter. This Agreement may not be supplemented or modified except in a written agreement properly executed by the parties.

b. **Waiver**. The terms of this Agreement may be waived only by a written document executed and delivered by the waiving party to the other party. No course of dealing between the parties, delay in the exercise of any rights under this Agreement, or failure to object to any action or omission constitutes a waiver of any terms of this Agreement. A waiver of any term of this Agreement will not constitute a continuing waiver of that term.

c. **Severability**. If any provision of this Agreement is determined to be to any extent invalid, illegal, or unenforceable, it will be deemed stricken from this Agreement. All other provisions of this Agreement will remain in full force and effect. The stricken provision will then be deemed replaced with one that is valid and enforceable and that comes closest to expressing the parties' original intent.

d. **Headings**. The headings in this Agreement are for convenience of reference only and do not constitute a part of it or affect its interpretation.

e. **Survival**. All provisions that may reasonably be interpreted as surviving the expiration of this Agreement shall survive such expiration, including but not limited to the payment for amounts owed hereunder with respect to the period prior to such expiration.

f. **Compliance with Laws**. Each party shall comply with all applicable federal, state, and local laws, ordinances, and regulations in carrying out their obligations under this Agreement.

g. **Governing Law**. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Oklahoma.

h. **Damages Waiver**. Neither party shall be liable to the other party for exemplary, punitive, treble, indirect, or consequential damages arising from or related to this Agreement and each party waives any and all claims they may have to recover such damages from the other.

i. **Disputes; Mediation and Venue**. In the event of any dispute arising under this Agreement, the parties shall first engage in good-faith negotiations to resolve the dispute. If the dispute remains unresolved after thirty (30) days, the parties shall submit the matter to mediation before proceeding with litigation. The mediation shall be conducted by a mutually agreed-upon mediator in Muskogee County, Oklahoma, and the costs of mediation shall be split equally between the parties. If mediation fails to resolve the dispute within sixty (60) days from the initial request for mediation, either party may pursue relief in the District Court of Muskogee County, Oklahoma, which shall have exclusive jurisdiction and venue.

j. **Counterpart Execution**. This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

This Economic Development Agreement is hereby approved by City as of the Effective Date**.**

CITY OF MUSKOGEE,
a municipal corporation

By: ______________________________
W. Patrick Cale, Mayor

ATTEST:

____
Tammy L. Tracy, City Clerk

(SEAL)

APPROVED as to form and legality this ______ of ________________________, 2025.

____
Katrina Bodenhamer, City Attorney

This Economic Development Agreement is hereby approved by the County as of the Effective Date**.**

BOARD OF COUNTY COMMISSIONERS,
MUSKOGEE COUNTY

By: ______________________________
Commissioner Ken Doke, Chairman

ATTEST:

____
Polly Irving, County Clerk

(SEAL)

APPROVED as to form and legality this ______ of ______________________, 2025.

____
John Tyler Hammons, General Counsel

Special City Council **5. a.**

Meeting Date: 04/14/2025

Submitted For: Katrina Bodenhamer, City Attorney

Initiator: Katrina Bodenhamer, City Attorney

Department: City Attorney

Staff Information Source:

Information

AGENDA ITEM TITLE:

Pursuant to Section 307 B.1, Title 25, Oklahoma Statutes, consider convening in Executive Session to discuss the appointment of a City Manager, as well as, conditions of employment thereto, and, if necessary, take appropriate action in open session, including but not limited to, approval of an Employment Agreement. (Mayor W. Patrick Cale)

BACKGROUND:

The City Attorney advises the City Council that the Council should determine that disclosure of communications regarding personnel negotiations that will relate in the potential hiring and employment of a City Manager is confidential, and from that determination, the Council should convene in executive session to discuss this matter. Action to hire a City Manager and approve a contract should be voted on in open session.

RECOMMENDED ACTION:

Convene in executive session to discuss the hiring terms of a City Manager, and, if necessary, take any appropriate action in open session, including the approval of an employment agreement.

Fiscal Impact

Attachments

No file(s) attached.

Special City Council **5. b.**

Meeting Date:	04/14/2025
Submitted For:	Katrina Bodenhamer, City Attorney
Initiator:	Katrina Bodenhamer, City Attorney
Department:	City Attorney
Staff Information Source:	Katrina Bodenhamer

Information

AGENDA ITEM TITLE:

Pursuant to Section 307 B.4, Title 25, Oklahoma Statutes, consider convening in Executive Session to discuss a potential lawsuit, and if necessary, take appropriate action in Open Session. (Katrina Bodenhamer)

BACKGROUND:

The City Attorney desires to discuss with the Mayor and Council potential litigation. The City Attorney advises the City Council that the Council should determine that disclosure of confidential communications between the Council and the City Attorney regarding the potential litigation will seriously impair the ability of the City to defend the City's interest, and from that determination, the Council should convene in Executive Session to discuss this matter.

RECOMMENDED ACTION:

Convene in Executive Session to discuss, and if necessary, take appropriate action in Open Session.

Fiscal Impact

Attachments

No file(s) attached.