

**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. 4258-A 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

28<sup>th</sup> day of April 2025

ATTEST:

Chairman

Member

Member

Attest

County Clerk

Polly Irving, County Clerk

(SEAL)

APPROVED as to form and legality this 28<sup>th</sup> of April, 2025.

John Tyler Hammons, General Counsel

**E-MAILED**  
4/28 10:57

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