

130032 - APPROVAL OF A TAX ABATEMENT AGREEMENT BETWEEN TARRANT COUNTY AND WINNER LLC FOR A DATA CENTER PROJECT, FORT WORTH

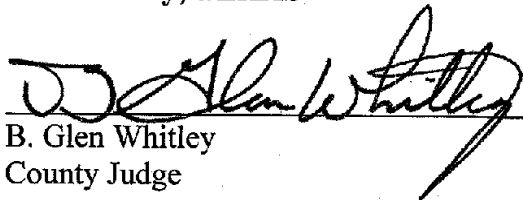
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the last date written below.

**WINNER LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

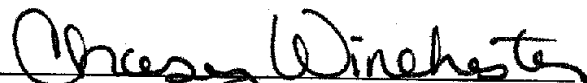
Date: \_\_\_\_\_

**TARRANT County, TEXAS**

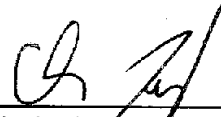
By:   
B. Glen Whitley  
County Judge

Date: April 30, 2019

ATTEST:

  
Deputy County Clerk

APPROVED AS TO FORM\*:

  
Asst. Criminal District Attorney

April 30, 2019

*\*By law, the District Attorney's Office may only approve contracts for its clients. We reviewed this document from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.*

**WINNER LLC**  
**Acknowledgment**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**STATE OF CALIFORNIA**        §  
   §  
**COUNTY OF** \_\_\_\_\_ §

On \_\_\_\_\_ before me, \_\_\_\_\_ (name/title), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that be his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed this instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

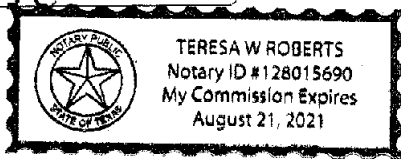
THE STATE OF TEXAS §

Tarrant County, Texas  
Acknowledgment

County OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **B. GLEN WHITLEY**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **TARRANT County, TEXAS**, as the **County Judge** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 30 day of April, 2019.



Teresa W Roberts

Notary Public in and for  
The State of Texas

August 21, 2021  
My Commission Expires

Teresa W Roberts  
Notary's Printed Name

**EXHIBIT "A"**  
**DESCRIPTION OF LAND**

**EXHIBIT "A"**

**Legal Description of the Land**

**Lot 4R-1R, Block 3, Alliance Gateway North, an Addition to the City of Fort Worth, according to the Plat recorded in Instrument No. D219062890, Official Public Records of Tarrant County, Texas.**

**Lot 4R-4, Block 3, Alliance Gateway North, an Addition to the City of Fort Worth, according to the Plat recorded in Instrument No. D219062890, Official Public Records of Tarrant County, Texas.**

**EXHIBIT "B"**

**CITY OF FORT WORTH TAX ABATEMENT AGREEMENT  
AND APPLICABLE ORDINANCES**



STATE OF TEXAS §  
COUNTY OF TARRANT §

## TAX ABATEMENT AGREEMENT

This TAX ABATEMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF FORT WORTH, TEXAS (the "City"), a home rule municipality organized under the laws of the State of Texas, and WINNER LLC, a Delaware limited liability company ("Company").

### RECITALS

- A. On January 29, 2019, the City Council adopted Resolution No. 5040-01-2019, stating that the City elects to be eligible to participate in tax abatement and setting forth guidelines and criteria governing tax abatement agreements entered into between the City and various parties, entitled "General Tax Abatement Policy" (the "Policy"), which is incorporated herein by reference and hereby made a part of this Agreement for all purposes.
- B. The Policy contains appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by Chapter 312 of the Texas Tax Code, as amended (the "Code").
- C. On March 26, 2019 the City Council adopted Ordinance No. 23620-03-2019 (the "Ordinance") establishing Tax Abatement Reinvestment Zone No. 99, City of Fort Worth, Texas (the "Zone").
- D. Company owns or will own approximately 33.81 acres of Land in the City, as more particularly described in Exhibit "A". The Land is located entirely within the Zone. Contingent upon receipt of the tax abatement herein, Company intends to expend or cause to be expended at least Fifty Million Dollars (\$50,000,000.00) in capital investment (as that term is defined in the Policy) for the construction and operation of an approximately 100,000 square foot data center on the Land.
- E. On or about August 20, 2018 Company submitted an application for tax abatement to the City concerning Company's plans for the development (the "Application"), which Application is attached hereto as Exhibit "B" and hereby made a part of this Agreement for all purposes.
- F. The contemplated use of the Land and the terms of this Agreement are consistent with encouraging development of the Zone and generating economic development and increased employment opportunities in the City, in accordance with the

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APR 11 2019  
CITY OF FORT WORTH  
CITY SECRETARY



purposes for creation of the Zone, and are in compliance with the Policy, the Ordinance and other applicable laws, ordinances, rules and regulations.

G. The provisions of this Agreement, and the proposed use of the Land and nature and minimum capital investment required for the Project Improvements, as defined in Section 2, satisfy the eligibility criteria for commercial/industrial tax abatement pursuant to Section 6 of the Policy (a data center "Mega Project").

H. Written notice that the City intends to enter into this Agreement, along with a copy of this Agreement, has been furnished in the manner prescribed by the Code to the presiding officers of the governing bodies of each of the taxing units that have jurisdiction over the Land.

I. The Abatement granted under this Agreement is in conjunction with a broader economic development incentive program governed by that certain Economic Development Program Agreement between the City and Company on file in the City Secretary's Office as City Secretary Contract No. 46728, as amended by City Secretary Contract No. 46728-A1 (the "EDPA"). The Land, as defined herein, also falls within the definition of the "Land" under the EDPA, and the Project Improvements constructed pursuant to this Agreement will also be counted as "Project Improvements" under the EDPA. For clarification, this Agreement is not in lieu of and does not replace the EDPA. This Agreement and the EDPA are provided in conjunction with one another and the EDPA remains in full force and effect.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### AGREEMENT

#### 1. INCORPORATION OF RECITALS.

The City Council has found, and the City and Company hereby agree, that the recitals set forth above are true and correct and form the basis upon which the parties have entered into this Agreement.

#### 2. DEFINITIONS.

In addition to terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

Abatement means (i) the abatement of twenty percent (20%) of the City's incremental ad valorem real property taxes on the Land and all improvements located on the Land, based on the increase in values of the Land and all improvements located on

the Land for the 2022 tax year over their values for the 2019 tax year (which is the year in which the parties entered into this Agreement); and (ii) the abatement of twenty percent (20%) of the City's ad valorem taxes on New Taxable Tangible Personal Property, based on the taxable assessed value of the New Taxable Tangible Personal Property; provided, however, that if Company fails to meet the M/WBE Construction Commitment, as outlined in Section 4.2, the percentage of Abatement applied hereunder will be reduced from twenty percent (20%) to ten percent (10%) in accordance with Section 6 of this Agreement.

**Affiliate** means all entities, incorporated or otherwise, under common control with, controlled by or controlling Company. For purposes of this definition, "control" means fifty percent (50%) or more of the ownership determined by either value or vote.

**Application** has the meaning ascribed to it in Recital E.

**Certificate of Completion** has the meaning ascribed to it in Section 5.

**Certified M/WBE Company** means a minority or woman-owned business that (i) has received certification as either a minority business enterprise (MBE), a woman business enterprise (WBE), or a disadvantaged business enterprise (DBE) by the North Central Texas Regional Certification Agency (NCTRCA), D/FW Minority Supplier Development Council (MSDC), or Women's Business Council – Southwest (WBC), and that has a principal office located within Tarrant, Dallas, Denton, Johnson, Parker, or Wise Counties, Texas. For purposes of this definition, a "principal office" means an office facility that is fully operational and has sufficient equipment, supplies, and personnel to provide the product or service of the business in question to clients in the City without significant reliance on the resources of another entity or affiliate or of an auxiliary facility of the business which is located outside of Tarrant, Dallas, Denton, Johnson, Parker, and Wise Counties, Texas.

**Code** has the meaning ascribed to it in Recital B.

**Completion Date** means the date as of which a temporary or permanent certificate of occupancy for at least 100,000 square feet of space within the Project Improvements has been issued.

**Completion Deadline** means December 31, 2021, subject to extension on account of force majeure, as provided in Section 22.

**Comprehensive Plan** means the City's 2019 Comprehensive Plan, adopted pursuant to Ordinance No. 23589-03-2019, adopted by the City Council on March 5, 2019.

**Consent to Collateral Assignment Agreement** has the meaning ascribed to it in Section 11.2.

**Construction Costs** means the aggregate of the following costs expended or caused to be expended by Company for the Project Improvements: actual site development and construction costs, general contractor and subcontractor fees, and the costs of supplies, materials and construction labor; engineering fees; and architectural and design fees; zoning fees; building permit fees; sewer basin fees; water and sewer tap fees; water, wastewater and thoroughfare impact fees; other costs and fees customarily incidental to construction of a commercial project; and insurance and taxes directly related to the construction of the Project Improvements. Construction Costs specifically excludes any costs associated with the acquisition or lease of the Land.

**Director** means the director of the City's Economic Development Department.

**EDPA** has the meaning ascribed to it in Recital I.

**Effective Date** has the meaning ascribed to it in Section 3.

**Employment Goal** has the meaning ascribed to it in Section 4.4.

**Event of Default** means a breach of this Agreement by a party, either by act or omission, as more specifically set forth in Section 7 of this Agreement.

**Full-time Job** means a job on (i) the Land or (ii) a combination of the Land and the land as such term is defined in the EDPA provided by Company or an Affiliate to one individual for (i) forty (40) hours per week or (ii) less than forty (40) hours per week if such other measurement is used to define full-time employment by Company or an Affiliate in accordance with its then-current personnel policies and regulations. For example, if Company or an Affiliate has a company-wide policy that considers full-time employment to be thirty-five (35) hours per week, a job on the Land provided by Company or an Affiliate for at least thirty-five (35) hours per week shall be considered a full-time job for purposes of this Agreement.

**Land** means the real property described on **Exhibit "A"** which is attached hereto and incorporated herein by reference for all purposes under this Agreement.

**M/WBE Construction Commitment** has the meaning ascribed to it in Section 4.2.

**Mortgagee** means the holder of a mortgage on the Land.

**New Taxable Tangible Personal Property** means any personal property that (i) is subject to ad valorem taxation and is rendered for that purpose to Tarrant Appraisal District or another appraisal district having jurisdiction over the Land; (ii) is located on the Land; (iii) is owned or leased by Company or an Affiliate; and (iv) was not located in the City prior to the Effective Date of this Agreement.

**Ordinance** has the meaning ascribed to it in Recital C.

**Personal Property Commitment** has the meaning ascribed to it in Section 4.3.

**Personal Property Report** has the meaning ascribed to it in Section 4.5.2.

**Policy** has the meaning ascribed to it in Recital A.

**Project Completion Report** has the meaning ascribed to it in Section 4.5.1.

**Project Improvements** means improvements constructed on the Land after the Effective Date of this Agreement, which must consist of, at a minimum, a data center facility containing at least 100,000 square feet.

**Real Property Improvement Commitment** has the meaning ascribed to it in Section 4.1.

**Salary** means the cash payment or remuneration made to a person holding a Full-time Job, including paid time off, commissions, and non-discretionary bonuses. A Salary does not include any benefits, such as health insurance or retirement contributions, reimbursements for employee expenses, or any discretionary bonuses.

**Server** means any computer data processing, storage, or other transmission equipment and any equipment at any time substituted for and performing the same or similar functions. "Server" does not include the software installed on any computer or data processing equipment.

**Term** has the meaning ascribed to it in Section 3.

**Zone** has the meaning ascribed to it in Recital C.

3. **TERM.**

This Agreement will take effect on the date of execution of this Agreement by both the City and Company (the "Effective Date") and, unless terminated earlier in accordance with its terms and conditions, will expire on December 31, 2022 (the "Term"). Company may terminate the Agreement at any time in its sole discretion without recourse; provided that, if Company terminates the Agreement it will no longer be eligible to receive the Abatement.

**4. COMPANY'S OBLIGATIONS AND COMMITMENTS.**

**4.1. Real Property Improvements and Uses.**

The Completion Date must occur on or before the Completion Deadline, and Company must expend or cause the expenditure by the Completion Deadline of at least Fifty Million Dollars (\$50,000,000.00) in Construction Costs for the Project Improvements; provided, however, that if the Personal Property Commitment outlined in Section 4.3 is exceeded and if Company submits a written request to the City on or before submission of the Personal Property Report, the Director may reduce this Fifty Million Dollar (\$50,000,000.00) minimum cost requirement by the same percentage by which the Personal Property Commitment was exceeded, but such reduction may not exceed twenty-five percent (25%), regardless of the percentage by which the Personal Property Commitment was exceeded, and with the understanding that any such reduction must be specified in writing and reflected in the Certificate of Completion issued pursuant to Section 5 (the "Real Property Improvement Commitment"). The Project Improvements are intended to be used as a "data center" as that term is defined in the City's Zoning Ordinance. After the Completion Deadline, the Project Improvements must be used for a lawful use related to the support and/or operation of Company's commercial, business, retail, or industrial uses and may not be used in conjunction with any use(s) that the City Council has determined cause or would cause materially adverse effects on the stability of the immediate neighborhood.

**4.2. Construction Spending Commitment for Certified M/WBE Companies.**

As a condition to receipt of the full twenty-percent (20%) Abatement (as further set forth in the definition of such term), by the Completion Date, Company must have expended or caused to be expended with Certified M/WBE Companies at least fifteen percent (15%) of all Construction Costs for the Project Improvements, regardless of the total amount of such Construction Costs (the "M/WBE Construction Commitment").

**4.3. Installation of Personal Property on Land.**

By the Completion Deadline, Company intends to install or otherwise locate on the Land (including within the Project Improvements), or cause to be installed or otherwise located on the Land, New Taxable Tangible Personal Property having an aggregate actual cost of at least One Hundred Million Dollars (\$100,000,000.00); provided, however, that if the Real Property Improvement Commitment is exceeded and if Company submits a written request to the City on or before submission of the Project Completion Report, the Director may reduce this One Hundred Million Dollar (\$100,000,000.00) minimum cost requirement

by the same percentage in which the Real Property Improvement Commitment was exceeded, but such reduction may not exceed twenty-five percent (25%), regardless of the percentage by which the Real Property Improvement Commitment was exceeded, with the understanding that any such reduction must be specified in writing and reflected in the Certificate of Completion issued pursuant to Section 5 (the "Personal Property Commitment").

**4.4. Employment Goal.**

During 2022, Company will use commercially reasonable efforts to provide or cause to be provided at least four (4) Full-time Jobs on (i) the Land or (ii) a combination of the Land and the land as such term is defined in the EDPA that is owned by Company or an Affiliate, with, collectively, average annual Salaries of such four (4) Full-time Jobs of Forty-three Thousand Nine Hundred Ninety-two Dollars (\$43,992.00) (the "Employment Goal"). Notwithstanding the foregoing, in order for a Full-time Job on a combination of the Land and the land as such term is defined in the EDPA to be counted towards the Employment Goal, the Full-time Job shall be in addition to Full-time Job(s) counted for purposes of satisfying the "employment goal" as such term is defined in the EDPA.

**4.5. Reports and Filings.**

**4.5.1. Notice of Completion and Final Construction Report.**

Provided that the Completion Date occurred on or before the Completion Deadline, on or before February 28 of the year following the year in which the Completion Deadline occurs, Company must provide a written report to the City, substantially in the form specified by the EDPA, that specifically outlines the total Construction Costs expended for the Project Improvements, as well as the total Construction Costs expended for the Project Improvements with Certified M/WBE Companies, together with supporting invoices and other documents reasonably necessary to demonstrate that such amounts were actually paid (the "Project Completion Report"). As provided in Section 7.7 below, a failure to meet the M/WBE Construction Commitment does not constitute a default under this Agreement.

**4.5.2. Personal Property Report.**

On or before February 28 of the year following the year in which the Completion Deadline occurred, Company must provide a written report to the City, substantially in the form specified by the EDPA, that specifically outlines the New Taxable Tangible Personal Property that has been installed or otherwise located on the Land, the legal owner of such New Taxable Tangible Personal Property, and the amounts actually paid

for such New Taxable Tangible Personal Property, together with supporting invoices and other documents reasonably necessary to demonstrate that such amounts were actually paid (the "Personal Property Report").

#### **4.5.3. Employment Report.**

On or before February 28 of the first full calendar year following the year in which the Completion Deadline occurred, Company must provide the City with a report, substantially in the form specified by the EDPA, that sets forth the total number of individuals who held Full-time Jobs on (i) the Land or (ii) a combination of the Land and the land as such term is defined in the EDPA (if such jobs are to be counted towards the Employment Goal under this Agreement) as of December 31 (or such other date requested by Company and reasonably acceptable to the City) of the previous year, plus their Salaries, together with reasonable supporting documentation. If the Employment Goal was not met, Company must include an explanation as to why Company believes the Employment Goal was not met and the efforts that were utilized to meet the Employment Goal. As provided in Section 7.8 below, a failure to meet the Employment Goal does not constitute a default under this Agreement.

#### **4.6. Audits.**

Provided at least ten (10) calendar days' notice is given and to the extent necessary to verify compliance with the terms of this Agreement or to otherwise administer the terms of this Agreement, but no more than once per calendar year, the City will have the right throughout the Term to audit the financial and business records of Company that relate solely to the Project Improvements, New Taxable Tangible Personal Property, and Salaries of individuals holding Full-time Jobs that are included in the employment report provided pursuant to Section 4.5.3, and that are necessary to evaluate compliance with this Agreement or with the commitments and goals set forth in this Agreement, including, but not limited to documents and invoices related to the construction of the Project Improvements and the purchase of New Taxable Tangible Personal Property. If documentation of any Construction Cost expenditures, costs of New Taxable Tangible Personal Property, or Salaries of individuals holding Full-time Jobs that are included in the employment report provided pursuant to Section 4.5.3 is contained in financial and business records of Company that also contain unrelated matters, and the City cannot verify such expenditures, costs, or Salaries in any other documents of Company, such expenditures, costs, and Salaries will not be counted for purposes of this Agreement unless Company allows the City to audit those records; provided, however, that if Company allows the City to audit those records, Company may redact any unrelated matters that are non-essential to the audit of any Construction Cost expenditures, costs of New Taxable Tangible Personal Property, and Salaries. If Company seeks to have Construction Cost expenditures

made by another party; costs of New Taxable Tangible Personal Property by an Affiliate; or Salaries of individuals holding Full-time Jobs that are provided by an Affiliate counted for purposes of this Agreement, Company must make or cause to be made the financial and business records of that party that relate to the expenditures in question available to the City for audit (provided the party providing such records may redact any unrelated matters that are non-essential to the audit). Company must make all such records described in this Section 4.6 available to the City at Company's offices in the City or at another location in the City acceptable to both parties and shall otherwise cooperate fully or cause full cooperation with the City during any audit. Further, Company may require that all individuals reviewing the financial and business records of Company, an Affiliate or another party must first sign a reasonable confidentiality agreement under which they agree to not discuss or publicize information contained in those records except as necessary for them to complete an audit of such records in accordance with this Agreement.

#### **4.7. Inspections of Land and Project Improvements.**

At any time during Company's normal business hours throughout the Term and following at least ten (10) calendar days' prior written notice to Company, the City will have the right to inspect and evaluate the Land and the Project Improvements, and Company will provide reasonable access to the same, in order for the City to monitor or verify compliance with the terms and conditions of this Agreement. Company will reasonably cooperate with the City during any such inspection and evaluation. Notwithstanding the foregoing, Company shall have the right to require that any representative of the City be escorted by a representative or security personnel of Company during any such inspection and evaluation, and Company shall be able to exercise its sole, reasonable discretion in scheduling a requested inspection so as not to interfere with ongoing business operations on the Land.

#### **4.8. Use of Land.**

From and after the construction of the Project Improvements, the Land must be used at all times during the remainder of the Term of this Agreement for purposes connected with the business operations of Company, as described in the Recitals, and further described in Section 4.1, and otherwise in a manner that is consistent with the general purposes of encouraging development or redevelopment of the Zone.

### **5. CERTIFICATE OF COMPLETION.**

Within ninety (90) calendar days following receipt by the City of the Project Completion Report and the Personal Property Report submitted by Company in accordance with Sections 4.5.1 and 4.5.2, and assessment by the City of the information



contained therein, if the City is able to verify that the Completion Date occurred on or before the Completion Deadline, that at least Fifty Million Dollars (\$50,000,000.00) in Construction Costs (or such lower amount if authorized by the Director in writing in accordance with Section 4.1) were expended for the Project Improvements by the Completion Deadline, and that New Taxable Tangible Personal Property having an actual cost of at least One Hundred Million Dollars (\$100,000,000.00) (or such lower amount if authorized by the Director in writing in accordance with Section 4.3) was installed or otherwise located on the Land (including within the Project Improvements) by the Completion Deadline, the Director will issue Company a certificate confirming that both the Real Property Improvement Commitment and the Personal Property Commitment have been met (the "Certificate of Completion"). The Certificate of Completion shall also indicate whether the M/WBE Construction Commitment, as outlined in Section 4.2, was met. The issuance of the Certificate of Completion by City shall not be unreasonably conditioned, withheld or delayed.

6. **TAX ABATEMENT.**

Subject to the terms and conditions of this Agreement, provided that both the Real Property Improvement Commitment, as outlined in Section 4.1, and the Personal Property Commitment, as outlined in Section 4.3, were met, as confirmed in the Certificate of Completion issued by the City in accordance with Section 5, subject to all extensions of time allowed by this Agreement, Company will be entitled to receive the Abatement for the 2022 tax year; provided, however, that if the M/WBE Construction Commitment, as outlined in Section 4.2, was not met, the percentage of Abatement applied for the 2022 tax year will be reduced from twenty percent (20%) to ten percent (10%). Section 15.5 of the Policy, which provides for a cap on the maximum amount of any given tax abatement, does not apply to this Agreement.

7. **DEFAULT, TERMINATION AND FAILURE BY COMPANY TO MEET VARIOUS DEADLINES AND COMMITMENTS.**

7.1. **Failure to Meet Real Property Improvement Commitment or Personal Property Commitment.**

If the Completion Date does not occur on or before the Completion Deadline, or if the Real Property Improvement Commitment, as set forth in Section 4.1, or the Personal Property Commitment, as set forth in Section 4.3, are not met by the Completion Deadline, the City shall have the right, as its sole remedy, to terminate this Agreement by providing written notice to Company without further obligation to Company hereunder.



**7.2. Failure to Pay City Taxes.**

An event of default shall occur under this Agreement if any City taxes owed on the Land or on business personal property located on the Land by Company or an Affiliate, or arising on account of Company's or an Affiliate's operations on the Land, become delinquent and Company or the Affiliate does not either pay such taxes or properly follow the legal procedures for protest and/or contest of any such taxes. In this event, the City shall notify Company in writing and Company shall have thirty (30) calendar days to cure such default. If the default has not been fully cured by such time, the City shall have the right to terminate this Agreement immediately by providing written notice to Company and shall have all other rights and remedies that may be available to it under the law or in equity necessary to collect such delinquent taxes. Either payment of such taxes or initiation of and ongoing engagement in legal proceedings for protest and/or contest of such taxes shall constitute a full cure pursuant to this Section 7.2.

**7.3. Violations of City Code, State or Federal Law.**

An event of default shall occur under this Agreement if any written citation is issued to Company or an Affiliate due to the occurrence of a material violation of a material provision of the City Code on the Land or on or within any improvements thereon (including, without limitation, any material violation of the City's Building or Fire Codes and any other material City Code violations related to the environmental condition of the Land; the environmental condition other land or waters which is attributable to operations on the Land; or to matters concerning the public health, safety or welfare) and such citation is not paid or the recipient of such citation does not properly follow the legal procedures for protest and/or contest of any such citation. An event of default shall occur under this Agreement if the City is notified by a governmental agency or unit with appropriate jurisdiction that Company or an Affiliate, or any successor in interest thereto; or an occupant or tenant with access to any portion of the Land owned or operated by Company or an Affiliate pursuant to the express or implied permission of Company or an Affiliate if action was not taken within thirty (30) days of actual knowledge by Company or an Affiliate to resolve, mitigate or protest and/or contest such violation under proper legal procedures; or the City is in material violation of any material state or federal law, rule or regulation on account of any portion of the Land owned or operated by Company or an Affiliate, or on account of improvements owned or operated by Company or an Affiliate or any operations therein on the Land (including, without limitation, any material violations related to the environmental condition of any portion of the Land owned or operated by Company or an Affiliate; the environmental condition of other land or waters which is attributable to operations on any portions of the Land owned or operated by Company or an Affiliate; or to matters concerning the public health, safety or welfare). Upon the occurrence of any default described by this Section 7.3, the City shall notify Company in writing and Company shall

have (i) thirty (30) calendar days to cure such default or (ii) if Company has diligently pursued cure of the default but such default is not reasonably curable within thirty (30) calendar days, then such amount of time as is reasonably necessary to cure such default. If the default has not been fully cured by such time, the City shall have the right to terminate this Agreement immediately by providing written notice to Company and shall have all other rights and remedies that may be available under the law or in equity.

**7.4. Foreclosure.**

Subject to any rights of a lender that is a party to a Consent to Collateral Assignment Agreement executed pursuant to and in accordance with Section 11, upon the occurrence of any of the following events, the City will have the right to terminate this Agreement immediately upon provision of written notice to Company: (i) the completion of an action to foreclose or otherwise enforce a lien, mortgage or deed of trust on Company's or an Affiliate's interest in the Land or improvements located thereon; (ii) the involuntary conveyance to a third party of Company's or an Affiliate's interest in the Land or improvements located thereon; (iii) execution by Company or an Affiliate of any assignment of Company's or an Affiliate's interest in the Land or improvements located thereon or a deed in lieu of foreclosure to Company's or an Affiliate's interest in the Land or improvements located thereon; or (iv) the appointment of a trustee or receiver for Company's or an Affiliate's interest in the Land or improvements located thereon.

**7.5. Failure to Submit Reports.**

If Company fails to submit any report required by and in accordance with Section 4.5, the City shall provide written notice to Company. If Company fails to provide any such report within thirty (30) calendar days following receipt of such written notice, the City will provide a second written notice to Company. If Company fails to provide any such report within five (5) business days following receipt of this second written notice, the City will have the right to terminate this Agreement immediately by providing written notice to Company.

**7.6. Knowing Employment of Undocumented Workers.**

Company acknowledges that the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. *Company hereby certifies that Company, and any branches, divisions, or departments of Company, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Company, or any branch, division, or department of Company, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that*

*may lawfully be available to and exercised by Company, Company shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the value of the Abatement received by Company hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum.*

For the purposes of this Section 7.6, "Simple Interest" is defined as a rate of interest applied only to an original value, in this case the aggregate amount of Program Grants paid pursuant to this Agreement. This rate of interest can be applied each year, but will only apply to the amount of the Abatement received hereunder and is not applied to interest calculated. For example, if the value of the Abatement received by Company hereunder is \$10,000 and it is required to be paid back with four percent (4%) interest five years later, the total amount would be  $\$10,000 + [5 \times (\$10,000 \times 0.04)]$ , which is \$12,000. This Section 7.6 does not apply to violations of any subsidiary or other Affiliate of Company, any franchisees of Company, or any person or entity with whom Company contracts. Notwithstanding anything to the contrary herein, this Section 7.6 shall survive the expiration or termination of this Agreement.

**7.7. Failure to Meet M/WBE Construction Commitment.**

If the M/WBE Construction Commitment, as outlined in Section 4.2, was not met, such event will not constitute a default hereunder, but, rather, will only cause the percentage of Abatement granted pursuant to this Agreement to be reduced from twenty percent (20%) to ten percent (10%).

**7.8. Failure to Meet Employment Goal.**

If Company fails to meet the Employment Goal, such event will not constitute a default hereunder and will not cause the amount of the Abatement to which Company is entitled hereunder to be reduced.

**7.9. General Breach.**

Unless and to the extent stated elsewhere in this Agreement, a party will be in default under this Agreement if that party breaches any term or condition of this Agreement and such breach remains uncured after thirty (30) calendar days following receipt of written notice from the other party referencing this Agreement (or, if the party in breach has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure, as determined by both parties mutually and in good faith). If a party is in default (after the aforementioned notice and cure periods), the non-breaching party will have the right to terminate this Agreement immediately by providing written notice to the other party as well as all other available rights and remedies under the law.

**7.10. City's Sole Remedy in the Event of Breach.**

Except as otherwise provided in this Agreement, the City's sole remedy in the event of Company's uncured breach of any condition or obligation under this Agreement will be the City's right to terminate this Agreement in accordance with its provisions. In addition, except as required by Section 7.6 and Section 7.11 of this Agreement, Company will not be required to repay any Abatement or property tax revenue lost as a result of this Agreement.

**7.11. Damages for Failure to Obtain Certificate of Completion.**

Company acknowledges and agrees that termination of this Agreement due to a default by Company will (i) harm the City's economic development and redevelopment efforts on the Land and in the vicinity of the Land; (ii) require unplanned and expensive additional administrative oversight and involvement by the City; and (iii) be detrimental to the City's general economic development programs, both in the eyes of the general public and by other business entities and corporate relocation professionals, and Company agrees that the exact amounts of actual damages sustained by the City therefrom will be difficult or impossible to ascertain. Therefore, upon termination of this Agreement for a failure to obtain the Certificate of Completion, as authorized by Section 312.205(a)(4) of the Code, Company must pay the City all taxes that were abated in accordance with this Agreement and which otherwise would have been paid to the City in the absence of this Agreement. The City and Company agree that this amount is a reasonable approximation of actual damages that the City will incur as a result of an uncured failure by Company to obtain a the Certificate of Completion and that this Section 7.11 is intended to provide the City with compensation for actual damages and is not a penalty. This amount may be recovered by the City through adjustments made to Company's ad valorem property tax appraisal by the appraisal district that has jurisdiction over the Land and over any taxable tangible personal property located thereon. Otherwise, this amount shall be due, owing and paid to the City within sixty (60) days following the effective date of termination of this Agreement by the City. In the event that all or any portion of this amount is not paid to the City within sixty (60) days following the effective date of termination of this Agreement, Company shall also be liable for all penalties and interest on any outstanding amount at the statutory rate for delinquent taxes, as determined by the Code at the time of the payment of such penalties and interest (currently, Section 33.01 of the Code).

**8. INDEPENDENT CONTRACTOR.**

It is expressly understood and agreed that Company shall operate as an independent contractor in each and every respect hereunder and not as an agent, representative or employee of the City. Company shall have the exclusive right to control all details and day-to-day operations relative to the Land and any improvements

thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Company acknowledges that the doctrine of *respondeat superior* will not apply as between the City and Company, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Company further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Company.

9. INDEMNIFICATION AND RELEASE.

9.1. Indemnification.

**COMPANY, AT NO COST TO THE CITY, AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO COMPANY'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) COMPANY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF COMPANY, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY) OR SUBCONTRACTORS, RELATED TO THE LAND, IMPROVEMENTS ON THE LAND, INCLUDING THE PROJECT IMPROVEMENTS, AND ANY OPERATIONS AND ACTIVITIES THEREON, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT.**

9.2. Release.

**THE CITY HEREBY RELEASES AND AGREES TO HOLD HARMLESS COMPANY, ITS OFFICERS, AGENTS, AFFILIATES AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) THE CITY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF THE CITY, ITS OFFICERS, SERVANTS, AGENTS, ASSOCIATES, EMPLOYEES CONTRACTORS (OTHER THAN COMPANY) OR SUBCONTRACTORS, RELATED TO THE LAND, IMPROVEMENTS ON THE LAND, INCLUDING THE PROJECT IMPROVEMENTS, AND ANY**

**OPERATIONS AND ACTIVITIES THEREON, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT.**

**10. NOTICES.**

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

**City:**

City of Fort Worth  
Attn: City Manager  
200 Texas St.  
Fort Worth, TX 76102

**Company:**

Winner LLC  
Attn: Data Center Counsel  
1 Hacker Way  
Menlo Park, CA 94025

***with copies to:***

the City Attorney and  
Economic Development Department  
Director at the same address

**11. ASSIGNMENT AND SUCCESSORS.**

**11.1. Affiliates.**

Company may at any time assign, transfer or otherwise convey any of its rights or obligations under this Agreement to an Affiliate that is in good standing to do business in the State of Texas, as determined by the Texas Secretary of State, without the consent of the City Council so long as Company, the Affiliate and the City first execute an agreement under which the Affiliate (and, if applicable, the owner of the Land) agrees to assume and be bound by all covenants and obligations of Company under this Agreement. Notwithstanding the foregoing, if the Affiliate is not the owner of the Land, the Agreement must also be assigned to the owner of the Land in accordance with Section 11.4.

**11.2. Collateral Assignment.**

Company may assign its rights and obligations under this Agreement to a financial institution or other lender for purposes of granting a security interest in the Land and/or improvements thereon without the consent of the City Council, provided that Company and the financial institution or other lender first execute a written agreement with the City in substantially the same form as that attached hereto as Exhibit "C", together with such other terms and conditions as may be

agreed by the City, Company and the financial institution or other lender with respect to such security interest (a "Consent to Collateral Assignment Agreement").

**11.3. Sale/Leaseback.**

So long as Company or an Affiliate to which this Agreement has been assigned under Section 11.1 remains the ground lessee, or its substantial equivalent, Company may, with consent of the City Council in accordance with Section 11.3, which shall not be unreasonably withheld, transfer fee simple title to the Land to a third party and continue to exercise its rights and obligations under this Agreement, including but not limited to the Abatement, so long as the third party owner and Company or its Affiliate first execute a written agreement with the City under which both the third party owner of the Land and Company or its Affiliate, jointly or severally as may be appropriate under the circumstances, agree to be bound by all covenants and obligations of Company under this Agreement.

**11.4. Other Assignment.**

Except as otherwise provided by Sections 11.1 and 11.2, Company may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the consent of the City Council, which consent shall not be unreasonably withheld, conditioned on (i) the prior approval of the assignee or successor and a finding by the City Council that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the City under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Company under this Agreement. Any attempted assignment without the City Council's prior consent shall constitute grounds for termination of this Agreement following ten (10) calendar days of receipt of written notice from the City to Company and failure to cure. Any lawful assignee or successor in interest of Company of all rights under this Agreement shall be deemed "Company" for all purposes under this Agreement.

**12. ESTOPPEL CERTIFICATE.**

Upon written request by Company to the City, as reasonably necessary to Company, the City will provide Company with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Company is in breach of this Agreement, the nature of the breach; (ii) a statement as to whether this Agreement has been amended and, if so, the identity of each amendment; and (iii) any other factual matters reasonably requested that relate to this Agreement.



13. **COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.**

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter and ordinances, as amended.

14. **GOVERNMENTAL POWERS.**

It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.

15. **ADDITIONAL PROVISIONS.**

15.1. **Future Land Uses and Zoning.**

The City acknowledges that Company's proposed land use is consistent with the current industrial zoning classification of the Land. Moreover, the current Comprehensive Plan provides that uses consistent with this zoning classification are the most appropriate for the Land. In the event that the City receives any request for a residential zoning classification within 250 feet of the Land, the City will use reasonable efforts to provide Company with written notice of such request.

15.2. **Expedited Permitting.**

During the Term, if requested by Company in writing, the City shall expedite the review and any response to the permits, approvals, maps, plans, inspections, applications and other administrative requests in connection with the Land and Project Improvements. The City shall use its best efforts to appoint an appropriate staff member with knowledge and experience in the relevant subject area for such permit or approval to organize and expedite such review.

16. **NO WAIVER.**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

**17. VENUE AND JURISDICTION.**

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.

**18. SEVERABILITY; CONFLICTING LAW.**

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. If any law is enacted after the Effective Date that prohibits either party from materially performing its duties and obligations under this Agreement, the parties agree to meet and confer in good faith for a period of no less than thirty (30) and no more than ninety (90) days to seek to effectuate an amendment to this Agreement that preserves, to the extent reasonably possible, the original intentions of the parties under this Agreement, with the understanding that this Agreement cannot be amended without the approval of the City Council, as specified in Section 25.

**19. CONFIDENTIAL INFORMATION.**

The City acknowledges that some information it receives from Company under this Agreement may be considered confidential. Company understands and agrees that the City is subject to the Texas Public Information Act, Chapter 552, Texas Government Code. The Parties agree to comply with the terms and conditions of that certain Single Party Non-Disclosure Agreement between the City and Company that is on file in the City Secretary's Office as City Secretary Contract No. 46664 to the extent that it relates to the rights, obligations, documents and/or information related to this Agreement.

**20. MUTUAL ASSISTANCE; DISPUTE RESOLUTION.**

The City and Company will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, including without limitation, the City facilitating approval of City permits, documents, and other instruments as may be reasonably necessary in carrying out such objectives. In case of any disputes arising under this Agreement, the City and Company agree to attempt to resolve such disputes through good faith negotiations between authorized representatives of both parties. If necessary, both parties agree to submit a dispute to a non-binding mediation. If a dispute cannot be resolved through non-binding mediation, either party may pursue any available legal remedies in any court of competent jurisdiction that satisfies the requirements of Section 17, or, if both parties mutually agree, the dispute

may be submitted to binding arbitration in accordance with procedures to which both parties agree.

**21. NO THIRD PARTY RIGHTS.**

The provisions and conditions of this Agreement are solely for the benefit of the City and Company, and any lawful assign or successor of Company, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

**22. FORCE MAJEURE.**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, strike, inclement weather, shortages or unavailability of labor or materials, unreasonable delays by the City (based on the then-current workload of the City department(s) responsible for undertaking the activity in question) in issuing any permits, consents, or certificates of occupancy or conducting any inspections of or with respect to the Land and Project Improvements, or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement and the Completion Deadline shall be extended for a period of time equal to the period such party was delayed. Notwithstanding anything to the contrary herein, it is specifically understood and agreed that any failure to obtain adequate financing necessary to meet the Real Property Improvement Commitment or the Personal Property Commitment shall not be deemed to be an event of force majeure and that this Section 22 shall not operate to extend the Completion Deadline in such an event.

**23. INTERPRETATION.**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

**24. CAPTIONS.**

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**25. ENTIRETY OF AGREEMENT.**

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Company, and any lawful assign and successor of Company, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

**26. COUNTERPARTS.**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

**27. BONDHOLDER RIGHTS.**

The development will not be financed by tax increment bonds. This Agreement is subject to the rights of holders of outstanding bonds of the City.

**28. CONFLICTS OF INTEREST.**

Neither the Land nor any improvements thereon are owned or leased by any member of the City Council, any member of the City Plan or Zoning Commission or any member of the governing body of any taxing unit with jurisdiction in the Zone.

[SIGNATURES IMMEDIATELY FOLLOW ON NEXT THREE (3) PAGES]



**EXECUTED** as of the last date indicated below:

**CITY CONTRACT COMPLIANCE MANAGER:**

By signing below, I hereby acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements:

A handwritten signature in black ink, appearing to read "Robert Sturis".

By:

Name of City Employee: Robert Sturis  
Title: Director

**CITY OF FORT WORTH:**

By: Susan Alanis  
Susan Alanis  
Assistant City Manager

Attested by:  
Mary J. Kayser  
Mary J. Kayser, City Secretary



Date: 4/10/19

**APPROVED AS TO FORM AND LEGALITY:**

By: Peter Vaky  
Peter Vaky  
Deputy City Attorney

M&C: C-29080 03-26-2019

Form 1295: 2019-461427

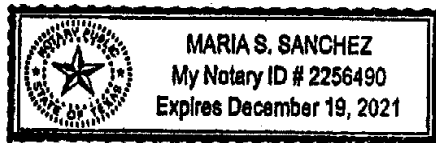
**STATE OF TEXAS §**

**COUNTY OF TARRANT §**

BEFORE ME, the undersigned authority, on this day personally appeared Susan Alanis, Assistant City Manager of the CITY OF FORT WORTH, a municipal corporation organized under the laws of the State of Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the CITY OF FORT WORTH, that she was duly authorized to perform the same by appropriate resolution of the City Council of the City of Fort Worth and that she executed the same as the act of the CITY OF FORT WORTH for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of April, 2019.

Maria S. Sanchez  
Notary Public in and for  
the State of Texas  
MARIA S. SANCHEZ  
Notary's Printed Name





WINNER LLC,  
a Delaware limited liability company:

By: [Signature]  
Name: Bobby Hollis  
Title: Authorized Representative  
Date: April 18/19

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_  
known to me to be the person whose name is subscribed to the foregoing instrument, and  
acknowledged to me that s/he executed the same for the purposes and consideration therein  
expressed, in the capacity therein stated and as the act and deed of \_\_\_\_\_.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this  
\_\_\_\_\_ day of \_\_\_\_\_, 2019.

Notary Public in and for  
the State of \_\_\_\_\_

Notary's Printed Name \_\_\_\_\_

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Mateo

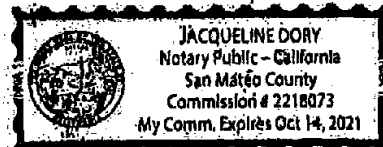
On April 8, 2019 before me, Jacqueline Dory, notary public  
(insert name and title of the officer)

personally appeared Bobby J. Hollis  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)







**EXHIBITS**

**"A" – Legal Description of the Land**

**"B" – Company's Tax Abatement Application**

**"C" – Form of Consent to Collateral Assignment**



**EXHIBIT "A"**

**Legal Description of the Land**

Lot 4R-1R, Block 3, Alliance Gateway North, an Addition to the City of Fort Worth, according to the Plat recorded in Instrument No. D219062890, Official Public Records of Tarrant County, Texas.

Lot 4R-4, Block 3, Alliance Gateway North, an Addition to the City of Fort Worth, according to the Plat recorded in Instrument No. D219062890, Official Public Records of Tarrant County, Texas.

**EXHIBIT "B"**

**Tax Abatement Application**



# **Economic Development Incentive Application**

**Economic Development Department  
1150 South Freeway  
Fort Worth, Texas 76104  
(817) 871-6021**

# Incentive Application

## APPLICANT INFORMATION

Date: \_\_\_\_\_

Company Name: Winner LLC d/b/a Ernst LLC

Company Address: 1 Hacker Way

City: Menlo Park

State: CA

Zip: 94025

Contact Person: Richie Kurtzman

Title/Position: Economic Development Manager

Telephone Number: \_\_\_\_\_

Mobile Telephone Number: 773-209-8344

Fax Number: \_\_\_\_\_

E-Mail Address: rkurtzman@fb.com

**1. If the applicant represents a Company: (If a Developer and not a Company, proceed to #2.)**

A. Company Ownership (check one):  Publicly Traded Stock  Privately Held

B. Form of Business (choose one): Corporation

C. How long has the company been in operation (Years)? \_\_\_\_\_

D. Company Industry: Data Center

E. Describe the Company's principal business:

Winner LLC is a special purpose entity whose sole and principal business will be the operation and maintenance of the proposed data center for its parent company. Winner LLC's parent company is Facebook, Inc.

F. Describe the Company's international presence, if any:

None

G. Describe the Company's corporate citizenship practices:

**2. If the applicant represents a Developer:**

A. Describe the Developer's experience and background. Please include similar projects that you have constructed including the project type and location (attach additional sheets as necessary):

N/A

B. Development Partners (Architect, Engineering Team, Interior Design, General Contract, etc.)

N/A

**II. PROJECT INFORMATION**

Please include below the project description, project benefits and how the project positively impacts the community. Any incentives given by the City should be considered only "gap" financing and should not be considered a substitute for debt and equity. However, the City is under no obligation to provide gap financing just because a gap exists. In order for a Company or Developer to be eligible to receive incentives for a project, the Company/Developer:

- A. Must complete and submit this application and the application fee to the City;
- B. Company/Developer or Company/Developer's principals must not be delinquent in paying property taxes for any property owned in Fort Worth;
- C. Company/Developer or Company/Developer's principals must not have ever been subject to the City of Fort Worth's Building Standards Commission's Review;
- D. Company/Developer or Company/Developer's principals must not have any City of Fort Worth liens filed against any other property owned by the applicant property owner/developer. "Liens" includes, but is not limited to, weed liens, demolition liens, board-up/open structure liens and paving liens.

1. Project Description (attach additional sheets as necessary):

See Exhibit A.

2. In what way will the project benefit the surrounding area or serve as a catalyst for additional development and/or business opportunities for the local economy (i.e. attract suppliers or customers)?

See Attached.

3. Describe how the project positively impacts the community.

See Attached.

**III. PROJECT DETAILS**

1. Proposed Project Site Address: 14100 Park Vista Blvd., Fort Worth, TX 76177

2. Proposed Project Site Land Size (Acres): 51.9

3. Will environmental remediation be required? No

4. Is this an existing facility or will a new facility be constructed?  New  Existing

A. If new, what is the construction: Anticipated Start Date: N/A Anticipated Completion Date: N/A

B. If existing, is this an adaptive reuse? Yes

5. Type of Project (choose one): Commercial/Industrial

6. Building Area (Square Feet) Requirements:

(a) Office 3,500

(b) Manufacturing \_\_\_\_\_

(c) Warehouse \_\_\_\_\_

(d) Showroom/Retail \_\_\_\_\_

(e) Other 322,000

Total Area (a+b+c+d+e): 325,500 SF

7. Will this facility be LEED certified, and if so, at what level? No

8. Public open space included within the proposed project site: 0 SF/Acres

**III. PROJECT DETAILS (Continued)**

**9. If the applicant represents a Company: (If a Developer and not a Company, proceed to #10.)**

A. Is the Company expanding its existing local operations or relocating its operations from somewhere else to our area?

Expansion  Relocation

B. If a relocation, where is the company currently located? \_\_\_\_\_

C. Does the company plan to lease or own the facility in Fort Worth?  Lease  Own

D. If the company is planning to lease space in Fort Worth, what is the lease term? 20 Years

E. Describe the specific operations and services to be provided or products to be manufactured at the proposed Fort Worth facility (attach additional sheets as necessary):

Winner would provide data hosting services to its parent company, Facebook. Facebook would have remote access to the content hosted in the data center.

**10. Development requests that will be sought for the project (select all that apply):**

Replat

Rezoning Current Zoning: N/A Requested Zoning: N/A

Variances If yes, please describe: \_\_\_\_\_

Downtown Design Review Board

Landmark Commission

Public Infrastructure Assistance

**11. Real Estate Investment**

A. Current Assessed Valuation of: Land \$ 8,927,012 Improvements \$ 41,072,988

B. Total Construction Costs: \$25,000,000

C. Hard Construction Costs: \$ 12,500,000

**12. Business Personal Property and Inventory**

**A. Business Personal Property**

Total investment on equipment, machinery, furnishing, etc.: \$ 125,000,000  Lease  Purchase

\*Estimated taxable value of equipment, machinery, furnishing, etc.: \$ 125,000,000

*\*This is the value that will be on the tax rolls which includes all tangible property.*

**B. Inventory and Supplies**

Value of Inventory: \$ N/A Value of Supplies: \$ N/A

Percent of inventory eligible for Freeport Exemption (inventory, exported from Texas within 175 days) N/A %

**13. Total Capital Investment (Real Estate and Business Personal Property):** \$ 150,000,000

**IV. EMPLOYMENT AND JOB CREATION**

**On the Project Site**

1. How many persons are currently employed? 0

2. What percent of current employees above are Fort Worth residents? 0 %

3. What percent of current employees above are Central City residents? 0 %

**IV. EMPLOYMENT AND JOB CREATION (Continued)**

4. Please complete the following table for new jobs to be created from direct hire by applicant.

	Currently	At Completion	Estimated By Fifth Year	Estimated By Tenth Year
Retained Jobs	0	0	0	0
New Jobs to be Created	0	TBD	TBD	TBD
Total Jobs at Project Site	0	TBD	TBD	TBD
% of Net Jobs to be filled by Fort Worth Residents	N/A	TBD	TBD	TBD
% of Net Jobs to be filled by Central City residents	N/A	TBD	TBD	TBD

5. Please attach a description of the jobs to be created, tasks to be performed for each and wage rate for each classification.

6. Does the applicant provide the following benefits:  Retirement  Health  Dental  Domestic Partner

7. Average wage paid to employees to be located at the project site: \$ 114,073

8. Describe the Company's talent recruitment efforts:

The expansion will allow continued investment and growth at the existing data center. Although exact job numbers are not known at this time, it is expected that the lease will allow for continued headcount expansion on site.

**V. INCENTIVES REQUEST**

Incentive(s) Requested:  Tax Abatement  Chapter 380 Economic Development Program Grant

Do you intend to pursue abatement of County taxes?  Yes  No

*If requesting a Tax Abatement, please refer to the Tax Abatement Policy for a comprehensive explanation of eligibility requirements.*

**VI. LOCAL COMMITMENTS**

**During Construction**

1. What percent of the total construction costs described in Section III, Question 11 will be committed to:

A. Fort Worth businesses? \_\_\_\_\_ %

B. Fort Worth Certified Minority and Women Business Enterprises? \_\_\_\_\_ %

**For Annual Supply and Service Needs**

Regarding discretionary supply and service expenses (i.e landscaping, office or manufacturing supplies, janitorial services, etc., excluding utilities):

2. What is the annual amount of discretionary supply and service expenses? \$ 500,000

3. What percentage will be committed to Fort Worth businesses? \_\_\_\_\_

4. What percentage will be committed to Fort Worth Certified Minority and Women Business Enterprises? \_\_\_\_\_

**VII. DISCLOSURES**

Is any person or firm receiving any form of compensation, commission or other monetary benefit based on the level of incentive obtained by the applicant from the City of Fort Worth? If yes, please explain and/or attach details.

No



**VIII ADDITIONAL INFORMATION (TO BE ATTACHED)**

These documents must be submitted with the application, otherwise the application will be deemed incomplete and will not be reviewed:

- a.) Attach a site plan of the project.
- b.) Explain why incentives are necessary for the success of this project. Include a business pro-forma or other documentation to substantiate your request.
- c.) Describe any environmental impacts associated with this project.
- d.) Describe the infrastructure improvements (water, sewer, streets, etc.) that will be constructed as part of this project.
- e.) Attach a talent recruitment plan, if applicable.
- f.) Attach a legal description or surveyor's certified metes and bounds description.
- g.) Attach a copy of the most recent property tax statement from the appropriate appraisal district for all parcels involved in the project.
- h.) Attach a brief description of the employee benefit package(s) offered (i.e. health insurance, retirement, public transportation assistance, day care provisions, etc.) including portion paid by employee and employer respectively.
- i.) Attach a plan for the utilization of Fort Worth Certified M/WBE companies.
- j.) Attach a listing of the applicant's Board of Director's, if applicable.
- k.) Attach a copy of Incorporation Papers noting all principals, partners, and agents and all Fort Worth properties owned by each.
- l.) Attach the purchasing representative's company contact information if known.

The company is responsible for paying \$5,000 as an application fee. If the application is withdrawn before the project is presented to City Council in Executive Session, the fee is refunded. Upon presentation to City Council in Open Session, \$2,000 is non-refundable and is applied to offset costs incurred by the Economic Development Department. Upon approval by City Council, the balance of \$3,000 can be credited towards required building permits, inspections fees, replatting fees, and other costs of doing business with the City related to the development. Any unused credit balance upon completion of the project will be refunded upon request from the company.

**IX CERTIFICATION**

On behalf of the applicant, I certify the information contained in this application, including all attachments to be true and correct. I further certify that, on behalf of the applicant, I have read the current Incentive Policy and all other pertinent City of Fort Worth policies and I agree with the guidelines and criteria state therein.

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**EXHIBIT "C"**

**Form of Consent to Collateral Assignment**

**CONSENT TO ASSIGNMENT  
FOR SECURITY PURPOSES OF  
TAX ABATEMENT AGREEMENT  
BETWEEN CITY OF FORT WORTH AND WINNER LLC  
(CITY SECRETARY CONTRACT NO. \_\_\_\_\_)**

---

This CONSENT TO ASSIGNMENT FOR SECURITY PURPOSES OF TAX ABATEMENT AGREEMENT ("Consent") is entered into by and between the CITY OF FORT WORTH ("City"), a home rule municipal corporation organized under the laws of the State of Texas; and WINNER LLC ("Company"), a Delaware limited liability company; and \_\_\_\_\_ ("Lender"), a \_\_\_\_\_.

**RECITALS**

The City, Company and Lender hereby agree that the following statements are true and correct and constitute the basis upon which the parties have entered into this Consent:

A. The City and Company previously entered into that certain Tax Abatement Agreement, dated as of \_\_\_\_\_, 2019 (the "Agreement") pursuant to which the City agreed to abate certain City ad valorem taxes in return for construction of a data center of approximately 100,000 square feet on property located at \_\_\_\_\_, as more specifically outlined in the Agreement (the "Project Improvements"). The Agreement is a public document on file in the City Secretary's Office as City Secretary Contract No. \_\_\_\_\_.

B. Section 11 of the Agreement allows Company to assign its rights and obligations under the Agreement to a financial institution or other lender for purposes of granting a security interest in the Land and/or Project Improvements without the approval of the City Council, provided that Company and the financial institution or other lender first execute a written agreement with the City governing the rights and obligations of the City, Company, and the financial institution or other lender with respect to such security interest.

C. Company wishes to obtain a loan from Lender in order to [state reason for loan] (the "Loan"). As security for the Loan, certain agreements between Company and Lender governing the Loan and dated \_\_\_\_\_, including, but not limited to, that certain Loan Agreement and [list other related documents] (collectively, the "Loan Documents") require that Company assign, transfer and convey to Lender all of Company's rights, interest in and to the Agreement until such time as Company has fully

satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender's security interest in the Agreement (the "Assignment").

D. The City is willing to consent to this Assignment specifically in accordance with the terms and conditions of this Consent.

### AGREEMENT

1. The City, Company and Lender hereby agree that the recitals set forth above are true and correct and form the basis upon which the City has entered into this Consent.

2. The City hereby consents to the Assignment at the request of Company and Lender solely for the purpose of Lender's securing the Loan pursuant to and in accordance with the Loan Documents. Notwithstanding such consent, the City does not adopt, ratify or approve any of the particular provisions of the Loan Documents and, unless and to the extent specifically acknowledged by the City in this Consent, does not grant any right or privilege to Lender or any assignee or successor in interest thereto that is different from or more extensive than any right or privilege granted to Company under the Agreement.

3. In the event that the City is required by the Agreement to provide any kind of written notice to Company, including notice of breach or default by Company, the City shall also provide a copy of such written notice to Lender, addressed to the following, or such other party or address as Lender designates in writing, by certified mail, postage prepaid, or by hand delivery:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other address(es) as Lender may advise City from time to time.

4. If Company fails to cure any default under the Agreement, the City agrees that Lender, its agents or designees shall have an additional thirty (30) calendar days or such greater time as may specifically be provided under the Agreement to perform any of the obligations or requirements of Company imposed by the Agreement and that the City will accept Lender's performance of the same as if Company had performed such obligations or requirements; provided, however, that in the event such default cannot be cured within such time, Lender, its agents or designees, shall have such additional time as may be reasonably necessary if within such time period Lender has commenced and is diligently pursuing the remedies to cure such default, including, without limitation, such time as may be required for lender to gain possession of Company's interest in the Company property pursuant to the terms of the Loan Documents.

5. If at any time Lender wishes to exercise any foreclosure rights under the Loan Documents, before taking any foreclosure action Lender shall first provide written notice to the City of such intent (a "Notice"). Lender shall copy Company on the Notice and deliver such Notice to Company by both first class and certified mail return receipt concurrent with its transmittal of the Notice to the City and represent in the Notice that it has done so. Notwithstanding anything to the contrary herein, unless Lender enters into a written agreement with the City to assume and be bound by all covenants and obligations of Company under the Agreement, Lender understands and agrees that the City shall not have any obligation to Lender under the Agreement. In addition, Lender understands and agrees that if Lender wishes to sell all or any portion of the Land or Project Improvements to a third party following Lender's exercise of any foreclosure rights under the Loan Documents, the City shall not owe any obligation to such third party pursuant to the Agreement unless Lender and such third party comply with the procedure for assignment set forth in Section 11 of the Agreement, including the obligation of such third party to enter into a written agreement with the City to assume and be bound by all covenants and obligations of Company under the Agreement.
6. In the event of any conflict between this Consent and the Agreement or any of the Loan Documents, this Consent shall control. In the event of any conflict between this Consent and any of the Loan Documents, this Consent shall control. In the event of any conflict between the Agreement and any of the Loan Documents, the Agreement shall control.
7. This Consent may not be amended or modified except by a written agreement executed by all of the parties hereto. Notwithstanding anything to the contrary in the Loan Documents, an amendment to any of the Loan Documents shall not constitute an amendment to this Consent or the Agreement.
8. Once Company has fully satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender's security interest in the Agreement and such security interest is released, Lender shall provide written notice to the City that Lender has released such security interest, in which case this Consent shall automatically terminate.
9. This Consent shall be construed in accordance with the laws of the State of Texas. Venue for any action arising under the provisions of this Consent shall lie in state courts located in Tarrant County, Texas or in the United States District Court for the Northern District of Texas, Fort Worth Division.
10. Capitalized terms used but not specifically defined in this Consent shall have the meanings ascribed to them in the Agreement.
11. This written instrument contains the entire understanding and agreement between the City, Company and Lender as to the matters contained herein. Any prior or

contemporaneous oral or written agreement concerning such matters is hereby declared null and void to the extent in conflict with this Consent.

12. This Consent shall be effective on the later date as of which all parties have executed it. This Consent may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Consent, or any counterpart hereof, shall not relieve the other signatories from their obligations from their obligations hereunder.

**EXECUTED** as of the last date indicated below:

**[SIGNATURES IMMEDIATELY FOLLOW ON NEXT PAGE]**



**CITY OF FORT WORTH:**

**APPROVED AS TO FORM  
AND LEGALITY:**

By: \_\_\_\_\_  
*Name:*  
Assistant City Manager

By: \_\_\_\_\_  
*Name:*  
Assistant City Attorney

Date: \_\_\_\_\_

M&C: none required

**WINNER LLC,  
a Delaware limited liability company:**

By: \_\_\_\_\_  
*Name:*  
*Title:*

Date: \_\_\_\_\_

\_\_\_\_\_:

By: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "C"**

**DESCRIPTION AND DEPICTION OF  
ELIGIBLE PROPERTY IMPROVEMENTS**

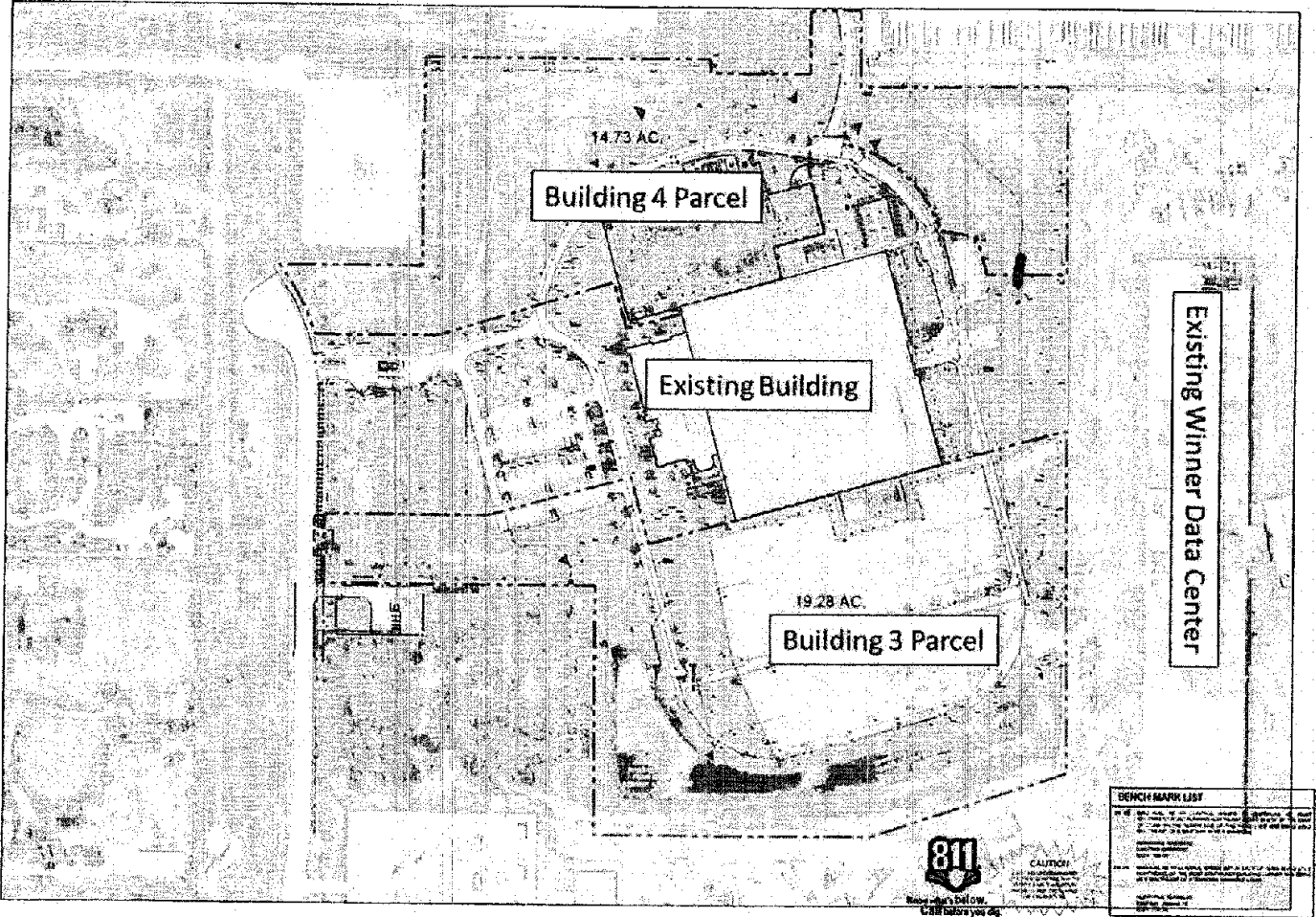
### Descriptive list and value of real and personal property improvements

In total, data center construction and equipping would involve a capital investment of at least \$100 million over a three-year period. The proposed qualified investment would include:

- The contractual use of an existing data center adjacent to the original Winner LLC project
- The expansion of the current data center building footprint.
  - The expansion would be specifically designed to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power and cooling equipment, (which would include an uninterruptible power source and generator backup power) used primarily to provide data center services to applicant's parent company and parent's affiliates.
  - The proposed expansion would have a complete fire alarm system, which would include sprinklers and fire smoke dampers. There would be physical security that would restrict access to the data center in addition provide surveillance, and electronic systems to monitor the site.
  - The proposed expansion would be comprised of multiple phases. Only Phases I and IV will be committed to if approved. Phases 2 and 3 would be expansion areas.
    - Phase 1: 13,000 sq. ft.
    - Phase 2: 42,000 sq. ft.
    - Phase 3: 176,000 sq. ft.
    - Phase 4: 91,000 sq. ft.
- Equipment purchased for use within the proposed data center would include but not be limited to:
  - Computer servers;
  - Chassis;
  - Storage heads;
  - Flash storage cards;
  - Network switches;
  - Routers;
  - Blades;
  - Racks; and
  - Miscellaneous server components.



*Proposed Data Center Layout*



**EXHIBIT "D"**

**APPLICATION FOR TAX ABATEMENT**



# Tarrant County

## Application for Tax Abatement/Reinvestment Zone

### I. APPLICANT INFORMATION

**Applicant/Property Owner:** Winner LLC d/b/a Ernst LLC

**Company/Project Name:** Winner LLC d/b/a Ernst LLC

**Mailing Address:** 1 Hacker Way, Menlo Park, CA 94025

**Telephone:** See Applicant's Telephone Below      **Fax:** N/A

**Applicant's Representative for contact regarding abatement request:**

**Name and Title:** Richie Kurtzman, Economic Development Manager

**Mailing Address:** 1 Hacker Way, Menlo Park, CA 94025

**Telephone:** 773-209-8344      **Fax:** N/A      **E-mail:** rkurtzman@fb.com

### II. PROPERTY AND PROJECT DESCRIPTION

**Address and legal description of property to be considered for Tax Abatement/Reinvestment Zone:**

14100 Park Vista Blvd., Fort Worth, TX 76177 ; legal description attached

**Project Description:** Winner LLC currently owns and operates a data center adjacent to the proposed project site. The project under consideration features a 20-year contract to retrofit and build out an existing data center building with company owned network and computer equipment. Future phases of the project could involve expansion of the existing building footprint. A site plan is attached to this application.

**Description of activities, products, or services produced and/or provided at project location:** Winner LLC would provide data hosting services to its parent company, Facebook. Facebook would have remote access to the content hosted in the data center.

**Current Assessed Value: Real Property:** \$ 50,000      **Personal Property:**

**Estimated start date of construction/site improvements:** Q2 2019

**Projected date of occupancy/commencement of operations at project site:**

Q1 2020 (first data halls provisioned) – Q4 2021 (all phases completed)

**Please indicate dates for phases if applicable:** N/A

**Location of existing company facilities:** 4500 Like Way, Fort Worth, TX 76177

**Requested level of Tax Abatement:** 100% of eligible property for 10 years.

**Explain why tax abatement is necessary for the success of this project. Include business pro-formas or other information to substantiate your request.** The business demands from Winner LLC's parent company, Facebook, Inc. have increased over the past few years such that this initial Winner LLC project cannot sufficiently provide the storage and capacity at its current footprint. Allowing Winner LLC to expand beyond its existing footprint is critical to the operations of the company and the requested abatement would allow Winner to lower the significant capital and operational expenses associated with expanding in this particular region.

### III. PROJECTED VALUE OF IMPROVEMENTS

Estimated Value of Real Property Improvements \$ 50,000,000

Estimated Value of Personal Property Improvements \$ 50,000,000

Will any infrastructure improvements (roads, drainage, etc.) be requested of Tarrant County for this project?

Yes  No

If yes, describe requested infrastructure improvements: N/A

**Detail any direct benefits to Tarrant County as a result of this project (i.e., inventory tax, etc.):** Expansion of the existing Winner LLC data center would allow for additional capital investment up front as well as over time through the purchase of network and computer equipment. Construction would be extended past when initially projected for the first Winner LLC project, which enables continued growth within the local economy. Furthermore, the existing data center building has a much smaller footprint than the proposed Winner LLC expansion, therefore the assessed value at this particular property will increase upon completion.

#### IV. EMPLOYMENT IMPACT AT PROJECT LOCATION

##### A. NEW EMPLOYMENT

**Projected number of new jobs created as a result of the proposed improvements:**

Full-time 4 Part-Time 0

**Provide types of jobs created and average salary levels:** The expansion will allow continued investment and growth at the existing data center.

**Start date and annual payroll of new permanent positions (if positions to be phased in, provide figures for each phase year):** \$300,000 in 2020

**Percentage of new jobs too be filled be Tarrant County residents:** TBD

**Number of employees transferring from other company locations:** 0

##### B. CONSTRUCTION RELATED EMPLOYMENTS

**Projected number of construction related jobs:** 200-300 construction workers on site daily

**Estimated total construction payroll:** \$ TBD but construction payroll will be commensurate with the local market.

**Commitment as to percentage of construction dollars to be spent with Tarrant County contractors or subcontractors:** Our goal is to utilize as many local and MWBE vendors as possible, but at this time that percentage is unknown. This will be supplemented at a later date.

**Commitment as to percentage & total dollars of construction contracts to be awarded to DBE:** Our goal is to utilize as many local and MWBE vendors as possible, but at this time that percentage is unknown. This will be supplemented at a later date.

##### C. CURRENT COMPANY/PROJECT LOCATION EMPLOYMENT

**Current Number of Employees:** Full-time 61 Part-time 0

**Average annual payroll:** \$ 114,073 [Average annual salary]

**Detail on workforce diversity – percentage breakdown of current employees by gender and ethnicity:**

\*\*We consider this information confidential and decline to disclose. That said, we have a strong company- wide commitment to diversity.

Please see our Equal Opportunity and Affirmative Action Policy on our careers website at <https://www.facebook.com/careers/>.

#### D. COMPANY SPONSORED HEALTH CARE BENEFITS ARE AVAILABLE

Full-time Employees  Part-time Employees  Employee Dependents  Not Available

Average monthly employee cost for health care benefits: Individual: \$ 0 Family: \$ 302

#### Other employee benefits provided or offered:

Life & AD&D Insurance, 401k, childcare reimbursement, wellness reimbursement, FSA plans, dental insurance, vision insurance, food, tax support, survivor benefits, baby gift, financial planning, estate planning, legal help, PTO, paid family leave, unlimited sick time, paid holidays, paid recharge sabbatical, paid bereavement leave, paid military leave, long and short term disability, paid parental leave.

#### V. LOCAL BUSINESS & DISADVANTAGED BUSINESS ENTERPRISES (DBE) IMPACT

Estimated amount of annual supply and services expenses: \$ 500,000

Detail any supply/services expenses that are sole source: TBD

Percentage of total supplier/services expenses committed to Tarrant County businesses: TBD

Percentage of total supplier and services expenses committed to DBE: Our goal is to utilize as many local and MWBE vendors as possible, but at this time that percentage is unknown. This will be supplemented at a later date.

#### VI. ENVIRONMENTAL IMPACT OF PROJECT

Indicate if development, construction, equipment, distribution methods, and/or operational processes may impact the environment in the following areas, attach detail if necessary: \*\*Environmental impacts of the project will be extremely minimal, see attached for more details.

Air Quality  Water Quality  Solid Waste Disposal  Storm/Water Runoff   
Floodplain/Wetlands  Noise levels  Other (specify)  "[Response]"

Provide detail on existing and new fleet vehicles, specifying types of vehicles, quantities and fuel used (gasoline, diesel, LP gas, CNG, etc.): None

#### VII. ADDITIONAL INFORMATION (TO BE ATTACHED)

- Letter addressing Economic Qualifications and additional criteria for abatement, Section III (h) and (i) of Tarrant County Tax Abatement Policy
- Descriptive list and value of real and personal property improvements
- Plat/Map of Project Location
- Project Time Schedule
- Owner's policy regarding use of disadvantaged Business Enterprises
- Owner's policy addressing regional air quality/non-attainment status (use of alternative fuels, employee trip reduction, etc.) and plan for participation in regional Ozone Action Program
- Tax Certificate showing property taxes paid for most recent year

**VIII. CERTIFICATION**

Upon receipt of a completed application, Tarrant County may require such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant.\*

I certify the information contained in this application (including all attachments) to be true and correct to the best of my knowledge. I further certify that I have read the "Tarrant County Tax Abatement Policy" and agree to comply with the guidelines and criteria stated therein.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**Return completed application and attachments to:**

**Economic Development Coordinator  
Tarrant County Administrator's Office  
100 E. Weatherford Street, Suite 404  
Fort Worth, Texas 76196-0609**

**You may also forward an electronic copy of the completed report to:**

**[lmcmillan@tarrantcounty.com](mailto:lmcmillan@tarrantcounty.com)**

**Please note that if you do submit this form electronically, you must also submit an original hard copy of the report to the above stated physical address for proper filing and review.**

**For assistance call: (817) 884-2643**

*\* As per Section IV (f) of the Tarrant County Tax Abatement Policy Guidelines and Criteria, this application must be filed prior to commencement of construction or installation of improvements in order to be eligible for County tax abatement.*

**Letter addressing economic qualifications and additional criteria for abatement**

Dear Sir/Madam:

On behalf of Winner LLC d/b/a Ernst LLC ("Winner"), this letter addresses the economic qualifications and additional criteria for abatement outlined in Section III (h) and (i) of the Tarrant County Tax Abatement Policy.

**Section III (h):**

- Winner has an existing data center in Tarrant County;
- If ultimately approved for Tarrant County, Winner is estimated to produce a minimum added value exceeding \$3 million in real and personal property as a result of the expansion project;
- If ultimately approved for Tarrant County, Winner reasonably expects to sustain existing employment levels;
- Winner must expand its existing data center footprint in order to meet growth demands from its parent company.

**Section III (i):**

- If ultimately approved for Tarrant County, Winner will use its best efforts to utilize Disadvantaged Business Enterprises ("DBE") and Tarrant County Businesses wherever possible and will make it a priority when evaluating potential construction and annual supply and service contracts.
- If ultimately approved for Tarrant County, environmental impacts are anticipated to be extremely minor, but may include the following:
  - Minor traffic increases around the site may have a small impact on air quality from the minimal traffic increase.
  - Onsite generators would have a small impact on air quality. This impact will be extremely minimal given that they will only run in the rare case of utility loss and short maintenance periods.
  - The data center would be run with 100% clean and renewable energy. This will have an extremely positive environmental impact.
  - Lastly, the proposed data center expects to meet or exceed all requirements for erosion control, storm water management and landscaping.
- Winner plans to continue to offer a health benefit plan to its full-time employees at a rate that is reasonable to the majority of its employees and allows access to the plan by the employees' dependents.

Thank you in advance for your cooperation and consideration of this tax abatement application. Should you or your staff have any questions or concerns, please do not hesitate to contact Richie Kurtzman at [rkurtzman@fb.com](mailto:rkurtzman@fb.com).

Respectfully submitted,

Richie Kurtzman

### Descriptive list and value of real and personal property improvements

In total, data center construction and equipping would involve a capital investment of at least \$100 million over a three-year period. The proposed qualified investment would include:

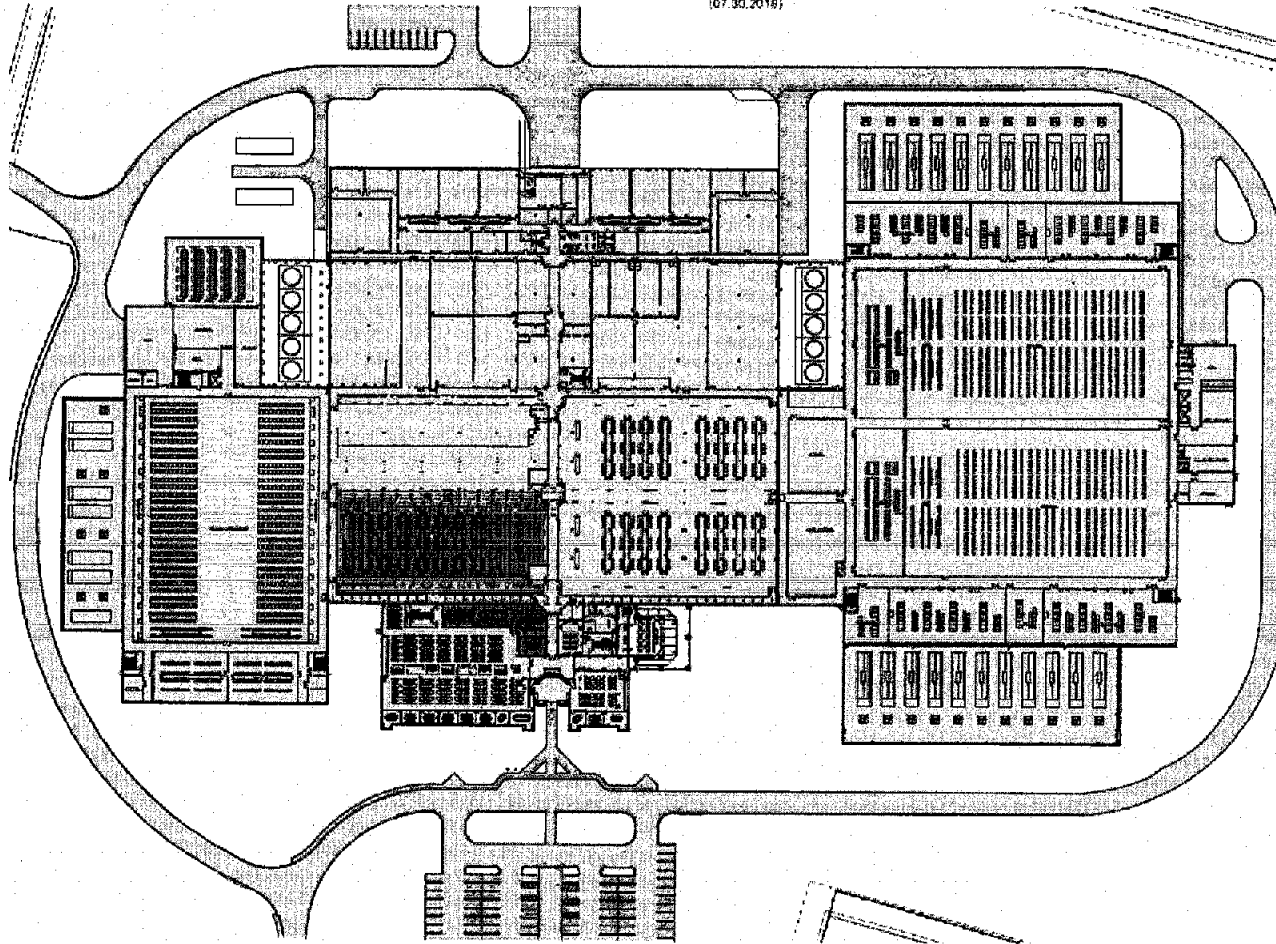
- The contractual use of an existing data center adjacent to the original Winner LLC project
- The expansion of the current data center building footprint.
  - The expansion would be specifically designed to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power and cooling equipment, (which would include an uninterruptible power source and generator backup power) used primarily to provide data center services to applicant's parent company and parent's affiliates.
  - The proposed expansion would have a complete fire alarm system, which would include sprinklers and fire smoke dampers. There would be physical security that would restrict access to the data center in addition provide surveillance, and electronic systems to monitor the site.
  - The proposed expansion would be comprised of multiple phases. Only Phases I and IV will be committed to if approved. Phases 2 and 3 would be expansion areas.
    - Phase 1: 13,000 sq. ft.
    - Phase 2: 42,000 sq. ft.
    - Phase 3: 176,000 sq. ft.
    - Phase 4: 91,000 sq. ft.
- Equipment purchased for use within the proposed data center would include but not be limited to:
  - Computer servers;
  - Chassis;
  - Storage heads;
  - Flash storage cards;
  - Network switches;
  - Routers;
  - Blades;
  - Racks; and
  - Miscellaneous server components.



**Plat/Map and Legal Description of project location**

# PROPOSED QTS FORT WORTH DEVELOPMENT – CONFIDENTIAL

CAPTURING DESIGN DISCUSSIONS  
(07.30.2018)



**PHASE 1**  
(1) 13,000 SF DATA HALL  
1 MW NETWORK  
2 MW DATA HALL  
3 MW TOTAL CRITICAL

**PHASE 2**  
(2) 21,000 SF DATA HALLS - 42,000 SF TOTAL  
4.5 MW EACH DATA HALL  
9 MW TOTAL CRITICAL

**PHASE 3**  
(4) 44,000 SF DATA HALL - 176,000 SF TOTAL  
30 MW CRITICAL DATA HALL  
6 MW CRITICAL NETWORK  
36 MW TOTAL CRITICAL

**PHASE 4**  
(2) 45,800 SF DATA HALL/TAPE STORAGE - 91,600 SF TOTAL  
6 MW CRITICAL DATA HALL  
1.5 MW CRITICAL NETWORK  
7.5 MW TOTAL CRITICAL

**DEDICATED OFFICE**  
3,500 SF

**MASTER PLAN TOTALS**  
47 MW CRITICAL DATA HALL  
8.5 MW CRITICAL NETWORK  
55.5 MW TOTAL CRITICAL

# Project Time Schedule

DC Supply		Q4'18	Q1'19	Q2'19	Q3'19	Q4'19	Q1'20	Q2'20	Q3'20	Q4'20	Q1'21	Q2'21	Q3'21
LRP Plan	Offline LRP Placeholder (MW)				5MW	9MW	16MW						
Proposal	Offline QTS Phase 1 DH1 - 3MW	◆		◆	◆	◆							
	Offline QTS Phase 2 DH3 - 4.5MW	◆		◆	◆	◆							
	Offline QTS Phase 2 DH4 - 4.5MW	◆		◆	◆	◆	◆						
	Offline QTS Phase 3 - 36MW (optionality)					◆			◆		◆	◆	

- ◆ Construction
- ◆ Early Access
- ◆ Fit-out complete
- ◆ Provision Ready

**Owner's policy regarding use of disadvantaged business enterprises ("DBE")**

The following targeted procurement approach will be utilized to achieve goals:

1. Civil, structural, and architectural (CSA) scope
  - a. CSA plan will involve the following approaches:
    - i. Solicitation of DBE subcontractors in a primary sub role.
    - ii. Encourage primary CSA subcontractors to provide sub tier work to DBE firms.
    - iii. Breaking up larger CSA scopes into multiple small packages to attract DBE participation.
  - b. Example scopes of work:
    - i. Landscaping
    - ii. Flagging
    - iii. Truck, Hauling & Shipping
    - iv. Metal Stud Framing & Drywall
    - v. Glazing
    - vi. Painting
    - vii. Flooring
    - viii. Interior Finishes
    - ix. Interim/Final Clean
    - x. Construction Site Services
2. Mechanical, electrical and plumbing (MEP) scope
  - a. Encourage primary mechanical and electrical subs to contract with DBE firms.
  - b. DBE firms must participate in specifically designated bid packages to ensure opportunities are presented and market competition is achieved.
  - c. General contractor to work with mechanical and electrical subs to develop specific sub tier bid scopes
  - d. Examples of scopes:
    - i. General contracting activities
    - ii. Piping insulation
    - iii. Trucking and shipping
    - iv. Other – TBD

**Owner's policy addressing regional air quality/non-attainment status and plan for participation in regional Ozone Action Program**

Environmental impacts are anticipated to be extremely minor, but may include the following:

- Minor traffic increases around the site will have a small impact on air quality from the minimal traffic increase.
- Onsite generators will have a small impact on air quality. This impact will be extremely minimal given that they will only run in the rare case of utility loss and short maintenance periods.
- The data center will be run with 100% clean and renewable energy. This will have an extremely positive environmental impact.
- Lastly, the proposed data center will meet or exceed all requirements for erosion control, storm water management and landscaping.

**Tax certificate showing property taxes paid for the most recent tax year**



**RON WRIGHT**  
**TARRANT COUNTY**  
**TAX ASSESSOR-COLLECTOR**

@TarrantCoTax  
 Facebook.com/TarrantCountyTAC

100 E. Weatherford, Fort Worth, TX 76196  
 (817) 884-1100  
 e-mail: taxoffice@tarrantcounty.com  
 web: www.tarrantcounty.com

**DATE:** 08/29/2018  
**ACCOUNT:** 00041467752

**2017 TAX STATEMENT**

**IMPORTANT:** Legislative Changes  
 5 - Year Comparison on back of statement.  
**IMPORTANTE:** Cambios Legislativos  
 Comparación de 5 - Años detrás del Cobro.

**LEGAL:** ALLIANCE GATEWAY NORTH ADDN  
 BLOCK 3 LOT 4R BALANCE IN  
 DENTON COUNTY  
**OWNER:** QTS INVESTMENTS PROPERTIES FORT WORTH LLC  
**PARCEL ADDRESS:** 0014100 PARK VISTA BLVD  
**EXEMPTIONS:** AB001

**e-STATEMENT**

V14

LAND VALUE	IMPROVEMENT VAL	APPRAISED VAL				
TAXING ENTITIES	APPRAISED VALUE	EXEMPTION AMOUNT	TAXABLE VALUE	TAX RATE PER \$100	BASE TAX	TAXES DUE CURRENTLY
8,927,012	41,072,988	50,000,000				
FT WORTH CITY	50,000,000	19,095,538	30,904,462	0.805000	248780.92	0.00
TARRANT COUNTY	50,000,000	0	50,000,000	0.244000	122000.00	0.00
T C HOSPITAL	50,000,000	0	50,000,000	0.224429	112214.50	0.00
T C COLLEGE	50,000,000	0	50,000,000	0.140060	70030.00	0.00
<b>TOTAL TAXES</b>					<b>559,025.42</b>	<b>0.00</b>

**TOTAL AMOUNT DUE** 0.00  
**INCLUDES PAYMENTS RECEIVED**

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QTS INVESTMENTS PROPERTIES FORT WORTH LLC  
 AB001

RETURN WITH PAYMENT

\*00041467752\*  
 \*00041467752\*

**PAY THIS AMOUNT** \$0.00  
 Delinquent after: 11/31/2018

00041467752 2017

H0

\*74190940\*  
 \*74190940\*

IF PAID IN	AMOUNT DUE
SEP	0.00
OCT	0.00

QTS INVESTMENTS PROPERTIES FORT  
 WORTH LLC  
 12851 FOSTER ST STE 205  
 OVERLAND PARK, KS 66213

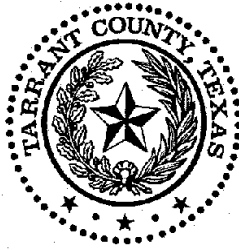
Make checks payable to:  
 RON WRIGHT, TAX-ASSESSOR-COLLECTOR

PO BOX 961018  
 FORT WORTH TX 76161-0018

00041467752 000000000 000000000 000000000 082920180000

**EXHIBIT "E"**

**TARRANT COUNTY TAX ABATEMENT POLICY AND GUIDELINES**



## **TARRANT COUNTY**

### **TAX ABATEMENT POLICY GUIDELINES AND CRITERIA**

#### **I. GENERAL PURPOSE AND OBJECTIVES**

As authorized under Chapter 312 of the Texas Tax Code, Tarrant County has established this policy so as to work in concert with other taxing authorities as part of an overall publicly supported incentive program designed to create job opportunities that bring new economic advantages or strengthen the current economic base of our community.

It is the intent of the Commissioners Court to consider approval or denial of any request for tax abatement for projects in unincorporated Tarrant County or participation in any tax abatement agreement agreed to and adopted by an incorporated city, which meets the minimum eligibility criteria as set forth in this policy, following the filing of a formal application for tax abatement from the County. As prescribed by Section 312.206 of the Tax Code, the Commissioners Court may approve participation with a municipality in a tax abatement agreement no later than the 90th day after the date the municipal agreement is executed. Further it is the intent of Tarrant County that the County will not approve nor join an abatement agreement that provides one Tarrant County city a competitive advantage over another Tarrant County city seeking the same project or encourages an applicant to move from one Tarrant County city to another, unless such agreement is agreeable to both such incorporated cities and both parties have indicated their approval in writing to Tarrant County.

In the case where the property is located within a municipality's extraterritorial jurisdiction, the municipality shall be the initiating taxing entity unless expressly deferred to the County. For those areas within Tarrant County that are not located within the boundaries of an incorporated municipality and a municipality has deferred to the County or in unincorporated areas not located in a municipality's extraterritorial jurisdiction, the guidelines and criteria contained in this policy will be applied by the Commissioners Court when considering the establishment of a reinvestment zone and the adoption of an abatement agreement.

#### **II. DEFINITIONS**

- (a) "Abatement" means the full or partial exemption from ad valorem taxes of certain real and/or personal property in a reinvestment zone designated for economic development purposes.



- (b) **"Eligible Jurisdiction"** means Tarrant County and any municipality, school district, college district, or other entity, which is located in Tarrant County, that levies ad valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone.
- (c) **"Agreement"** means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purposes of tax abatement.
- (d) **"Base Year Value"** means the assessed value of the applicant's real and personal property located in a designated reinvestment zone on January 1 of the year of the execution of the agreement, plus the agreed upon value of real and personal property improvements made after January 1, but before the execution of the agreement.
- (e) **"Economic Life"** means the number of years a property improvement is expected to be in service in a facility.
- (f) **"Deferred Maintenance"** means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (g) **"Disadvantaged Business Enterprise (DBE)"** means:
- (1) a corporation formed for the purpose of making a profit and at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially or economically disadvantaged because of their identification as members of certain groups that have been subject to racial or ethnic prejudice or cultural bias without regard to their qualities as individuals or capabilities as a business, and whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. "DBE" includes the State of Texas definition of historically underutilized businesses (HUBs) as defined in Texas Government Code 407.101 and as it may be updated.
  - (2) a sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively by one or more persons described in paragraph (1);
  - (3) a partnership that is formed for the purpose of making a profit in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by paragraph (1), and in which minority or women partners have proportionate interest in the control, operation, and management of the partnership affairs.

- (h) **"Expansion"** means the addition of buildings, structures, fixed machinery and equipment, and fixed personal property for the purposes of increasing production capacity.
- (i) **"Facility"** means property improvements completed or in the process of construction which together comprise an integral whole.
- (j) **"Fixed Machinery and Equipment and/or Personal Property"** means tangible machinery, equipment, or personal property that is securely placed or fastened and stationary within a building or structure, or which is movable but remains at and is used solely at the project site.
- (k) **"Manufacturing Facility"** means buildings and structures, including fixed machinery and equipment, and fixed personal property, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- (l) **"Modernization"** means the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation, and extends the economic life of the facility. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery and equipment, and fixed personal property. It shall not be for the purpose of reconditioning, refurbishing, repairing, or completion of deferred maintenance.
- (m) **"New Facility"** means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- (n) **"Other Basic Industry"** means buildings and structures including fixed machinery and equipment, and fixed personal property not elsewhere described, used or to be used for the production of products or services which primarily serve a market outside Tarrant County [or the Fort Worth Consolidated Metropolitan Statistical Area] and result in the creation of new permanent jobs and bring new wealth in to Tarrant County.
- (o) **"Regional Distribution Center Facility"** means building and structures, including fixed machinery and equipment, and fixed personal property, used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility operator.
- (p) **"Non-Manufacturing Facilities"** means buildings and structures, used to service and/or house individuals on a permanent or temporary basis.
- (q) **"Regional Service Facility"** means building and structures, including fixed machinery and equipment, and fixed personal property, used or to be used to service goods.

- (r) "Reinvestment Zone" is an area designated as such for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code.
- (s) "Regional Entertainment Facility" means buildings and structures, including machinery and equipment, used or to be used to provide entertainment through the admission of the general public where the majority of the users reside at least 100 miles from its location in the County.
- (t) "Regional Retail Facility" means buildings and structures including fixed machinery and equipment used or to be used to provide retail services from which a large portion of the revenues generated by the activity at the facility are derived from users outside the County.
- (u) "Research Facility" means building and structures, including fixed machinery and equipment, and fixed personal property, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

### III. ABATEMENT AUTHORIZED

- (a) Authorized Facility. A facility may be eligible for abatement if it is a Manufacturing Facility, a Research Facility, a Regional Distribution Center Facility, A Regional Service Facility, a Regional Entertainment Facility, Regional Retail Facility; a Non-Manufacturing Facility, or Other Basic Industry as defined. The economic life of a facility and any improvements must exceed the life of the abatement agreement.
- (b) Creation of New Value. Abatement may be only granted for the additional value of eligible property improvements made subsequent to and listed in an abatement agreement between the County and the property owner and lessee, subject to such limitations as Commissioners Court may require.
- (c) New and Existing Facilities. Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.
- (d) Eligible Property. Abatement may be extended to the value above the Base Year Value of buildings, structures, fixed machinery and equipment, fixed personal property, and site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility.
- (e) Ineligible Property. The following types of property shall be fully taxable and ineligible for abatement: land; inventories; supplies; tools; furnishings, and other forms of movable personal property; vehicles; vessels; private aircraft; deferred maintenance investments; property to be rented or leased except as provided in Section 3 (f); also, any property included in the calculation of base year value as defined.

- (f) **Owned/Leased Facilities.** If a leased facility is granted abatement the agreement shall be executed with the lessor and the lessee.
- (g) **Value and Term of Abatement.** Abatement shall be granted effective with the execution of the agreement. The value of the abatement will be determined based on the merits of the project, including, but not limited to, total capital investment value and added employment. Up to one hundred percent of the value of new eligible properties may be abated for a total term of abatement not to exceed ten years. However, a project must provide an extraordinary economic benefit to the County to be considered for a one hundred percent abatement.
- (h) **Economic Qualification.** In order to be eligible for designation as a County reinvestment zone and/or receive County tax abatement, the planned improvement:
- (1) for new businesses, must be reasonably expected to produce a minimum added value of Five Million Dollars (\$5,000,000) in real and personal property to Tarrant County and create and sustain a minimum of 25 new full-time jobs.
  - (2) for expansions or modernizations of existing businesses, must be reasonably expected to produce a minimum added value of Three Million Dollars (\$3,000,000) in real and personal property improvements to Tarrant County, and sustain existing employment levels.
  - (3) must not be expected to solely or primarily have the effect of transferring employment from one part of Tarrant County to another without a majority vote of approval from the Commissioners Court.
  - (4) must be necessary for expansion and/or modernization because the capacity cannot be provided efficiently utilizing existing improved property when reasonable allowance is made for necessary improvements.
  - (5) the above investment and employment minimums may be waived at the discretion of the Commissioners Court for projects located in Federal or State designated Enterprise Zones.
- (i) **Additional Criteria For Abatement.** To be eligible for abatement, the project must be expected to meet the specific goals and requirements as noted below. If a company is unable to meet the minimum requirements of this section, a variance must be requested with a detailed explanation as to the circumstances that preclude the company from meeting the minimum requirements.
- (1) **Use of DBE and Tarrant County Businesses.** The project must provide for the utilization of Disadvantaged Business Enterprises for a minimum of 15% of the total costs for construction contracts and annual supply and service contracts.

Additionally, the project must provide for the utilization of Tarrant County businesses for a minimum of 25% of the total costs for construction contracts and annual supply and services contracts.

- (2) **Tarrant County Employment.** The company must hire Tarrant County residents for a minimum of 25% of the new full time jobs to be created by the project. Residents, for the purpose of this policy, are those employees who reside in Tarrant County, whether through relocation or existing residency.
  - (3) **Environmental Impacts.** Environmental impact information must be provided, noting any anticipated impacts of the project on the environment, including, but not limited to, water quality, storm water and runoff, floodplain and wetlands, solid waste disposal, noise levels, and air quality. Additionally, the company must provide a written company policy on air quality mitigation, the company's plan for participation in the region's Ozone Action Program, and a report of employer assistance in encouraging alternative commute programs and employee trip reductions. For companies new to the region, the above policies and plan must be completed and presented within the first year of the abatement.
  - (4) **Employee Benefits.** The company must offer a health benefit plan to its full-time employees at a rate that is reasonable to the majority of its employees and which allows access to the plan by the employees' dependents. For additional consideration, the company may provide information on other employee benefits provided, such as retirement/pension programs and subsidies for education, job-training, transportation assistance and child/elderly care.
- (j) **Taxability.** From the execution of the abatement to the end of the agreement period taxes shall be payable as follows:
- (1) The value of ineligible property as provided in Section III (e) shall be fully taxable;
  - (2) The base year value of existing eligible property shall be fully taxable, as well as the value of any existing personal property currently on the tax rolls in Tarrant County that is either moved to a new abated location or is replaced due to modernization or expansion.
  - (3) The additional value of new eligible property shall be taxable in the manner and for the period provided for in the abatement agreement, subject to the terms described in Section III (g); and
  - (4) The additional value of new eligible property shall be fully taxable at the end of the abatement period.

#### **IV. APPLICATION**

- (a) Any present or potential owner of taxable property in Tarrant County may request the creation of a reinvestment zone and/or tax abatement by filing a written request with the County Judge.**
- (b) The application shall consist of a completed application form including, but not limited to: a general description of the new improvements to be undertaken; a descriptive list of the improvements for which an abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a map and property description; a time schedule for undertaking and completing the proposed improvements; employment and contract information; the location of existing company locations in Tarrant County and the surrounding counties and the expected number of transferring employees; details of the environmental impacts of the project, and employee benefit information. In the case of modernization a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The County may require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors pertaining to the applicant, to be attached to the application.**
- (c) All applications for creation of reinvestment zones or abatements shall incorporate a feasibility study estimating the economic effect of the proposed reinvestment zone and tax abatement on Tarrant County, other eligible participating jurisdictions, and the applicant.**
- (d) Upon receipt of a completed application for creation of a reinvestment zone, the County Judge shall notify in writing and provide a copy of the application to the presiding officer of the governing body of each eligible jurisdiction.**
- (e) Upon receipt of a completed application and/or request to participate with a municipality in an abatement agreement, Tarrant County Administrator's Office must review and provide recommendation to the Commissioners Court within 30 days and before the public hearing.**
- (f) The County shall not establish a reinvestment zone, nor participate in an abatement, if it finds that the application for County reinvestment zone/tax abatement was filed after the commencement of construction, alteration, or installation of improvements related to the proposed modernization, expansion or new facility.**
- (g) Variance. Request for variance from the provisions of this policy must be made in written form to the County Judge and submitted with the application for abatement, provided, however, the total duration of an abatement shall in no instance exceed ten years. Such request shall include a complete description of the circumstances explaining why the applicant should be granted a variance. Request for variance must**

be approved by a majority vote of the Commissioners Court.

**V. PUBLIC HEARINGS AND APPROVAL**

- (a) For projects in unincorporated Tarrant County, the Commissioners Court may not adopt a resolution designating a County reinvestment zone until it has held a public hearing at which interested persons are entitled to speak and present evidence for or against the designation. Notice of the hearing shall be clearly identified on the Commissioners Court agenda at least 30 days prior to the hearing. The presiding officers of eligible jurisdictions shall be notified in writing at least 15 days prior to the hearing.
- (b) Prior to entering into a tax abatement agreement the Commissioners Court may, at its option, hold a public hearing at which interested persons shall be entitled to speak and present written materials for or against the approval of the tax abatement agreement.
- (c) In order to enter into a tax abatement agreement, the Commissioners Court must find that the terms of the proposed agreement meet these Guidelines and Criteria and that:
  - (1) there will be no substantial adverse affect on the provision of the jurisdiction's service or tax base: and
  - (2) the planned use of the property will not constitute a hazard to public safety, health or morals.
- (d) Any application requesting a variance under Section IV (g) shall be approved by a majority vote of the Commissioners Court. No application which deviates from the requirements of these Guidelines and Criteria shall be approved unless accompanied by a request for variance as provided under Section IV (g).

**VI. AGREEMENT**

- (a) After approval the County shall formally pass a resolution and execute an agreement with the owner of the facility and lessee as required. The Court Order shall include:
  - (1) estimated value of real and personal property to be abated and the base year value;
  - (2) percent of value to be abated each year as provided in Section III (g);
  - (3) the commencement date and the termination date of abatement;
  - (4) the proposed use of the facility; nature of construction, time schedule, map, property description and improvement list as provide in Section IV (b);

- (5) contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections III (a), III (e), III (g) VII, VIII, and IX, or other provisions that may be required for uniformity or by state law, and;
- (6) a statement of the facility owner's policy regarding Disadvantaged Business Enterprises (DBEs), and the estimated dollar amount and percentage of total contracts to be awarded to DBEs for construction, professional services, purchases of equipment and supplies and other services required for the abated improvements;
- (7) amount of investment and average number of jobs involved; and
- (8) an assessment of the environmental impacts of the project, including a statement of the owner's policy addressing regional air quality and information on the use of alternative fuels in fleet vehicles.
- (9) a statement indicating the provision of a health care benefit plan for employees and dependents.

Such agreement shall normally be executed within 60 days after the applicant has forwarded all necessary information and documentation to the County.

- (b) Participation in tax abatement agreements with municipalities requires additional information to be included in the Court Order approving the agreement, as follows:
  - (1) a copy of the agreement between the applicant and municipality shall be attached and made apart of the Court Order for all purposes;
  - (2) authorization for the County Judge to execute a signatory page on behalf of the Commissioners Court which shall be attached and made part of the original agreement.

## **VII. RECAPTURE**

Commissioners Court reserves the right to review compliance for full or partial recapture in the event that the applicant fails to perform in "good faith." If a project is not completed as specified in the tax abatement agreement, the County has the right to cancel the abatement agreement and abated taxes shall become due to the County and other affected taxing units as provided by law. If any of the provisions contained in the tax abatement agreement, i.e., employment, amount of investment, etc., are not met, the County shall have the right to reduce or cancel the abatement agreement. If a project granted a tax abatement ceases to operate or is no longer in conformance with the tax abatement agreement, the agreement shall not be in



effect for the period of time during which the project is not operating or is not in conformance.

## **VIII. ADMINISTRATION**

- (a) The Chief Appraiser of the County shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving abatement shall furnish the assessor with such information as may be necessary for the abatement. Once value has been established, the chief Appraiser shall notify the affected jurisdictions which levies taxes of the amount of the assessment.
- (b) The agreement shall stipulate that employees and/or designated representatives of the County will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.
- (c) Upon completion of construction the County and/or the jurisdiction creating the reinvestment zone shall annually (or at such other times as deemed appropriate by the Commissioners Court) evaluate each facility receiving abatement to ensure compliance with the agreement and report possible violations to the contract and agreement to the Commissioners Court and the District Attorney. On or before April 30th of every year during the life of the abatement agreement, the company or individual receiving the abatement shall complete and file a Tax Abatement Evaluation Report, along with other required written documentation, detailing and certifying the abatement recipient's compliance with the terms of the abatement agreement. Failure to provide information requested in the compliance evaluation by the prescribed deadline may result in taxes abated in the prior year being due and payable. The company or individual receiving a tax abatement shall provide information to the County for the evaluation which shall include, but not be limited to, the following:

  - (1) the number and dollar amounts of all construction contracts and subcontracts awarded on the project;
  - (2) the total number of employees of the company, their gross salaries, and the number of employees residing in Tarrant County and their gross salaries, reported in job classifications appropriate to the employee;
  - (3) the gross dollars spent on supplier and professional service contracts, indicating the amounts by contract awarded and performed by Tarrant County business and individuals;

- (4) the dollar amount of contracts awarded to Disadvantaged Business Enterprises;
- (5) detail of actions taken to mitigate any adverse environmental impacts of the project, if applicable; and
- (6) should the dollars, percentages, or actions not meet the original or modified requirements of the abatement agreement, a statement shall be provided explaining the reason for the failure to meet the requirements and a recommended course of rectification.

#### **IX. ASSIGNMENT**

Tax abatement agreements may be assigned to a new owner or lessee of the facility with the written consent of the Commissioners Court, which consent shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the agreement. Any assignment of a tax abatement agreement shall be to an entity that contemplates the same improvements or repairs to the property, except to the extent such improvements or repairs have been completed. No assignment shall be approved if the assignor or the assignee are indebted to the County for ad valorem taxes or other obligations.

#### **X. SUNSET PROVISION**

These Guidelines and Criteria are effective on January 1 of the year following the date of their adoption and will remain in force for two years, at which time all reinvestment zones and tax abatement contracts created pursuant to its provisions will be reviewed by the County to determine whether the goals have been achieved. Based on that review, the guidelines and Criteria will be modified, renewed or eliminated. These Guidelines and Criteria may be amended by Commissioners Court at any time during their effective period.

**EXHIBIT "F"**

**FORM OF CONSENT TO COLLATERAL ASSIGNMENT**

**CONSENT TO ASSIGNMENT  
FOR SECURITY PURPOSES OF  
TAX ABATEMENT AGREEMENT  
BETWEEN TARRANT COUNTY AND**

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This **CONSENT TO ASSIGNMENT FOR SECURITY PURPOSES OF TAX ABATEMENT AGREEMENT** (“**Consent**”) is entered into by and between the **TARRANT COUNTY, TEXAS** (“**County**”); \_\_\_\_\_ (“**Owner**”), a \_\_\_\_\_; and \_\_\_\_\_ (“**Lender**”), a \_\_\_\_\_.

**RECITALS**

The County, Owner and Lender hereby agree that the following statements are true and correct and constitute the basis upon which the parties have entered into this Consent:

A. The County and Owner previously entered into that certain Tax Abatement Agreement, dated as of \_\_\_\_\_, 2019 (the “**Agreement**”) pursuant to which the County agreed to abate a percentage of Owner’s ad valorem real and personal property taxes in return for Owner’s construction of \_\_\_\_\_, as more specifically outlined in the Agreement (the “**Project Improvements**”). The Agreement is a public document on file in the County’s offices.

B. Section VIII of the Agreement allows Owner to assign its rights and obligations under the Agreement to a financial institution or other lender for purposes of granting a security interest in the Land and/or Project Improvements without the approval of the Commissioners’ Court, provided that Owner and the financial institution or other lender first execute a written agreement with the County governing the rights and obligations of the County, Owner, and the financial institution or other lender with respect to such security interest.

C. Owner wishes to obtain a loan from Lender in order to [*state reason for loan*] (the “**Loan**”). As security for the Loan, certain agreements between Owner and Lender governing the Loan and dated \_\_\_\_\_, including, but not limited to, that certain Loan Agreement and [*list other related documents*] (collectively, the “**Loan Documents**”) require that Owner assign, transfer and convey to Lender all of Owner’s rights, interest in and to the Agreement until such time as Owner has fully satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender’s security interest in the Agreement (the “**Assignment**”).

D. The County is willing to consent to this Assignment specifically in accordance with the terms and conditions of this Consent.

## AGREEMENT

1. The County, Owner and Lender hereby agree that the recitals set forth above are true and correct and form the basis upon which the County has entered into this Consent.
2. The County hereby consents to the Assignment at the request of Owner and Lender solely for the purpose of Lender's securing the Loan pursuant to and in accordance with the Loan Documents. Notwithstanding such consent, the County does not adopt, ratify or approve any of the particular provisions of the Loan Documents and, unless and to the extent specifically acknowledged by the County in this Consent, does not grant any right or privilege to Lender or any assignee or successor in interest thereto that is different from or more extensive than any right or privilege granted to Owner under the Agreement.
3. In the event that the County is required by the Agreement to provide any kind of written notice to Owner, including notice of breach or default by Owner, the County shall also provide a copy of such written notice to Lender, addressed to the following, or such other party or address as Lender designates in writing, by certified mail, postage prepaid, or by hand delivery:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other address(es) as Lender may advise County from time to time.

4. If Owner fails to cure any default under the Agreement, the County agrees that Lender, its agents or designees shall have an additional thirty (30) calendar days or such greater time as may specifically be provided under the Agreement to perform any of the obligations or requirements of Owner imposed by the Agreement and that the County will accept Lender's performance of the same as if Owner had performed such obligations or requirements; provided, however, that in the event such default cannot be cured within such time, Lender, its agents or designees, shall have such additional time as may be reasonably necessary if within such time period Lender has commenced and is diligently pursuing the remedies to cure such default, including, without limitation, such time as may be required for lender to gain possession of Owner's interest in the Owner property pursuant to the terms of the Loan Documents.
5. If at any time Lender wishes to exercise any foreclosure rights under the Loan Documents, before taking any foreclosure action Lender shall first provide written notice to the County of such intent (a "Notice"). Lender shall copy Owner on the Notice and deliver such Notice to Owner by both first class and certified mail return receipt concurrent with its transmittal of the Notice to the County and represent in the Notice that it has done so. Notwithstanding anything to the contrary herein, unless Lender enters into a written agreement with the County to assume and be bound by all covenants and obligations of Owner under the Agreement, Lender understands and agrees that the County shall not have any obligation to Lender under the Agreement. In addition, Lender understands and agrees that if Lender wishes

to sell all or any portion of the Land or Project Improvements to a third party following Lender's exercise of any foreclosure rights under the Loan Documents, the County shall not owe any obligation to such third party pursuant to the Agreement unless Lender and such third party comply with the procedure for assignment set forth in Section VIII of the Agreement, including the obligation of such third party to enter into a written agreement with the County to assume and be bound by all covenants and obligations of Owner under the Agreement.

6. In the event of any conflict between this Consent and the Agreement or any of the Loan Documents, this Consent shall control. In the event of any conflict between this Consent and any of the Loan Documents, this Consent shall control. In the event of any conflict between the Agreement and any of the Loan Documents, the Agreement shall control.

7. This Consent may not be amended or modified except by a written agreement executed by all of the parties hereto. Notwithstanding anything to the contrary in the Loan Documents, an amendment to any of the Loan Documents shall not constitute an amendment to this Consent or the Agreement.

8. Once Owner has fully satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender's security interest in the Agreement and such security interest is released, Lender shall provide written notice to the County that Lender has released such security interest, in which case this Consent shall automatically terminate.

9. This Consent shall be construed in accordance with the laws of the State of Texas. Venue for any action arising under the provisions of this Consent shall lie in state courts located in Tarrant County, Texas or in the United States District Court for the Northern District of Texas, Fort Worth Division.

10. Capitalized terms used but not specifically defined in this Consent shall have the meanings ascribed to them in the Agreement.

11. This written instrument contains the entire understanding and agreement between the County, Owner and Lender as to the matters contained herein. Any prior or contemporaneous oral or written agreement concerning such matters is hereby declared null and void to the extent in conflict with this Consent.

12. This Consent shall be effective on the later date as of which all parties have executed it. This Consent may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Consent, or any counterpart hereof, shall not relieve the other signatories from their obligations from their obligations hereunder.

**EXECUTED** as of the last date indicated below:

[SIGNATURES IMMEDIATELY FOLLOW ON NEXT PAGE]

**WINNER, LLC,**  
a limited liability company:

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

**TARRANT County, TEXAS**

By: \_\_\_\_\_  
B. Glen Whitley  
County Judge

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM\*:

\_\_\_\_\_  
Deputy County Clerk

\_\_\_\_\_  
Asst. Criminal District Attorney

*\*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.*

**EXHIBIT "G"**

**FORM OF TAX ABATEMENT EVALUATION REPORT**





# Tarrant County Annual Tax Abatement Evaluation Report

Reporting Period: January 1, 20\_\_ to December 31, 20\_\_

## I. PROJECT INFORMATION

Property Owner: "[Response]"

Company/Project Name: "[Response]"

Project Contact: "[Response]" Title: "[Response]"

Telephone: "[Response]" Fax: "[Response]" E-mail: "[Response]"

Property Owner Address: "[Response]"

Company Address (if different): "[Response]"

Address of Property Subject to Abatement: "[Response]"

TAD Tax Account Number(s) of Property Subject to Abatement:

Has construction/installation of planned improvements commenced? Yes  No

If Yes, on what date? "[Response]"

If No, please explain. "[Response]"

Has construction/installation of planned improvements been completed? Yes  No

If Yes, on what date? "[Response]"

If No, please estimate completion date *and* attach a current time schedule for the project:

"[Response]"

Date on which *Certificate of Occupancy* from City was received: "[Response]"

## II. INVESTMENT / VALUATION

### REAL PROPERTY

Beginning Year Appraised Value – Land: \$"[Response]"

Beginning Year Appraised Value – Improvements: \$"[Response]"

Construction Costs Incurred This Reporting Period: \$"[Response]"

Appraised Value of Improvements Added This Period: \$"[Response]"

### PERSONAL PROPERTY

Beginning Year Appraised Value – Machinery, Equipment, Other Business Personal Property: \$ "[Response]"

New M&E, and other Business Personal Property Value Added During Period: \$"[Response]"

Beginning Year Appraised Value Inventory and Supplies: \$[Response]

New Inventory Value Added This Period: \$[Response]

Percentage/Amount of Inventory Subject to Exemption (i.e., Freeport/Foreign Trade Zone): [Response] %

### III. JOB CREATION / RETENTION

Total Current Employees at End of Reporting Period: Full-time [Response] Part-time [Response]

Number of Current Employees Residing in Tarrant County: [Response]

Number of New Employees Added During Reporting Period: Full-time [Response] Part-time [Response]

Number of New Employees Added During Tax Abatement Term: Full-time [Response] Part-time [Response]

Current Workforce Diversity Percentages:

Gender: Male [Response] Female [Response]

Ethnicity: Caucasian [Response] Asian [Response] African American [Response]  
Hispanic [Response] Other [Response]

Annual Payroll During Reporting Period: \$[Response]

Average Salary During Reporting Period: \$[Response]

### IV. CONSTRUCTION & SUPPLY/SERVICES EXPENDITURES

#### CONSTRUCTION:

Construction Dollars Spent This Reporting Period: \$[Response]

Number of Construction Related Jobs This Period: [Response]

Total Construction Payroll This Period: \$[Response]

#### CONSTRUCTION SPENDING WITH TARRANT COUNTY & DISADVANTAGED BUSINESS ENTERPRISES (DBE):

Total Dollars of Construction Spending with Tarrant County Contractors: \$[Response]

Percent of Total Construction Spending with Tarrant County Contractors: [Response] %

Total Dollars of Construction Spending with DBE Contractors: \$[Response]

Percent of Total Construction Spending with DBE Contractors: [Response] %

#### ANNUAL SUPPLY/SERVICES EXPENSES:

Total Number Supply/Services Contracts This Period: [Response]

Total Dollars Spent on Supply/Services Expenditures This Period: \$[Response]

Total Dollars of Supply/Services Expenditures with Tarrant County Businesses: [Response] %

Percent of Supply/Services Expenditures with Tarrant County Businesses: [Response] %

Total Dollars of Supply/Services Expenditures with DBE Businesses: [Response] %

Percent of Supply/Services Expenditures with to DBE Businesses: [Response] %

**V. EMPLOYEE AND ENVIRONMENTAL FACTORS**

Company Sponsored Health Care Benefits Are Available To (check all that apply):

Full-time  Part-time  No Employees

Number of Employees Enrolled in Health Care Plan at End of Period: "[Response]"

Name of Health Care/Insurance Provider: "[Response]"

Average Percentage of Monthly Health Insurance Premiums Paid by Company: "[Response]" %

Average Monthly Employee Cost for Health Care Benefits: Individual: \$"[Response]" Family: \$"[Response]"

List Other Company Benefits Provided (life insurance, pension plan, childcare, etc.): "[Response]"

Does Your Company Encourage, Facilitate, and/or Provide Subsidies/Initiatives for Alternative Commute Options (i.e., bus, vanpools, carpools, telecommuting, etc.)? Yes  No

If Yes, Please Describe: "[Response]"

Describe the Number, Type, and Fuels Used (Gas, Diesel, LPG, Electric, etc.) for Fleet Vehicles On Site:

**VI. ADDITIONAL INFORMATION (TO BE ATTACHED)**

- Copy of Personal Property List Rendered to the Tarrant Appraisal District
- Brief Narrative Highlighting The Progress And Status of the Project
- If Applicable, a Statement Addressing Any Failure to Meet Requirements of the Tax Abatement Agreement and a Plan for Recertification

**VII. CERTIFICATION**

I certify that, to the best of my knowledge and belief, the information and attachments provided herein are true and accurate and in compliance with the terms of the Tax Abatement Agreement with Tarrant County.

\_\_\_\_\_  
Name of Certifying Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Signature of Certifying Officer

\_\_\_\_\_  
Date

In order to remain eligible for the abatement of Tarrant County and/or Tarrant County Hospital District property taxes, you must return the completed report by April 30<sup>th</sup> to:

**Lisa McMillan**  
**Economic Development Coordinator**  
**Tarrant County Administrator's Office**  
**100 E. Weatherford Street, Suite 404**  
**Fort Worth, Texas 76196-0609**

**You may also forward an electronic copy of the completed report to:**

**[lmcmillan@tarrantcounty.com](mailto:lmcmillan@tarrantcounty.com)**

**Please note that if you do submit this form electronically, you must also submit an original hard copy of the report to the above stated physical address for proper filing and review.**

**For assistance call: (817) 884-2643**

CO # 136032



COMMISSIONERS COURT  
COMMUNICATION

REFERENCE NUMBER

PAGE 1 OF

103

DATE:

04/30/2019

SUBJECT: **APPROVAL OF A TAX ABATEMENT AGREEMENT BETWEEN TARRANT COUNTY AND WINNER LLC FOR A DATA CENTER PROJECT, FORT WORTH**

**COMMISSIONERS COURT ACTION REQUESTED:**

It is requested that the Commissioners Court consider approval of a Resolution and Tax Abatement Agreement providing for Tarrant County participation with the City of Fort Worth in the abatement of ad valorem taxes on the eligible real and personal property improvements made by Winner LLC for the redevelopment of an existing data center site and construction of new data center facilities on a site adjacent to its current data center location in Alliance Gateway Park, said abatement being for a period of ten (10) years at a maximum abatement percentage of sixty percent (60%) as it relates to Tarrant County taxes and forty percent (40%) as it relates to Tarrant County Hospital District taxes, as set forth in the Agreement, and authorize the County Judge or his designee to execute the Agreement.

**BACKGROUND:**

In 2015 and 2016, Tarrant County approved participation with the City of Fort Worth in tax abatement for Winner LLC, for the development and operation of a multi-building Data Center off Alliance Gateway at Park Vista Boulevard in north Fort Worth. In order to meet the growth demands from its parent company, Winner LLC is now considering expansion of its data center footprint to an adjacent site that currently houses a data center facility. Planned expansion improvements include finish out of approximately 13,000 square feet of the current data facility and the addition of a new 91,000 square foot data facility. Initial investment is expected to be in excess of \$50 million in real property improvements and over \$50 million in new business personal property to the site over a 3 year period. The location also provides for additional expansion opportunities for Winner LLC, including future finish out of more of the existing data facility space and the addition of another new data center building on the site with similar investment. The expansion is expected to add a minimum of 4 full-time jobs with an average annual salary of approximately \$44,000.00. Healthcare and other benefits are provided at a reasonable cost to full-time employees.

The City of Fort Worth has approved a reinvestment zone for the site, along with a one (1) year tax abatement and an Economic Program Agreement for the overall Winner LLC project, providing up to twenty (20) years of incentive payments in the form of grants tied to increases in real and personal property taxes, sales tax, electric franchise fees and other revenues.

SUBMITTED BY:	Administrator's Office	PREPARED BY:	Lisa McMillan
		APPROVED BY:	



## COMMISSIONERS COURT COMMUNICATION

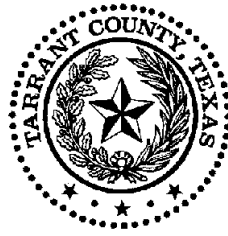
REFERENCE NUMBER: \_\_\_\_\_ DATE: 04/30/2019 PAGE 2 OF 103

The attached Tax Abatement Agreement provides for a maximum of sixty percent (60%) abatement of new real and personal property value for Tarrant County taxes, and up to forty percent (40%) abatement for Tarrant County Hospital District taxes, for a period of 10 years, subject to minimum investment levels and performance-based criteria. For the existing data facility on the site, only the new business personal property improvements added to the facility will be eligible for tax abatement.

### **FISCAL IMPACT:**

The minimum new real and personal property value added from this project is estimated at over \$100 million (\$50 million for real property and \$50 million for business personal property). Based on current tax rates, should Winner LLC earn the maximum tax abatement from the County and Hospital District of sixty percent (60%) and forty percent (40%), respectively, for all ten (10) years, the project would receive a total ten (10)-year tax abatement estimated at \$1.4 million from the County and just under \$900,000.00 from the Hospital District. Development of additional facility improvements would increase these amounts.

Over that same period, the County and Hospital District will receive tax revenues from the unabated portion of the new improvements, as well as the current base value of the land and existing facility, expected to be approximately \$210,000.00 annually for the County and \$247,000.00 annually for the Hospital District.



## **RESOLUTION**

### **PARTICIPATION IN TAX ABATEMENT FOR WINNER LLC, FORT WORTH**

**WHEREAS**, Winner LLC, duly authorized to do business in the State of Texas, and duly acting by and through their authorized officers, (hereafter referred to collectively as "Owner"), plans to construct and equip a Data Center on real property under its ownership, more particularly described in the Abatement Agreement attached hereto and incorporated herein by reference ("Real Property"), located in the City of Fort Worth; and

**WHEREAS**, the Real Property is located within Tarrant County (the "County"), a political subdivision of the State of Texas, which Real Property is located within the City of Fort Worth; and

**WHEREAS**, the Real Property and all improvements and tangible personal property thereon, whether now existing or hereinafter to be constructed or installed, are subject to ad valorem taxation by the City of Fort Worth and the County; and

**WHEREAS**, the Real Property and all improvements thereon are located in Reinvestment Zone No. 99 in the City of Fort Worth, being a reinvestment zone for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code, as amended (the "Code"); and

**WHEREAS**, on the City Council of the City of Fort Worth has approved and executed a tax abatement agreement as to certain improvements thereon; and

**WHEREAS**, the Tax Abatement Agreements (the "Agreements") between Tarrant County and Owner, provide for the construction and operation of a minimum 100,000 square foot Data Center facility and installation of certain improvements at an estimated investment of over \$100,000,000, to be completed and equipped by December 31, 2021; and

**WHEREAS**, the Agreements with the Owner are conditioned upon specific real and personal property improvements, continued operation of the facility and the addition of new jobs; and

**WHEREAS**, the Commissioners Court has been requested by the Owner to take the steps required pursuant to the Code to permit tax abatement with respect to that portion of the Real Property and the improvements thereon which are subject to the taxing jurisdiction of the County, and has further requested that the County enter in the Agreements; and

**WHEREAS**, the County has approved the Tarrant County Tax Abatement Policy Statement Guidelines and Criteria for granting tax abatement in reinvestment zones in Tarrant County;

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** by the Commissioners Court of Tarrant County, Texas:

1. That all recitals set forth in the preamble are hereby found to be true and correct;
2. That the Commissioners Court shall have prudently reviewed each tax abatement agreement approved by a municipality having taxing jurisdiction with respect to property located in the County and within a reinvestment zone designated by such municipality; and according to the adopted guidelines and criteria for tax abatement of the County, shall prudently review and consider each proposed County tax abatement agreement providing participation in tax abatement with a municipality; and shall, solely at its discretion, approve those tax abatement agreements that it finds meet all constitutional and statutory criteria and requirements, and which it finds to be in the best interest of the taxpayers and citizens of the County; and
3. That the Commissioners Court hereby finds that the terms and conditions of the Agreements substantially meet its guidelines and criteria; that the Agreements for the abatement of certain Tarrant County and Tarrant County Hospital District taxes be and are hereby approved; that the County and its Commissioners Court hereby agree to enter into the Agreements as a party thereto; and the County Judge of the County be and is hereby authorized and directed to execute and deliver said Agreements on behalf of the County and its Commissioners Court, substantially in the form attached hereto, and carry out the terms thereof at the appropriate time(s).

**PASSED AND APPROVED, IN OPEN COURT**, this 30<sup>th</sup> day of April, 2019, through Court Order No. \_\_\_\_\_.

\_\_\_\_\_  
B. Glen Whitley, County Judge

\_\_\_\_\_  
Roy C. Brooks  
Commissioner, Precinct 1

\_\_\_\_\_  
Devan Allen  
Commissioner, Precinct 2

\_\_\_\_\_  
Gary Fickes  
Commissioner, Precinct 3

\_\_\_\_\_  
J.D. Johnson  
Commissioner, Precinct 4



THE STATE OF TEXAS §

Tax Abatement Agreement

COUNTY OF TARRANT §

This Agreement is executed by and between WINNER LLC, a Delaware limited liability company (hereafter referred to as "Owner"), and TARRANT COUNTY, TEXAS, acting by and through its County Judge or his designee, (hereafter referred to as "County").

WITNESSETH:

WHEREAS, the Tarrant County Commissioners Court has resolved that the County may elect to participate in tax abatement; and

WHEREAS, the Commissioners Court, in accordance with law, has adopted a Policy Statement for Tax Abatement, herein contained as Exhibit "E", which constitutes appropriate guidelines and criteria governing tax abatement agreements to be entered into by the County; and

WHEREAS, the Land (as hereafter defined) and the Eligible Property (as hereafter defined) are located in Reinvestment Zone No. 99 in the City of Fort Worth, Texas, established by Ordinance No. 23620-03-2019 adopted on March 26, 2019, being a commercial-industrial reinvestment zone for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code, as amended; and

WHEREAS, the City Council of the City of Fort Worth, Texas ("City") has approved and authorized the execution and delivery of a Tax Abatement Agreement as to the Eligible Property thereon, substantially in the form attached hereto as Exhibit "B"; and

WHEREAS, Owner submitted an application for tax abatement to the County concerning the contemplated improvements to the Land (the "Application for Tax Abatement"), attached hereto and incorporated herein as Exhibit "D"; and

WHEREAS, Owner intends to purchase approximately 33.81 acres of land, said land being located entirely within the Zone and more specifically defined in Section I.O. Contingent on receipt of the tax abatement herein, Owner intends to construct or cause to be constructed and operate or cause to be operated an approximately 100,000 square foot Data Center facility on the Land, with potential additional facilities to be constructed, resulting in an aggregate investment of more than \$50,000,000 in real and business personal property investments; and

WHEREAS, the Commissioners Court finds that the contemplated use of the Land, the Eligible Property and the terms of this Agreement are consistent with encouraging development of the Zone in accordance with the purposes for its creation and are in compliance with the Policy Statement and other applicable law;

NOW THEREFORE, the County and Owner, for and in consideration of the mutual promises contained herein, do hereby agree, covenant and contract as set forth below:

**I.**  
**Definitions**

- A. "Abatement Term" has the meaning ascribed to it in Section IV.D.
- B. "Added Market Value" is defined as the market value of Eligible Property on the Land above the Base Year Value.
- C. "Affiliate" means all entities, incorporated or otherwise, under common control with, controlled by or controlling Owner. For purposes of this definition, "control" means fifty percent (50%) or more of the ownership determined by either value or vote.
- D. "Base Year Value" is defined as the tax year 2019 taxable value of real and personal property located on the Land in Reinvestment Zone No. 99 on January 1, 2019, as finally determined by the Tarrant Appraisal District.
- E. "City's Zoning Ordinance" means the Zoning Ordinance of the City, being Ordinance No. 13896, as amended, codified as Appendix "A" of the Code of The City of Fort Worth (1986).
- F. "Completion Date" means the date as of which a temporary or permanent certificate of occupancy has been issued by the City for at least 100,000 square feet of space within the Facility Improvement.
- G. "Completion Deadline" means December 31, 2021, subject to all extensions of time allowed by this Agreement.
- H. "Construction Costs" are defined as the aggregate of the following costs expended or caused to be expended by Owner for the Real Property Improvements: actual site development and construction costs, general contractor and subcontractor fees, and the costs of supplies, materials and construction labor; engineering fees; and architectural and design fees; zoning fees; building permit fees; sewer basin fees; water and sewer tap fees; water, wastewater and thoroughfare impact fees; other costs and fees customarily incidental to construction of a commercial project; and insurance and taxes directly related to the construction of the Real Property Improvements. Construction Costs specifically excludes any costs associated with the acquisition of the Land.
- I. "Data Center" means real and personal property consisting of buildings or structures specifically designed or modified to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power and cooling equipment, used primarily to provide, as a service to persons other than the company operating the data center, data and transaction processing services, outsource information technology services and computer equipment colocation services, or, used primarily to provide, to a single user, including the user's affiliates,

customers, lessees, vendors and other persons authorized by the user, data and transaction processing services.

J. "DBE Companies" are defined as companies who are a Disadvantaged Business Enterprise (DBE), and the term "DBE" shall mean:

- i. a corporation formed for the purpose of making a profit and at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially or economically disadvantaged because of their identification as members of certain groups that have been subject to racial or ethnic prejudice or cultural bias without regard to their qualities as individuals or capabilities as a business, and whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. "DBE" includes the State of Texas definition of historically underutilized businesses (HUBs) as defined in Section 2161.001 of the Texas Government Code, and as it may be amended.
- ii. a sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively by one or more persons described in J(i) above.
- iii. a partnership that is formed for the purpose of making a profit in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by J(i) above, and in which minority or women partners have proportionate interest in the control, operation, and management of the partnership affairs.
- iv. a limited liability company that is formed for the purpose of making a profit in which 51 percent of the assets and interest in the company is owned by one or more persons described by J(i) above.

K. "Effective Date" has the meaning ascribed to it in Section IV.D.

L. "Eligible Property" is defined as Real Property Improvements and Personal Property Improvements made for construction and operation of the Facility Improvement as generally described in Exhibit "C", constructed, delivered to, installed or placed on the Land after January 1, 2019 and throughout the Abatement Term, as set forth in this Agreement.

M. "Facility Improvement" means the improvements to be constructed and completed on the Land after the Effective Date of this Agreement, which must consist of, at a minimum, a data center facility containing at least 100,000 square feet of shell space and at least partially finished out with the equipment and supporting building systems and improvements necessary for Owner's intended use, as generally depicted in Exhibit "C".

- N. "Job" means a job provided to one (1) individual by Owner or an Affiliate on the Land for (i) forty (40) hours per week or (ii) less than forty (40) hours per week if such other measurement is used to define full-time employment by Owner or an Affiliate in accordance with its then-current personnel policies and regulations. For example, if Owner or an Affiliate has a company-wide policy that considers full-time employment to be thirty-five (35) hours per week, a job on the Land provided by Owner or an Affiliate for at least thirty-five (35) hours per week shall be considered a Job for purposes of this Agreement. Outsourced or independent contractor positions shall not be included in this definition.
- O. "Land" means that certain parcel of land located within Tarrant County, Texas and more particularly described in **Exhibit "A"** attached hereto and hereby made a part of this Agreement for all purposes.
- P. "Personal Property Commitment" has the meaning ascribed to it in Section III.B.
- Q. "Personal Property Improvements" are defined as tangible personal property (except inventory or supplies) delivered to, installed or located on the Land for the Facility Improvement after the Effective Date of this Agreement.
- R. "Real Property Improvements" are defined as improvements to the Land, and for purposes of this Agreement shall include structures or fixtures erected or affixed to the Land for the Facility Improvement after the Effective Date of this Agreement.
- S. "Real Property Improvement Commitment" has the meaning ascribed to it in Section III.C.
- T. "Reinvestment Zone No. 99" is defined as the real property located in the City and described by City of Fort Worth Ordinance No. 23620-03-2019.
- U. "Supply and Service Expenditures" are defined as those local discretionary expenditures made by Owner directly for the operation and maintenance of Land and any improvements thereon, excluding utility service costs.
- V. "Tarrant County Companies" are defined as any corporation, partnership, limited liability company or sole proprietorship maintaining an addressed office location within Tarrant County from which such entity conducts all or a substantial part of its business operations within Tarrant County.
- W. "Term" has the meaning ascribed to it in Section IV.D.

## II. General Provisions

- A. The Land and Eligible Property are not an improvement project financed by tax increment bonds.

- B. Neither the Land nor any of the improvements covered by this Agreement are owned or leased by any member of the Commissioners Court, or any member of the governing body of any taxing units joining in or adopting this Agreement.

### III.

#### Improvement Conditions and Requirements

- A. Owner shall cause the Completion Date to occur by the Completion Deadline in accordance with this Agreement.
- B. Owner shall install or otherwise locate on the Land by the Completion Deadline Personal Property Improvements at a cumulative actual cost of not less than Fifty Million Dollars (\$50,000,000) ("Personal Property Commitment").
- C. Owner shall expend or cause the expenditure by the Completion Deadline of at least Fifty Million (\$50,000,000) in Construction Costs for Real Property Improvements ("Real Property Improvement Commitment").
- D. Owner intends to expend or cause the expenditure by the Completion Deadline of at least fifteen percent (15%) of all Construction Costs for Real Property Improvements with DBE Companies.
- E. Owner intends to expend or cause the expenditure by the Completion Deadline of at least twenty-five percent (25%) of all Construction Costs for Real Property Improvements with Tarrant County Companies.
- F. Owner will provide for employment of a least four (4) Jobs on the Land or on land owned by Owner or an Affiliate within a half-mile radius of the Land not later than December 31, 2022 and throughout the remaining Abatement Term.
- G. Owner shall operate and maintain, or cause to be operated and maintained, the Eligible Property on the Land for the duration of this Agreement after the Completion Date.

### IV.

#### Abatement Allowed

- A. As set forth in this section, the tax abatement allowed herein shall be for Tarrant County and Tarrant County Hospital District ad valorem real and personal property taxes, relative to Added Market Value of the Eligible Property located on the Land, subject to the following terms and conditions.
- B. If the Improvement Conditions and Requirements set forth in Section III A., B., C., F., and G. herein are met, County agrees to exempt from taxation (i) sixty percent (60%) of the Added Market Value of the Eligible Property for Tarrant County taxes, and (ii) forty percent (40%) of the Added Market Value of the Eligible Property for Tarrant County Hospital District taxes, in accordance with the various requirements established by the terms of this Agreement. The Improvement Conditions and Requirements in Section III

shall in no event be considered a covenant or requirement of Owner to perform for any reason other than to receive the abatement allowed by this Agreement.

1. Reduction to Abatement

a. Completion of Eligible Property Investment

Failure of Owner to make the Real Property Improvements and Personal Property Improvements at the minimum values as set forth in this Agreement by the Completion Deadline is a breach of this Agreement and shall result in the termination of this Agreement in accordance with Section VII.

b. Employment and Spending Deficiencies

In any year that the employment level does not meet the minimum Jobs requirement set forth in Section III.F., the County shall reduce the abatement percentage for that year as set forth below. Notwithstanding the foregoing, if Owner meets the minimum Jobs requirement in the following years, Owner shall be entitled to the full abatement for such years.

- i. If the actual number of Jobs falls below the minimum Jobs requirement of four (4) Jobs, the abatement percentage will be reduced by two percent (2%) for each one (1) Job deficiency, for that year.

(Example: A total of 3 Jobs would be a deficiency of 1 Jobs, which would provide for a 2% reduction in the abatement.)

- ii. If less than twenty-five percent (25%) of all Jobs are filled by Tarrant County residents, Owner will receive a five percent (5%) reduction. For purposes of ascertaining compliance with this provision, an employee is considered a Tarrant County resident if the employee resides in Tarrant County on the date of hire.

- C. Owner intends to use its best efforts to meet the goals with respect to DBE Companies and Tarrant County Companies set forth in Sections III.D. and III.E.; provided, however, the parties expressly agree that, because the construction of a Data Center involves highly specialized labor, a failure to attain the goals with respect to DBE Companies and/or Tarrant County Companies is not a condition precedent to receiving any abatement under this Agreement nor does such a failure constitute a breach of this Agreement.
- D. This Agreement shall take effect on the date which both the County and Owner have executed this Agreement (the "Effective Date") and, unless terminated earlier in accordance with its terms and conditions, shall expire simultaneously upon expiration of the Abatement Term, as defined below (the "Term"). The term during which Owner may receive an abatement shall commence on January 1 of the tax year following the year as

of which the Completion Date has occurred and shall expire on December 31 of the tenth (10th) year thereafter (the "Abatement Term"). Notwithstanding the foregoing, Owner may terminate this Agreement at any time in its sole discretion without recourse; provided that, if Owner terminates the Agreement it will no longer be eligible to receive the abatement allowed hereunder.

V.

**Reports, Audits and Inspections**

- A. Annual Certification and Reports - Pursuant to state law, Owner shall certify annually to taxing units that Owner is in compliance with the terms of the Agreement, and shall provide taxing units with reports and records reasonably necessary to support each year of the Agreement, as follows:
1. Certification - Owner shall complete and certify a Tax Abatement Evaluation Report substantially in the form attached hereto as **Exhibit "G"** for each year of the tax abatement agreement, to be due annually not later than April 30. This certification shall include information supporting Job creation and retention requirements, reports on Eligible Property values, costs, and spending on construction and supply and services, a narrative description of the project's progress, and other submittals required by the Agreement.
  2. Eligible Property Reports - To the extent necessary to verify compliance with the terms of this Agreement or to otherwise administer the terms of this Agreement, but no more than once per calendar year, Owner shall make available to County, upon reasonable written request, the information in the Tax Abatement Evaluation Report applicable to all Eligible Property.
  3. Equipment Added, Replaced or Removed - Owner agrees to provide County, upon reasonable written request but no more than once per calendar year, a copy of its personal property tax return detailing any Eligible Property that has been added, replaced or removed from the Land.
  4. Report Upon Project Completion - Provided the Completion Date occurred by the Completion Deadline, within one-hundred eighty (180) days of completion of the Real Property Improvement Commitment and Personal Property Commitment, Owner shall provide County with a final Eligible Property Report that shall describe all Eligible Property for which Owner is granted tax abatement. The report may contemplate a reconciliation of the general ledger to the personal property rendition to satisfy this requirement.
  5. DBE and Tarrant County Companies Report - Owner shall complete and certify a DBE and Tarrant County Companies Report as provided for in the Tax Abatement Evaluation Report for each year of the tax abatement agreement, to be due annually not later than April 30. This report and certification shall include the total Construction Costs expended for the Real Property Improvements with DBE Companies and Tarrant County Companies, together with supporting

invoices and other documents reasonably necessary to demonstrate that such amounts were actually paid.

6. Failure to Submit Reports - If Owner fails to submit any report required by and in accordance with this Section V.A., the County shall provide written notice to Owner. If Owner fails to provide any such report within thirty (30) calendar days following receipt of such written notice, the County will provide a second written notice to Owner. If Owner fails to provide any such report within five (5) business days following receipt of this second written notice, the County will have the right to terminate this Agreement immediately by providing written notice to Owner.
- B. Right to Audit Books and Records - Provided at least ten (10) calendar days' notice is given and to the extent necessary to verify compliance with the terms of this Agreement or to otherwise administer the terms of this Agreement, but no more than once per calendar year, the County will have the right throughout the Term to audit the financial and business records of Owner that relate solely to the Real Property Improvements and Personal Property Improvements and are necessary to evaluate compliance with this Agreement or with the commitments set forth in this Agreement, including, but not limited to documents and invoices related to the construction of the Real Property Improvements and the purchase of Personal Property Improvements. Owner must make all such records described in this Section V.B. available to the County at Owner's offices in the County or at another location in the County acceptable to both parties and shall otherwise cooperate fully or cause full cooperation with the County during any audit. Further, Owner may require that all individuals reviewing the financial and business records of Owner, an Affiliate or another party must first sign a reasonable confidentiality agreement under which they agree to not discuss or publicize information contained in such records except as necessary for them to complete an audit of such records in accordance with this Agreement.
- C. Inspection - At any time during Owner's normal business hours throughout the Term and following at least ten (10) calendar days' prior written notice to Owner, the County will have the right to inspect and evaluate the Land, and Owner will provide reasonable access to the same, in order for the County to monitor or verify compliance with the terms and conditions of this Agreement. Owner will reasonably cooperate with the County during any such inspection and evaluation. Notwithstanding the foregoing, Owner shall have the right to require that any representative of the County be escorted by a representative or security personnel of Owner during any such inspection and evaluation, and Owner shall be able to exercise its sole, reasonable discretion in scheduling a requested inspection so as not to interfere with its ongoing business operations on the Land. Further, Owner may require that all individuals inspecting the Land or Eligible Property must first sign a reasonable confidentiality agreement under which they agree to not discuss or publicize information revealed in such inspection except as necessary for them to complete such inspection in accordance with this Agreement.



**VI.**  
**Use of Land**

The Land is intended to be used as a Data Center as that term is defined in the City's Zoning Ordinance as of the Completion Date and as defined in Section I.I. herein. After the Completion Deadline, the Land must be used for a lawful use related to the support and/or operation of commercial, business, retail, or industrial uses. The Land at all times shall be used in a manner that is consistent with the City's Zoning Ordinance and consistent with the general purpose of encouraging development within Reinvestment Zone No. 99. Both parties acknowledge that the use of the Land as described in this Section VI is consistent with such purposes.

**VII.**  
**Breach**

- A. The following conditions shall constitute a breach of this Agreement:
1. Owner terminates the use of the Land in accordance with Section VI at any time during the Abatement Term; or
  2. Owner fails to meet the Abatement Conditions and Requirements as specified in Section III, A., B., C. or G.
  3. Violations of City Code, State or Federal Law - If (i) any written citation is issued to Owner due to the occurrence of a material violation of a material provision of an applicable City ordinance on the Land or on or within any improvements thereon and such citation is not paid or the recipient of such citation does not properly follow the legal procedures for protest and/or contest of any such citation; (ii) the County is notified by a governmental agency or unit with appropriate jurisdiction that Owner is in material violation of any material state or federal law, rule or regulation on account of any portion of the Land owned by Owner, or on account of improvements owned or operated by Owner or any operations therein on the Land, and Owner does not take affirmative action to resolve, mitigate or protest and/or contest such violation under proper legal procedures.
  4. Failure to Pay County Taxes - A breach shall occur under this Agreement if Owner allows its ad valorem taxes on the Land or Eligible Property owed to the County to become delinquent and Owner does not either pay or cause such taxes to be paid or properly follow the legal procedures for protest and/or contest of any such taxes. In this event, the County shall notify Owner in writing and Owner shall have the opportunity to cure such default in accordance with Section VII.B. If the default has not been fully cured by such time, the County shall have the right to terminate this Agreement immediately by providing written notice to Owner and shall have all other rights and remedies that may be available to it under the law or in equity necessary to collect such delinquent taxes. Additionally, County shall have the right to recapture taxes which otherwise

would have been paid to County without the benefit of the Agreement for the year that Owner's taxes were delinquent. Either payment of such taxes or initiation of and ongoing engagement in legal proceedings for protest and/or contest of such taxes shall constitute a full cure pursuant to Section VII.B.

- B. Notice of Breach - In the event that County makes a reasonable determination that Owner has breached this Agreement, County shall give Owner written notice of such default. Owner has sixty (60) days following receipt of said written notice to reasonably cure such breach, or this Agreement may be terminated by County, and partial recapture of abated taxes may occur in accordance with Section VII.C. Notice of default shall be in writing and shall be delivered by personal delivery or certified mail to Owner at its address provided in Section IX of this Agreement. It shall be the duty of County to determine whether to request partial recapture and payment of abated taxes and to demand payment of such.
- C. Recapture - Should Owner commit a breach of this Agreement according to items A.1. or A.2. of this Section VII and fail to cure as provided in Section VII.B., County may terminate this Agreement and recapture taxes abated for the years during which the cause for termination occurs. Such taxes shall become due sixty (60) days following notice of breach and after the expiration of any cure period as provided in Section VII.B. Penalty and interest on recaptured taxes will be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas. A breach under any sections of this Agreement other than Section VII.A.1., Section VII.A.2., Section VII.A.4., or Section XXI, shall not trigger a right to any recapture of taxes by County.
- D. Tax Lien Not Impaired - It is expressly agreed and acknowledged between the parties to this Agreement that nothing in this Agreement shall be deemed or construed to affect the lien for taxes against the property established by Section 32.01 of the Tax Code of the State of Texas. Such lien shall secure the payment of all taxes, penalties and interest ultimately imposed on the property, including any taxes abated and subject to recapture under this Agreement. Any such lien may be fully enforced pursuant to the provisions of the Code. For purposes of this Subsection, "property" refers to the Land and Eligible Property described herein.

### VIII.

#### Effect of Sale, Lease or Assignment of Property

- A. Affiliate - Upon written notice to the County, Owner may assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any entity which is an Affiliate of Owner, without the consent of the County, in which case the benefits and obligations under this Agreement shall apply to the property and premises owned by such assignee.
- B. Collateral Assignment - Owner may assign its rights and obligations under this Agreement to a financial institution or other lender for purposes of granting a security interest in the Land and/or Eligible Property thereon with the written consent of the

Commissioners Court, which consent shall not be unreasonably withheld or delayed, provided that Owner and the financial institution or other lender first execute a written agreement with the County in substantially the same form as that attached hereto as **Exhibit "F"**, together with such other terms and conditions as may be agreed by the County, Owner and the financial institution or other lender with respect to such security interest (a "Consent to Collateral Assignment Agreement").

- C. Sale/Leaseback - So long as Owner or an Affiliate of Owner remains the ground lessee or the substantial equivalent of the ground lessee, Owner may, with the written consent of the Commissioners Court, which shall not be unreasonably withheld or delayed, transfer fee simple title to the Land to a third party and continue to exercise its rights and obligations under this Agreement, including but not limited to the abatement, so long as the third party owner and Owner or its Affiliate first execute a written agreement with the County under which both the third party owner of the Land and Owner or its Affiliate, jointly or severally as may be appropriate under the circumstances, agree to be bound by all covenants and obligations of Owner under this Agreement.
- D. Other Assignments - Except as otherwise provided in this Section VIII, the abatement granted by this Agreement shall not be assignable to any new owner or new lessee of all or a portion of the Land or Eligible Property unless such assignment is approved in writing by the County, which consent shall not be unreasonably withheld or delayed, conditioned on (i) findings, which shall likewise not be unreasonably withheld or delayed, that the assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) execution by the proposed assignee or successor of a written agreement with the County under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Owner under this Agreement. Any such attempted assignment without the Commissioners Court's prior consent shall constitute grounds for termination of this Agreement following ten (10) calendar days of receipt of written notice from the County to Owner and failure to cure in accordance with Section VII.B. Any lawful assignee or successor in interest of Owner of all rights under this Agreement shall be deemed "Owner" for all purposes under this Agreement.

#### **IX.** **Notice**

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid, hand delivery, or by professional delivery service providing confirmation of receipt:

Owner: Winner LLC  
Attn: Data Center Counsel  
1 Hacker Way  
Menlo Park, CA 94025

County: Tarrant County  
County Administrator's Office  
100 E. Weatherford  
Fort Worth, Texas 76196  
Attention: County Administrator

X.

**Commissioners Court Authorization**

This Agreement was authorized by resolution of the Commissioners Court authorizing the County Judge or his designee to execute this Tax Abatement Agreement on behalf of the County.

XI.

**Severability; Conflicting Law**

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word. If any law is enacted after the Effective Date that prohibits either party from materially performing its duties and obligations under this Agreement, the parties agree to meet and confer in good faith for a period of no less than thirty (30) and no more than ninety (90) days to seek to effectuate an amendment to this Agreement that preserves, to the extent reasonably possible, the original intentions of the parties under this Agreement, with the understanding that this Agreement cannot be amended without the approval of the Commissioners Court.

XII.

**Estoppel Certificate**

Upon written request by Owner to the County, as reasonably necessary to Owner, the County will provide Owner with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Owner is in breach of this Agreement, the nature of the breach; (ii) a statement as to whether this Agreement has been amended and, if so, the identity of each amendment; and (iii) any other factual matters reasonably requested that relate to this Agreement.

XIII.

**Owner's Standing**

Owner, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions or City Council actions authorizing same, and Owner shall be entitled to intervene in said litigation.

**XIV.**  
**Applicable Law**

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

**XV.**  
**Independent Contractor**

It is expressly understood and agreed that Owner shall operate as an independent contractor in each and every respect hereunder and not as an agent, representative or employee of the County. Owner shall have the exclusive right to control all details and day-to-day operations relative to the Land and any improvements thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Owner acknowledges that the doctrine of *respondeat superior* will not apply as between the County and Owner, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Owner further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the County and Owner.

**XVI.**  
**Indemnification**

It is understood and agreed between the parties that the Owner, in performing its obligations hereunder, is acting independently, and County assumes no responsibility or liability to third parties in connection therewith, and Owner agrees to indemnify and hold harmless County from any such responsibility or liability. It is further understood and agreed among the parties that County, in performing its obligations hereunder, is acting independently, and the Owner assumes no responsibility or liability to third parties in connection therewith, and County agrees to the extent allowed by law to indemnify and hold harmless Owner from any such responsibility or liability.

**XVII.**  
**Confidential Information**

The County acknowledges that some information it receives from Owner under this Agreement may be considered confidential. Owner understands and agrees that the County is subject to the Texas Public Information Act, Chapter 552, Texas Government Code. The parties agree to comply with the terms and conditions of that certain Single Party Non-Disclosure Agreement between the County and Owner dated effective as of August 24, 2018 that is on file in with the County to the extent that it relates to the rights, obligations, documents and/or information related to this Agreement and as allowed by Chapter 312 of the Texas Tax Code. By this reference, the above-described Non-Disclosure Agreement is made coterminous with the term of this Agreement.

**XVIII.**

**Mutual Assistance; Dispute Resolution**

The County and Owner will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, including without limitation, the County facilitating approval of permits, documents, and other instruments as may be reasonably necessary in carrying out such objectives. In case of any disputes arising under this Agreement, the County and Owner agree to attempt to resolve such disputes through good faith negotiations between authorized representatives of both parties. If necessary, both parties agree to submit a dispute to a non-binding mediation. If a dispute cannot be resolved through non-binding mediation, either party may pursue any available legal remedies in any court of competent jurisdiction that satisfies the requirements of Section XIV, or, if both parties mutually agree, the dispute may be submitted to binding arbitration. In the event of binding arbitration, the arbitrators will be chosen from a panel of arbitrators with substantive knowledge relative to the subject matter of the dispute. The arbitrators will apply the laws specified in this Agreement to the merits of any dispute or claim. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitrators may grant permanent injunctions or other relief in such dispute or claim.

**XIX.**

**No Third Party Rights**

The provisions and conditions of this Agreement are solely for the benefit of the County and Owner, and any lawful assign or successor of Owner, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

**XX.**

**Force Majeure**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, strike, inclement weather, shortages or unavailability of labor or materials, unreasonable delays by the City (based on the then-current workload of the city department(s) responsible for undertaking the activity in question) in issuing any permits, consents, or certificates of occupancy or conducting any inspections of or with respect to the Land or Eligible Property, or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement and the Completion Deadline shall be extended for a period of time equal to the period such party was delayed. Notwithstanding anything to the contrary herein, it is specifically understood and agreed that any failure to obtain adequate financing necessary to meet the Real Property Improvement Commitment or the Personal Property Commitment shall not be deemed to be an event of force majeure and that this Section XX shall not operate to extend the Completion Deadline in such an event.

**XXI.**

**Knowing Employment of Undocumented Workers**

Owner acknowledges that the County is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. Owner hereby certifies that Owner, and any branches, divisions, or departments of Owner, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Owner, or any branch, division, or department of Owner, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that may lawfully be available to and exercised by Owner, Owner shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the County, the aggregate amount of the value of the abatement received by Owner hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum. Owner shall not be considered in violation of this section for any actions of a subsidiary, Affiliate, franchisee of Owner or a person or entity with whom Owner contracts.

**XXII.**

**No Other Agreement**

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified or supplemented only by an instrument or instruments in writing executed by the parties.

**XXIII.**

**Signatories**

This Agreement is effective and binding on those parties that have duly signed below. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

**XXIV.**

**Headings**

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XXV.**

**Interpretation**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

**XXVI.**  
**Binding Agreement**

The parties to this Agreement each bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement.

**XXVII.**  
**No Waiver**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

**XXVIII.**  
**Termination**

This Agreement shall terminate, in accordance with the terms of this Agreement, unless extended by written agreement of the parties or a written instrument signed by all parties evidencing a delay by force majeure; provided however, that the period of abatement may not extend beyond ten (10) years.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the last date written below.

**WINNER LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

**TARRANT County, TEXAS**

By: \_\_\_\_\_

B. Glen Whitley

County Judge

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM\*:

\_\_\_\_\_  
Deputy County Clerk

\_\_\_\_\_  
Asst. Criminal District Attorney

*\*By law, the District Attorney's Office may only approve contracts for its clients. We reviewed this document from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.*



THE STATE OF TEXAS §

Tarrant County, Texas

Acknowledgment

County OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **B. GLEN WHITLEY**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **TARRANT County, TEXAS**, as the **County Judge** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Notary's Printed Name

**EXHIBIT "A"**  
**DESCRIPTION OF LAND**

**EXHIBIT "A"**

**Legal Description of the Land**

**Lot 4R-1R, Block 3, Alliance Gateway North, an Addition to the City of Fort Worth, according to the Plat recorded in Instrument No. D219062890, Official Public Records of Tarrant County, Texas.**

**Lot 4R-4, Block 3, Alliance Gateway North, an Addition to the City of Fort Worth, according to the Plat recorded in Instrument No. D219062890, Official Public Records of Tarrant County, Texas.**

**EXHIBIT "B"**

**CITY OF FORT WORTH TAX ABATEMENT AGREEMENT  
AND APPLICABLE ORDINANCES**

STATE OF TEXAS §

COUNTY OF TARRANT §

## TAX ABATEMENT AGREEMENT

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This TAX ABATEMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF FORT WORTH, TEXAS (the "City"), a home rule municipality organized under the laws of the State of Texas, and WINNER LLC, a Delaware limited liability company ("Company").

### RECITALS

A. On January 29, 2019, the City Council adopted Resolution No. 5040-01-2019, stating that the City elects to be eligible to participate in tax abatement and setting forth guidelines and criteria governing tax abatement agreements entered into between the City and various parties, entitled "General Tax Abatement Policy" (the "Policy"), which is incorporated herein by reference and hereby made a part of this Agreement for all purposes.

B. The Policy contains appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by Chapter 312 of the Texas Tax Code, as amended (the "Code").

C. On March 26, 2019 the City Council adopted Ordinance No. 23620-03-2019 (the "Ordinance") establishing Tax Abatement Reinvestment Zone No. 99, City of Fort Worth, Texas (the "Zone").

D. Company owns or will own approximately 33.81 acres of Land in the City, as more particularly described in Exhibit "A". The Land is located entirely within the Zone. Contingent upon receipt of the tax abatement herein, Company intends to expend or cause to be expended at least Fifty Million Dollars (\$50,000,000.00) in capital investment (as that term is defined in the Policy) for the construction and operation of an approximately 100,000 square foot data center on the Land.

E. On or about August 20, 2018 Company submitted an application for tax abatement to the City concerning Company's plans for the development (the "Application"), which Application is attached hereto as Exhibit "B" and hereby made a part of this Agreement for all purposes.

F. The contemplated use of the Land and the terms of this Agreement are consistent with encouraging development of the Zone and generating economic development and increased employment opportunities in the City, in accordance with the

purposes for creation of the Zone, and are in compliance with the Policy, the Ordinance and other applicable laws, ordinances, rules and regulations.

G. The provisions of this Agreement, and the proposed use of the Land and nature and minimum capital investment required for the Project Improvements, as defined in Section 2, satisfy the eligibility criteria for commercial/industrial tax abatement pursuant to Section 6 of the Policy (a data center "Mega Project").

H. Written notice that the City intends to enter into this Agreement, along with a copy of this Agreement, has been furnished in the manner prescribed by the Code to the presiding officers of the governing bodies of each of the taxing units that have jurisdiction over the Land.

I. The Abatement granted under this Agreement is in conjunction with a broader economic development incentive program governed by that certain Economic Development Program Agreement between the City and Company on file in the City Secretary's Office as City Secretary Contract No. 46728, as amended by City Secretary Contract No. 46728-A1 (the "EDPA"). The Land, as defined herein, also falls within the definition of the "Land" under the EDPA, and the Project Improvements constructed pursuant to this Agreement will also be counted as "Project Improvements" under the EDPA. For clarification, this Agreement is not in lieu of and does not replace the EDPA. This Agreement and the EDPA are provided in conjunction with one another and the EDPA remains in full force and effect.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### AGREEMENT

#### 1. INCORPORATION OF RECITALS.

The City Council has found, and the City and Company hereby agree, that the recitals set forth above are true and correct and form the basis upon which the parties have entered into this Agreement.

#### 2. DEFINITIONS.

In addition to terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

**Abatement** means (i) the abatement of twenty percent (20%) of the City's incremental ad valorem real property taxes on the Land and all improvements located on the Land, based on the increase in values of the Land and all improvements located on



the Land for the 2022 tax year over their values for the 2019 tax year (which is the year in which the parties entered into this Agreement); and (ii) the abatement of twenty percent (20%) of the City's ad valorem taxes on New Taxable Tangible Personal Property, based on the taxable assessed value of the New Taxable Tangible Personal Property; provided, however, that if Company fails to meet the M/WBE Construction Commitment, as outlined in Section 4.2, the percentage of Abatement applied hereunder will be reduced from twenty percent (20%) to ten percent (10%) in accordance with Section 6 of this Agreement.

**Affiliate** means all entities, incorporated or otherwise, under common control with, controlled by or controlling Company. For purposes of this definition, "control" means fifty percent (50%) or more of the ownership determined by either value or vote.

**Application** has the meaning ascribed to it in Recital E.

**Certificate of Completion** has the meaning ascribed to it in Section 5.

**Certified M/WBE Company** means a minority or woman-owned business that (i) has received certification as either a minority business enterprise (MBE), a woman business enterprise (WBE), or a disadvantaged business enterprise (DBE) by the North Central Texas Regional Certification Agency (NCTRCA), D/FW Minority Supplier Development Council (MSDC), or Women's Business Council – Southwest (WBC), and that has a principal office located within Tarrant, Dallas, Denton, Johnson, Parker, or Wise Counties, Texas. For purposes of this definition, a "principal office" means an office facility that is fully operational and has sufficient equipment, supplies, and personnel to provide the product or service of the business in question to clients in the City without significant reliance on the resources of another entity or affiliate or of an auxiliary facility of the business which is located outside of Tarrant, Dallas, Denton, Johnson, Parker, and Wise Counties, Texas.

**Code** has the meaning ascribed to it in Recital B.

**Completion Date** means the date as of which a temporary or permanent certificate of occupancy for at least 100,000 square feet of space within the Project Improvements has been issued.

**Completion Deadline** means December 31, 2021, subject to extension on account of force majeure, as provided in Section 22.

**Comprehensive Plan** means the City's 2019 Comprehensive Plan, adopted pursuant to Ordinance No. 23589-03-2019, adopted by the City Council on March 5, 2019.

**Consent to Collateral Assignment Agreement** has the meaning ascribed to it in Section 11.2.

**Construction Costs** means the aggregate of the following costs expended or caused to be expended by Company for the Project Improvements: actual site development and construction costs, general contractor and subcontractor fees, and the costs of supplies, materials and construction labor; engineering fees; and architectural and design fees; zoning fees; building permit fees; sewer basin fees; water and sewer tap fees; water, wastewater and thoroughfare impact fees; other costs and fees customarily incidental to construction of a commercial project; and insurance and taxes directly related to the construction of the Project Improvements. Construction Costs specifically excludes any costs associated with the acquisition or lease of the Land.

**Director** means the director of the City's Economic Development Department.

**EDPA** has the meaning ascribed to it in Recital I.

**Effective Date** has the meaning ascribed to it in Section 3.

**Employment Goal** has the meaning ascribed to it in Section 4.4.

**Event of Default** means a breach of this Agreement by a party, either by act or omission, as more specifically set forth in Section 7 of this Agreement.

**Full-time Job** means a job on (i) the Land or (ii) a combination of the Land and the land as such term is defined in the EDPA provided by Company or an Affiliate to one individual for (i) forty (40) hours per week or (ii) less than forty (40) hours per week if such other measurement is used to define full-time employment by Company or an Affiliate in accordance with its then-current personnel policies and regulations. For example, if Company or an Affiliate has a company-wide policy that considers full-time employment to be thirty-five (35) hours per week, a job on the Land provided by Company or an Affiliate for at least thirty-five (35) hours per week shall be considered a full-time job for purposes of this Agreement.

**Land** means the real property described on Exhibit "A" which is attached hereto and incorporated herein by reference for all purposes under this Agreement.

**M/WBE Construction Commitment** has the meaning ascribed to it in Section 4.2.

**Mortgagee** means the holder of a mortgage on the Land.

**New Taxable Tangible Personal Property** means any personal property that (i) is subject to ad valorem taxation and is rendered for that purpose to Tarrant Appraisal District or another appraisal district having jurisdiction over the Land; (ii) is located on the Land; (iii) is owned or leased by Company or an Affiliate; and (iv) was not located in the City prior to the Effective Date of this Agreement.

**Ordinance** has the meaning ascribed to it in Recital C.

Personal Property Commitment has the meaning ascribed to it in Section 4.3.

Personal Property Report has the meaning ascribed to it in Section 4.5.2.

Policy has the meaning ascribed to it in Recital A.

Project Completion Report has the meaning ascribed to it in Section 4.5.1.

Project Improvements means improvements constructed on the Land after the Effective Date of this Agreement, which must consist of, at a minimum, a data center facility containing at least 100,000 square feet.

Real Property Improvement Commitment has the meaning ascribed to it in Section 4.1.

Salary means the cash payment or remuneration made to a person holding a Full-time Job, including paid time off, commissions, and non-discretionary bonuses. A Salary does not include any benefits, such as health insurance or retirement contributions, reimbursements for employee expenses, or any discretionary bonuses.

Server means any computer data processing, storage, or other transmission equipment and any equipment at any time substituted for and performing the same or similar functions. "Server" does not include the software installed on any computer or data processing equipment.

Term has the meaning ascribed to it in Section 3.

Zone has the meaning ascribed to it in Recital C.

3. TERM.

This Agreement will take effect on the date of execution of this Agreement by both the City and Company (the "Effective Date") and, unless terminated earlier in accordance with its terms and conditions, will expire on December 31, 2022 (the "Term"). Company may terminate the Agreement at any time in its sole discretion without recourse; provided that, if Company terminates the Agreement it will no longer be eligible to receive the Abatement.

4. **COMPANY'S OBLIGATIONS AND COMMITMENTS.**

4.1. **Real Property Improvements and Uses.**

The Completion Date must occur on or before the Completion Deadline, and Company must expend or cause the expenditure by the Completion Deadline of at least Fifty Million Dollars (\$50,000,000.00) in Construction Costs for the Project Improvements; provided, however, that if the Personal Property Commitment outlined in Section 4.3 is exceeded and if Company submits a written request to the City on or before submission of the Personal Property Report, the Director may reduce this Fifty Million Dollar (\$50,000,000.00) minimum cost requirement by the same percentage by which the Personal Property Commitment was exceeded, but such reduction may not exceed twenty-five percent (25%), regardless of the percentage by which the Personal Property Commitment was exceeded, and with the understanding that any such reduction must be specified in writing and reflected in the Certificate of Completion issued pursuant to Section 5 (the "Real Property Improvement Commitment"). The Project Improvements are intended to be used as a "data center" as that term is defined in the City's Zoning Ordinance. After the Completion Deadline, the Project Improvements must be used for a lawful use related to the support and/or operation of Company's commercial, business, retail, or industrial uses and may not be used in conjunction with any use(s) that the City Council has determined cause or would cause materially adverse effects on the stability of the immediate neighborhood.

4.2. **Construction Spending Commitment for Certified M/WBE Companies.**

As a condition to receipt of the full twenty-percent (20%) Abatement (as further set forth in the definition of such term), by the Completion Date, Company must have expended or caused to be expended with Certified M/WBE Companies at least fifteen percent (15%) of all Construction Costs for the Project Improvements, regardless of the total amount of such Construction Costs (the "M/WBE Construction Commitment").

4.3. **Installation of Personal Property on Land.**

By the Completion Deadline, Company intends to install or otherwise locate on the Land (including within the Project Improvements), or cause to be installed or otherwise located on the Land, New Taxable Tangible Personal Property having an aggregate actual cost of at least One Hundred Million Dollars (\$100,000,000.00); provided, however, that if the Real Property Improvement Commitment is exceeded and if Company submits a written request to the City on or before submission of the Project Completion Report, the Director may reduce this One Hundred Million Dollar (\$100,000,000.00) minimum cost requirement

by the same percentage in which the Real Property Improvement Commitment was exceeded, but such reduction may not exceed twenty-five percent (25%), regardless of the percentage by which the Real Property Improvement Commitment was exceeded, with the understanding that any such reduction must be specified in writing and reflected in the Certificate of Completion issued pursuant to Section 5 (the "Personal Property Commitment").

**4.4. Employment Goal.**

During 2022, Company will use commercially reasonable efforts to provide or cause to be provided at least four (4) Full-time Jobs on (i) the Land or (ii) a combination of the Land and the land as such term is defined in the EDPA that is owned by Company or an Affiliate, with, collectively, average annual Salaries of such four (4) Full-time Jobs of Forty-three Thousand Nine Hundred Ninety-two Dollars (\$43,992.00) (the "Employment Goal"). Notwithstanding the foregoing, in order for a Full-time Job on a combination of the Land and the land as such term is defined in the EDPA to be counted towards the Employment Goal, the Full-time Job shall be in addition to Full-time Job(s) counted for purposes of satisfying the "employment goal" as such term is defined in the EDPA.

**4.5. Reports and Filings.**

**4.5.1. Notice of Completion and Final Construction Report.**

Provided that the Completion Date occurred on or before the Completion Deadline, on or before February 28 of the year following the year in which the Completion Deadline occurs, Company must provide a written report to the City, substantially in the form specified by the EDPA, that specifically outlines the total Construction Costs expended for the Project Improvements, as well as the total Construction Costs expended for the Project Improvements with Certified M/WBE Companies, together with supporting invoices and other documents reasonably necessary to demonstrate that such amounts were actually paid (the "Project Completion Report"). As provided in Section 7.7 below, a failure to meet the M/WBE Construction Commitment does not constitute a default under this Agreement.

**4.5.2. Personal Property Report.**

On or before February 28 of the year following the year in which the Completion Deadline occurred, Company must provide a written report to the City, substantially in the form specified by the EDPA, that specifically outlines the New Taxable Tangible Personal Property that has been installed or otherwise located on the Land, the legal owner of such New Taxable Tangible Personal Property, and the amounts actually paid

for such New Taxable Tangible Personal Property, together with supporting invoices and other documents reasonably necessary to demonstrate that such amounts were actually paid (the "Personal Property Report").

#### **4.5.3. Employment Report.**

On or before February 28 of the first full calendar year following the year in which the Completion Deadline occurred, Company must provide the City with a report, substantially in the form specified by the EDPA, that sets forth the total number of individuals who held Full-time Jobs on (i) the Land or (ii) a combination of the Land and the land as such term is defined in the EDPA (if such jobs are to be counted towards the Employment Goal under this Agreement) as of December 31 (or such other date requested by Company and reasonably acceptable to the City) of the previous year, plus their Salaries, together with reasonable supporting documentation. If the Employment Goal was not met, Company must include an explanation as to why Company believes the Employment Goal was not met and the efforts that were utilized to meet the Employment Goal. As provided in Section 7.8 below, a failure to meet the Employment Goal does not constitute a default under this Agreement.

#### **4.6. Audits.**

Provided at least ten (10) calendar days' notice is given and to the extent necessary to verify compliance with the terms of this Agreement or to otherwise administer the terms of this Agreement, but no more than once per calendar year, the City will have the right throughout the Term to audit the financial and business records of Company that relate solely to the Project Improvements, New Taxable Tangible Personal Property, and Salaries of individuals holding Full-time Jobs that are included in the employment report provided pursuant to Section 4.5.3, and that are necessary to evaluate compliance with this Agreement or with the commitments and goals set forth in this Agreement; including, but not limited to documents and invoices related to the construction of the Project Improvements and the purchase of New Taxable Tangible Personal Property. If documentation of any Construction Cost expenditures, costs of New Taxable Tangible Personal Property, or Salaries of individuals holding Full-time Jobs that are included in the employment report provided pursuant to Section 4.5.3 is contained in financial and business records of Company that also contain unrelated matters, and the City cannot verify such expenditures, costs, or Salaries in any other documents of Company, such expenditures, costs, and Salaries will not be counted for purposes of this Agreement unless Company allows the City to audit those records; provided, however, that if Company allows the City to audit those records, Company may redact any unrelated matters that are non-essential to the audit of any Construction Cost expenditures, costs of New Taxable Tangible Personal Property, and Salaries. If Company seeks to have Construction Cost expenditures

- B. Neither the Land nor any of the improvements covered by this Agreement are owned or leased by any member of the Commissioners Court, or any member of the governing body of any taxing units joining in or adopting this Agreement.

**III.**

**Improvement Conditions and Requirements**

- A. Owner shall cause the Completion Date to occur by the Completion Deadline in accordance with this Agreement.
- B. Owner shall install or otherwise locate on the Land by the Completion Deadline Personal Property Improvements at a cumulative actual cost of not less than Fifty Million Dollars (\$50,000,000) ("Personal Property Commitment").
- C. Owner shall expend or cause the expenditure by the Completion Deadline of at least Fifty Million (\$50,000,000) in Construction Costs for Real Property Improvements ("Real Property Improvement Commitment").
- D. Owner intends to expend or cause the expenditure by the Completion Deadline of at least fifteen percent (15%) of all Construction Costs for Real Property Improvements with DBE Companies.
- E. Owner intends to expend or cause the expenditure by the Completion Deadline of at least twenty-five percent (25%) of all Construction Costs for Real Property Improvements with Tarrant County Companies.
- F. Owner will provide for employment of a least four (4) Jobs on the Land or on land owned by Owner or an Affiliate within a half-mile radius of the Land not later than December 31, 2022 and throughout the remaining Abatement Term.
- G. Owner shall operate and maintain, or cause to be operated and maintained, the Eligible Property on the Land for the duration of this Agreement after the Completion Date.

**IV.**

**Abatement Allowed**

- A. As set forth in this section, the tax abatement allowed herein shall be for Tarrant County and Tarrant County Hospital District ad valorem real and personal property taxes, relative to Added Market Value of the Eligible Property located on the Land, subject to the following terms and conditions.
- B. If the Improvement Conditions and Requirements set forth in Section III A., B., C., F., and G. herein are met, County agrees to exempt from taxation (i) sixty percent (60%) of the Added Market Value of the Eligible Property for Tarrant County taxes, and (ii) forty percent (40%) of the Added Market Value of the Eligible Property for Tarrant County Hospital District taxes, in accordance with the various requirements established by the terms of this Agreement. The Improvement Conditions and Requirements in Section III

shall in no event be considered a covenant or requirement of Owner to perform for any reason other than to receive the abatement allowed by this Agreement.

1. Reduction to Abatement

a. Completion of Eligible Property Investment

Failure of Owner to make the Real Property Improvements and Personal Property Improvements at the minimum values as set forth in this Agreement by the Completion Deadline is a breach of this Agreement and shall result in the termination of this Agreement in accordance with Section VII.

b. Employment and Spending Deficiencies

In any year that the employment level does not meet the minimum Jobs requirement set forth in Section III.F., the County shall reduce the abatement percentage for that year as set forth below. Notwithstanding the foregoing, if Owner meets the minimum Jobs requirement in the following years, Owner shall be entitled to the full abatement for such years.

- i. If the actual number of Jobs falls below the minimum Jobs requirement of four (4) Jobs, the abatement percentage will be reduced by two percent (2%) for each one (1) Job deficiency, for that year.

(Example: A total of 3 Jobs would be a deficiency of 1 Jobs, which would provide for a 2% reduction in the abatement.)

- ii. If less than twenty-five percent (25%) of all Jobs are filled by Tarrant County residents, Owner will receive a five percent (5%) reduction. For purposes of ascertaining compliance with this provision, an employee is considered a Tarrant County resident if the employee resides in Tarrant County on the date of hire.

C. Owner intends to use its best efforts to meet the goals with respect to DBE Companies and Tarrant County Companies set forth in Sections III.D. and III.E.; provided, however, the parties expressly agree that, because the construction of a Data Center involves highly specialized labor, a failure to attain the goals with respect to DBE Companies and/or Tarrant County Companies is not a condition precedent to receiving any abatement under this Agreement nor does such a failure constitute a breach of this Agreement.

D. This Agreement shall take effect on the date which both the County and Owner have executed this Agreement (the "Effective Date") and, unless terminated earlier in accordance with its terms and conditions, shall expire simultaneously upon expiration of the Abatement Term, as defined below (the "Term"). The term during which Owner may receive an abatement shall commence on January 1 of the tax year following the year as



of which the Completion Date has occurred and shall expire on December 31 of the tenth (10th) year thereafter (the "Abatement Term"). Notwithstanding the foregoing, Owner may terminate this Agreement at any time in its sole discretion without recourse; provided that, if Owner terminates the Agreement it will no longer be eligible to receive the abatement allowed hereunder.

## V.

### Reports, Audits and Inspections

- A. Annual Certification and Reports - Pursuant to state law, Owner shall certify annually to taxing units that Owner is in compliance with the terms of the Agreement, and shall provide taxing units with reports and records reasonably necessary to support each year of the Agreement, as follows:
1. Certification - Owner shall complete and certify a Tax Abatement Evaluation Report substantially in the form attached hereto as **Exhibit "G"** for each year of the tax abatement agreement, to be due annually not later than April 30. This certification shall include information supporting Job creation and retention requirements, reports on Eligible Property values, costs, and spending on construction and supply and services, a narrative description of the project's progress, and other submittals required by the Agreement.
  2. Eligible Property Reports - To the extent necessary to verify compliance with the terms of this Agreement or to otherwise administer the terms of this Agreement, but no more than once per calendar year, Owner shall make available to County, upon reasonable written request, the information in the Tax Abatement Evaluation Report applicable to all Eligible Property.
  3. Equipment Added, Replaced or Removed - Owner agrees to provide County, upon reasonable written request but no more than once per calendar year, a copy of its personal property tax return detailing any Eligible Property that has been added, replaced or removed from the Land.
  4. Report Upon Project Completion - Provided the Completion Date occurred by the Completion Deadline, within one-hundred eighty (180) days of completion of the Real Property Improvement Commitment and Personal Property Commitment, Owner shall provide County with a final Eligible Property Report that shall describe all Eligible Property for which Owner is granted tax abatement. The report may contemplate a reconciliation of the general ledger to the personal property rendition to satisfy this requirement.
  5. DBE and Tarrant County Companies Report - Owner shall complete and certify a DBE and Tarrant County Companies Report as provided for in the Tax Abatement Evaluation Report for each year of the tax abatement agreement, to be due annually not later than April 30. This report and certification shall include the total Construction Costs expended for the Real Property Improvements with DBE Companies and Tarrant County Companies, together with supporting

invoices and other documents reasonably necessary to demonstrate that such amounts were actually paid.

6. Failure to Submit Reports - If Owner fails to submit any report required by and in accordance with this Section V.A., the County shall provide written notice to Owner. If Owner fails to provide any such report within thirty (30) calendar days following receipt of such written notice, the County will provide a second written notice to Owner. If Owner fails to provide any such report within five (5) business days following receipt of this second written notice, the County will have the right to terminate this Agreement immediately by providing written notice to Owner.
- B. Right to Audit Books and Records - Provided at least ten (10) calendar days' notice is given and to the extent necessary to verify compliance with the terms of this Agreement or to otherwise administer the terms of this Agreement, but no more than once per calendar year, the County will have the right throughout the Term to audit the financial and business records of Owner that relate solely to the Real Property Improvements and Personal Property Improvements and are necessary to evaluate compliance with this Agreement or with the commitments set forth in this Agreement, including, but not limited to documents and invoices related to the construction of the Real Property Improvements and the purchase of Personal Property Improvements. Owner must make all such records described in this Section V.B. available to the County at Owner's offices in the County or at another location in the County acceptable to both parties and shall otherwise cooperate fully or cause full cooperation with the County during any audit. Further, Owner may require that all individuals reviewing the financial and business records of Owner, an Affiliate or another party must first sign a reasonable confidentiality agreement under which they agree to not discuss or publicize information contained in such records except as necessary for them to complete an audit of such records in accordance with this Agreement.
- C. Inspection - At any time during Owner's normal business hours throughout the Term and following at least ten (10) calendar days' prior written notice to Owner, the County will have the right to inspect and evaluate the Land, and Owner will provide reasonable access to the same, in order for the County to monitor or verify compliance with the terms and conditions of this Agreement. Owner will reasonably cooperate with the County during any such inspection and evaluation. Notwithstanding the foregoing, Owner shall have the right to require that any representative of the County be escorted by a representative or security personnel of Owner during any such inspection and evaluation, and Owner shall be able to exercise its sole, reasonable discretion in scheduling a requested inspection so as not to interfere with its ongoing business operations on the Land. Further, Owner may require that all individuals inspecting the Land or Eligible Property must first sign a reasonable confidentiality agreement under which they agree to not discuss or publicize information revealed in such inspection except as necessary for them to complete such inspection in accordance with this Agreement.

**VI.**  
**Use of Land**

The Land is intended to be used as a Data Center as that term is defined in the City's Zoning Ordinance as of the Completion Date and as defined in Section I.I. herein. After the Completion Deadline, the Land must be used for a lawful use related to the support and/or operation of commercial, business, retail, or industrial uses. The Land at all times shall be used in a manner that is consistent with the City's Zoning Ordinance and consistent with the general purpose of encouraging development within Reinvestment Zone No. 99. Both parties acknowledge that the use of the Land as described in this Section VI is consistent with such purposes.

**VII.**  
**Breach**

- A. The following conditions shall constitute a breach of this Agreement:
1. Owner terminates the use of the Land in accordance with Section VI at any time during the Abatement Term; or
  2. Owner fails to meet the Abatement Conditions and Requirements as specified in Section III, A., B., C. or G.
  3. Violations of City Code, State or Federal Law - If (i) any written citation is issued to Owner due to the occurrence of a material violation of a material provision of an applicable City ordinance on the Land or on or within any improvements thereon and such citation is not paid or the recipient of such citation does not properly follow the legal procedures for protest and/or contest of any such citation; (ii) the County is notified by a governmental agency or unit with appropriate jurisdiction that Owner is in material violation of any material state or federal law, rule or regulation on account of any portion of the Land owned by Owner, or on account of improvements owned or operated by Owner or any operations therein on the Land, and Owner does not take affirmative action to resolve, mitigate or protest and/or contest such violation under proper legal procedures.
  4. Failure to Pay County Taxes - A breach shall occur under this Agreement if Owner allows its ad valorem taxes on the Land or Eligible Property owed to the County to become delinquent and Owner does not either pay or cause such taxes to be paid or properly follow the legal procedures for protest and/or contest of any such taxes. In this event, the County shall notify Owner in writing and Owner shall have the opportunity to cure such default in accordance with Section VII.B. If the default has not been fully cured by such time, the County shall have the right to terminate this Agreement immediately by providing written notice to Owner and shall have all other rights and remedies that may be available to it under the law or in equity necessary to collect such delinquent taxes. Additionally, County shall have the right to recapture taxes which otherwise

would have been paid to County without the benefit of the Agreement for the year that Owner's taxes were delinquent. Either payment of such taxes or initiation of and ongoing engagement in legal proceedings for protest and/or contest of such taxes shall constitute a full cure pursuant to Section VII.B.

- B. Notice of Breach - In the event that County makes a reasonable determination that Owner has breached this Agreement, County shall give Owner written notice of such default. Owner has sixty (60) days following receipt of said written notice to reasonably cure such breach, or this Agreement may be terminated by County, and partial recapture of abated taxes may occur in accordance with Section VII.C. Notice of default shall be in writing and shall be delivered by personal delivery or certified mail to Owner at its address provided in Section IX of this Agreement. It shall be the duty of County to determine whether to request partial recapture and payment of abated taxes and to demand payment of such.
- C. Recapture - Should Owner commit a breach of this Agreement according to items A.1. or A.2. of this Section VII and fail to cure as provided in Section VII.B., County may terminate this Agreement and recapture taxes abated for the years during which the cause for termination occurs. Such taxes shall become due sixty (60) days following notice of breach and after the expiration of any cure period as provided in Section VII.B. Penalty and interest on recaptured taxes will be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas. A breach under any sections of this Agreement other than Section VII.A.1., Section VII.A.2., Section VII.A.4., or Section XXI, shall not trigger a right to any recapture of taxes by County.
- D. Tax Lien Not Impaired - It is expressly agreed and acknowledged between the parties to this Agreement that nothing in this Agreement shall be deemed or construed to affect the lien for taxes against the property established by Section 32.01 of the Tax Code of the State of Texas. Such lien shall secure the payment of all taxes, penalties and interest ultimately imposed on the property, including any taxes abated and subject to recapture under this Agreement. Any such lien may be fully enforced pursuant to the provisions of the Code. For purposes of this Subsection, "property" refers to the Land and Eligible Property described herein.

## VIII.

### Effect of Sale, Lease or Assignment of Property

- A. Affiliate - Upon written notice to the County, Owner may assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any entity which is an Affiliate of Owner, without the consent of the County, in which case the benefits and obligations under this Agreement shall apply to the property and premises owned by such assignee.
- B. Collateral Assignment - Owner may assign its rights and obligations under this Agreement to a financial institution or other lender for purposes of granting a security interest in the Land and/or Eligible Property thereon with the written consent of the

Commissioners Court, which consent shall not be unreasonably withheld or delayed, provided that Owner and the financial institution or other lender first execute a written agreement with the County in substantially the same form as that attached hereto as **Exhibit "F"**, together with such other terms and conditions as may be agreed by the County, Owner and the financial institution or other lender with respect to such security interest (a "Consent to Collateral Assignment Agreement").

- C. Sale/Leaseback - So long as Owner or an Affiliate of Owner remains the ground lessee or the substantial equivalent of the ground lessee, Owner may, with the written consent of the Commissioners Court, which shall not be unreasonably withheld or delayed, transfer fee simple title to the Land to a third party and continue to exercise its rights and obligations under this Agreement, including but not limited to the abatement, so long as the third party owner and Owner or its Affiliate first execute a written agreement with the County under which both the third party owner of the Land and Owner or its Affiliate, jointly or severally as may be appropriate under the circumstances, agree to be bound by all covenants and obligations of Owner under this Agreement.
- D. Other Assignments - Except as otherwise provided in this Section VIII, the abatement granted by this Agreement shall not be assignable to any new owner or new lessee of all or a portion of the Land or Eligible Property unless such assignment is approved in writing by the County, which consent shall not be unreasonably withheld or delayed, conditioned on (i) findings, which shall likewise not be unreasonably withheld or delayed, that the assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) execution by the proposed assignee or successor of a written agreement with the County under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Owner under this Agreement. Any such attempted assignment without the Commissioners Court's prior consent shall constitute grounds for termination of this Agreement following ten (10) calendar days of receipt of written notice from the County to Owner and failure to cure in accordance with Section VII.B. Any lawful assignee or successor in interest of Owner of all rights under this Agreement shall be deemed "Owner" for all purposes under this Agreement.

### **IX.** **Notice**

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid, hand delivery, or by professional delivery service providing confirmation of receipt:

Owner:           Winner LLC  
                    Attn: Data Center Counsel  
                    1 Hacker Way  
                    Menlo Park, CA 94025

County: Tarrant County  
County Administrator's Office  
100 E. Weatherford  
Fort Worth, Texas 76196  
Attention: County Administrator

**X.**

**Commissioners Court Authorization**

This Agreement was authorized by resolution of the Commissioners Court authorizing the County Judge or his designee to execute this Tax Abatement Agreement on behalf of the County.

**XI.**

**Severability; Conflicting Law**

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word. If any law is enacted after the Effective Date that prohibits either party from materially performing its duties and obligations under this Agreement, the parties agree to meet and confer in good faith for a period of no less than thirty (30) and no more than ninety (90) days to seek to effectuate an amendment to this Agreement that preserves, to the extent reasonably possible, the original intentions of the parties under this Agreement, with the understanding that this Agreement cannot be amended without the approval of the Commissioners Court.

**XII.**

**Estoppel Certificate**

Upon written request by Owner to the County, as reasonably necessary to Owner, the County will provide Owner with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Owner is in breach of this Agreement, the nature of the breach; (ii) a statement as to whether this Agreement has been amended and, if so, the identity of each amendment; and (iii) any other factual matters reasonably requested that relate to this Agreement.

**XIII.**

**Owner's Standing**

Owner, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions or City Council actions authorizing same, and Owner shall be entitled to intervene in said litigation.

**XIV.**  
**Applicable Law**

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

**XV.**  
**Independent Contractor**

It is expressly understood and agreed that Owner shall operate as an independent contractor in each and every respect hereunder and not as an agent, representative or employee of the County. Owner shall have the exclusive right to control all details and day-to-day operations relative to the Land and any improvements thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Owner acknowledges that the doctrine of *respondeat superior* will not apply as between the County and Owner, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Owner further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the County and Owner.

**XVI.**  
**Indemnification**

It is understood and agreed between the parties that the Owner, in performing its obligations hereunder, is acting independently, and County assumes no responsibility or liability to third parties in connection therewith, and Owner agrees to indemnify and hold harmless County from any such responsibility or liability. It is further understood and agreed among the parties that County, in performing its obligations hereunder, is acting independently, and the Owner assumes no responsibility or liability to third parties in connection therewith, and County agrees to the extent allowed by law to indemnify and hold harmless Owner from any such responsibility or liability.

**XVII.**  
**Confidential Information**

The County acknowledges that some information it receives from Owner under this Agreement may be considered confidential. Owner understands and agrees that the County is subject to the Texas Public Information Act, Chapter 552, Texas Government Code. The parties agree to comply with the terms and conditions of that certain Single Party Non-Disclosure Agreement between the County and Owner dated effective as of August 24, 2018 that is on file in with the County to the extent that it relates to the rights, obligations, documents and/or information related to this Agreement and as allowed by Chapter 312 of the Texas Tax Code. By this reference, the above-described Non-Disclosure Agreement is made coterminous with the term of this Agreement.

### **XVIII.**

#### **Mutual Assistance; Dispute Resolution**

The County and Owner will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, including without limitation, the County facilitating approval of permits, documents, and other instruments as may be reasonably necessary in carrying out such objectives. In case of any disputes arising under this Agreement, the County and Owner agree to attempt to resolve such disputes through good faith negotiations between authorized representatives of both parties. If necessary, both parties agree to submit a dispute to a non-binding mediation. If a dispute cannot be resolved through non-binding mediation, either party may pursue any available legal remedies in any court of competent jurisdiction that satisfies the requirements of Section XIV, or, if both parties mutually agree, the dispute may be submitted to binding arbitration. In the event of binding arbitration, the arbitrators will be chosen from a panel of arbitrators with substantive knowledge relative to the subject matter of the dispute. The arbitrators will apply the laws specified in this Agreement to the merits of any dispute or claim. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitrators may grant permanent injunctions or other relief in such dispute or claim.

### **XIX.**

#### **No Third Party Rights**

The provisions and conditions of this Agreement are solely for the benefit of the County and Owner, and any lawful assign or successor of Owner, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

### **XX.**

#### **Force Majeure**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, strike, inclement weather, shortages or unavailability of labor or materials, unreasonable delays by the City (based on the then-current workload of the city department(s) responsible for undertaking the activity in question) in issuing any permits, consents, or certificates of occupancy or conducting any inspections of or with respect to the Land or Eligible Property, or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement and the Completion Deadline shall be extended for a period of time equal to the period such party was delayed. Notwithstanding anything to the contrary herein, it is specifically understood and agreed that any failure to obtain adequate financing necessary to meet the Real Property Improvement Commitment or the Personal Property Commitment shall not be deemed to be an event of force majeure and that this Section XX shall not operate to extend the Completion Deadline in such an event.



**XXI.**

**Knowing Employment of Undocumented Workers**

Owner acknowledges that the County is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. Owner hereby certifies that Owner, and any branches, divisions, or departments of Owner, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Owner, or any branch, division, or department of Owner, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that may lawfully be available to and exercised by Owner, Owner shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the County, the aggregate amount of the value of the abatement received by Owner hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum. Owner shall not be considered in violation of this section for any actions of a subsidiary, Affiliate, franchisee of Owner or a person or entity with whom Owner contracts.

**XXII.**

**No Other Agreement**

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified or supplemented only by an instrument or instruments in writing executed by the parties.

**XXIII.**

**Signatories**

This Agreement is effective and binding on those parties that have duly signed below. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

**XXIV.**

**Headings**

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XXV.**

**Interpretation**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

**XXVI.**  
**Binding Agreement**

The parties to this Agreement each bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement.

**XXVII.**  
**No Waiver**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

**XXVIII.**  
**Termination**

This Agreement shall terminate, in accordance with the terms of this Agreement, unless extended by written agreement of the parties or a written instrument signed by all parties evidencing a delay by force majeure; provided however, that the period of abatement may not extend beyond ten (10) years.

made by another party; costs of New Taxable Tangible Personal Property by an Affiliate; or Salaries of individuals holding Full-time Jobs that are provided by an Affiliate counted for purposes of this Agreement, Company must make or cause to be made the financial and business records of that party that relate to the expenditures in question available to the City for audit (provided the party providing such records may redact any unrelated matters that are non-essential to the audit). Company must make all such records described in this Section 4.6 available to the City at Company's offices in the City or at another location in the City acceptable to both parties and shall otherwise cooperate fully or cause full cooperation with the City during any audit. Further, Company may require that all individuals reviewing the financial and business records of Company, an Affiliate or another party must first sign a reasonable confidentiality agreement under which they agree to not discuss or publicize information contained in those records except as necessary for them to complete an audit of such records in accordance with this Agreement.

**4.7. Inspections of Land and Project Improvements.**

At any time during Company's normal business hours throughout the Term and following at least ten (10) calendar days' prior written notice to Company, the City will have the right to inspect and evaluate the Land and the Project Improvements, and Company will provide reasonable access to the same, in order for the City to monitor or verify compliance with the terms and conditions of this Agreement. Company will reasonably cooperate with the City during any such inspection and evaluation. Notwithstanding the foregoing, Company shall have the right to require that any representative of the City be escorted by a representative or security personnel of Company during any such inspection and evaluation, and Company shall be able to exercise its sole, reasonable discretion in scheduling a requested inspection so as not to interfere with ongoing business operations on the Land.

**4.8. Use of Land.**

From and after the construction of the Project Improvements, the Land must be used at all times during the remainder of the Term of this Agreement for purposes connected with the business operations of Company, as described in the Recitals, and further described in Section 4.1, and otherwise in a manner that is consistent with the general purposes of encouraging development or redevelopment of the Zone.

**5. CERTIFICATE OF COMPLETION.**

Within ninety (90) calendar days following receipt by the City of the Project Completion Report and the Personal Property Report submitted by Company in accordance with Sections 4.5.1 and 4.5.2, and assessment by the City of the information

contained therein, if the City is able to verify that the Completion Date occurred on or before the Completion Deadline, that at least Fifty Million Dollars (\$50,000,000.00) in Construction Costs (or such lower amount if authorized by the Director in writing in accordance with Section 4.1) were expended for the Project Improvements by the Completion Deadline, and that New Taxable Tangible Personal Property having an actual cost of at least One Hundred Million Dollars (\$100,000,000.00) (or such lower amount if authorized by the Director in writing in accordance with Section 4.3) was installed or otherwise located on the Land (including within the Project Improvements) by the Completion Deadline, the Director will issue Company a certificate confirming that both the Real Property Improvement Commitment and the Personal Property Commitment have been met (the "Certificate of Completion"). The Certificate of Completion shall also indicate whether the M/WBE Construction Commitment, as outlined in Section 4.2, was met. The issuance of the Certificate of Completion by City shall not be unreasonably conditioned, withheld or delayed.

**6. TAX ABATEMENT.**

Subject to the terms and conditions of this Agreement, provided that both the Real Property Improvement Commitment, as outlined in Section 4.1, and the Personal Property Commitment, as outlined in Section 4.3, were met, as confirmed in the Certificate of Completion issued by the City in accordance with Section 5, subject to all extensions of time allowed by this Agreement, Company will be entitled to receive the Abatement for the 2022 tax year; provided, however, that if the M/WBE Construction Commitment, as outlined in Section 4.2, was not met, the percentage of Abatement applied for the 2022 tax year will be reduced from twenty percent (20%) to ten percent (10%). Section 15.5 of the Policy, which provides for a cap on the maximum amount of any given tax abatement, does not apply to this Agreement.

**7. DEFAULT, TERMINATION AND FAILURE BY COMPANY TO MEET VARIOUS DEADLINES AND COMMITMENTS.**

**7.1. Failure to Meet Real Property Improvement Commitment or Personal Property Commitment.**

If the Completion Date does not occur on or before the Completion Deadline, or if the Real Property Improvement Commitment, as set forth in Section 4.1, or the Personal Property Commitment, as set forth in Section 4.3, are not met by the Completion Deadline, the City shall have the right, as its sole remedy, to terminate this Agreement by providing written notice to Company without further obligation to Company hereunder.

**7.2. Failure to Pay City Taxes.**

An event of default shall occur under this Agreement if any City taxes owed on the Land or on business personal property located on the Land by Company or an Affiliate, or arising on account of Company's or an Affiliate's operations on the Land, become delinquent and Company or the Affiliate does not either pay such taxes or properly follow the legal procedures for protest and/or contest of any such taxes. In this event, the City shall notify Company in writing and Company shall have thirty (30) calendar days to cure such default. If the default has not been fully cured by such time, the City shall have the right to terminate this Agreement immediately by providing written notice to Company and shall have all other rights and remedies that may be available to it under the law or in equity necessary to collect such delinquent taxes. Either payment of such taxes or initiation of and ongoing engagement in legal proceedings for protest and/or contest of such taxes shall constitute a full cure pursuant to this Section 7.2.

**7.3. Violations of City Code, State or Federal Law.**

An event of default shall occur under this Agreement if any written citation is issued to Company or an Affiliate due to the occurrence of a material violation of a material provision of the City Code on the Land or on or within any improvements thereon (including, without limitation, any material violation of the City's Building or Fire Codes and any other material City Code violations related to the environmental condition of the Land; the environmental condition other land or waters which is attributable to operations on the Land; or to matters concerning the public health, safety or welfare) and such citation is not paid or the recipient of such citation does not properly follow the legal procedures for protest and/or contest of any such citation. An event of default shall occur under this Agreement if the City is notified by a governmental agency or unit with appropriate jurisdiction that Company or an Affiliate, or any successor in interest thereto; or an occupant or tenant with access to any portion of the Land owned or operated by Company or an Affiliate pursuant to the express or implied permission of Company or an Affiliate if action was not taken within thirty (30) days of actual knowledge by Company or an Affiliate to resolve, mitigate or protest and/or contest such violation under proper legal procedures; or the City is in material violation of any material state or federal law, rule or regulation on account of any portion of the Land owned or operated by Company or an Affiliate, or on account of improvements owned or operated by Company or an Affiliate or any operations therein on the Land (including, without limitation, any material violations related to the environmental condition of any portion of the Land owned or operated by Company or an Affiliate; the environmental condition of other land or waters which is attributable to operations on any portions of the Land owned or operated by Company or an Affiliate; or to matters concerning the public health, safety or welfare). Upon the occurrence of any default described by this Section 7.3, the City shall notify Company in writing and Company shall

have (i) thirty (30) calendar days to cure such default or (ii) if Company has diligently pursued cure of the default but such default is not reasonably curable within thirty (30) calendar days, then such amount of time as is reasonably necessary to cure such default. If the default has not been fully cured by such time, the City shall have the right to terminate this Agreement immediately by providing written notice to Company and shall have all other rights and remedies that may be available under the law or in equity.

**7.4. Foreclosure.**

Subject to any rights of a lender that is a party to a Consent to Collateral Assignment Agreement executed pursuant to and in accordance with Section 11, upon the occurrence of any of the following events, the City will have the right to terminate this Agreement immediately upon provision of written notice to Company: (i) the completion of an action to foreclose or otherwise enforce a lien, mortgage or deed of trust on Company's or an Affiliate's interest in the Land or improvements located thereon; (ii) the involuntary conveyance to a third party of Company's or an Affiliate's interest in the Land or improvements located thereon; (iii) execution by Company or an Affiliate of any assignment of Company's or an Affiliate's interest in the Land or improvements located thereon or a deed in lieu of foreclosure to Company's or an Affiliate's interest in the Land or improvements located thereon; or (iv) the appointment of a trustee or receiver for Company's or an Affiliate's interest in the Land or improvements located thereon.

**7.5. Failure to Submit Reports.**

If Company fails to submit any report required by and in accordance with Section 4.5, the City shall provide written notice to Company. If Company fails to provide any such report within thirty (30) calendar days following receipt of such written notice, the City will provide a second written notice to Company. If Company fails to provide any such report within five (5) business days following receipt of this second written notice, the City will have the right to terminate this Agreement immediately by providing written notice to Company.

**7.6. Knowing Employment of Undocumented Workers.**

Company acknowledges that the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. *Company hereby certifies that Company, and any branches, divisions, or departments of Company, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Company, or any branch, division, or department of Company, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that*

*may lawfully be available to and exercised by Company, Company shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the value of the Abatement received by Company hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum.*

For the purposes of this Section 7.6, "Simple Interest" is defined as a rate of interest applied only to an original value, in this case the aggregate amount of Program Grants paid pursuant to this Agreement. This rate of interest can be applied each year, but will only apply to the amount of the Abatement received hereunder and is not applied to interest calculated. For example, if the value of the Abatement received by Company hereunder is \$10,000 and it is required to be paid back with four percent (4%) interest five years later, the total amount would be  $\$10,000 + [5 \times (\$10,000 \times 0.04)]$ , which is \$12,000. This Section 7.6 does not apply to violations of any subsidiary or other Affiliate of Company, any franchisees of Company, or any person or entity with whom Company contracts. Notwithstanding anything to the contrary herein, this Section 7.6 shall survive the expiration or termination of this Agreement.

**7.7. Failure to Meet M/WBE Construction Commitment.**

If the M/WBE Construction Commitment, as outlined in Section 4.2, was not met, such event will not constitute a default hereunder, but, rather, will only cause the percentage of Abatement granted pursuant to this Agreement to be reduced from twenty percent (20%) to ten percent (10%).

**7.8. Failure to Meet Employment Goal.**

If Company fails to meet the Employment Goal, such event will not constitute a default hereunder and will not cause the amount of the Abatement to which Company is entitled hereunder to be reduced.

**7.9. General Breach.**

Unless and to the extent stated elsewhere in this Agreement, a party will be in default under this Agreement if that party breaches any term or condition of this Agreement and such breach remains uncured after thirty (30) calendar days following receipt of written notice from the other party referencing this Agreement (or, if the party in breach has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure, as determined by both parties mutually and in good faith). If a party is in default (after the aforementioned notice and cure periods), the non-breaching party will have the right to terminate this Agreement immediately by providing written notice to the other party as well as all other available rights and remedies under the law.

**7.10. City's Sole Remedy in the Event of Breach.**

Except as otherwise provided in this Agreement, the City's sole remedy in the event of Company's uncured breach of any condition or obligation under this Agreement will be the City's right to terminate this Agreement in accordance with its provisions. In addition, except as required by Section 7.6 and Section 7.11 of this Agreement, Company will not be required to repay any Abatement or property tax revenue lost as a result of this Agreement.

**7.11. Damages for Failure to Obtain Certificate of Completion.**

Company acknowledges and agrees that termination of this Agreement due to a default by Company will (i) harm the City's economic development and redevelopment efforts on the Land and in the vicinity of the Land; (ii) require unplanned and expensive additional administrative oversight and involvement by the City; and (iii) be detrimental to the City's general economic development programs, both in the eyes of the general public and by other business entities and corporate relocation professionals, and Company agrees that the exact amounts of actual damages sustained by the City therefrom will be difficult or impossible to ascertain. Therefore, upon termination of this Agreement for a failure to obtain the Certificate of Completion, as authorized by Section 312.205(a)(4) of the Code, Company must pay the City all taxes that were abated in accordance with this Agreement and which otherwise would have been paid to the City in the absence of this Agreement. The City and Company agree that this amount is a reasonable approximation of actual damages that the City will incur as a result of an uncured failure by Company to obtain a the Certificate of Completion and that this Section 7.11 is intended to provide the City with compensation for actual damages and is not a penalty. This amount may be recovered by the City through adjustments made to Company's ad valorem property tax appraisal by the appraisal district that has jurisdiction over the Land and over any taxable tangible personal property located thereon. Otherwise, this amount shall be due, owing and paid to the City within sixty (60) days following the effective date of termination of this Agreement by the City. In the event that all or any portion of this amount is not paid to the City within sixty (60) days following the effective date of termination of this Agreement, Company shall also be liable for all penalties and interest on any outstanding amount at the statutory rate for delinquent taxes, as determined by the Code at the time of the payment of such penalties and interest (currently, Section 33.01 of the Code).

**8. INDEPENDENT CONTRACTOR.**

It is expressly understood and agreed that Company shall operate as an independent contractor in each and every respect hereunder and not as an agent, representative or employee of the City. Company shall have the exclusive right to control all details and day-to-day operations relative to the Land and any improvements



thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Company acknowledges that the doctrine of *respondet superior* will not apply as between the City and Company, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Company further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Company.

9. **INDEMNIFICATION AND RELEASE.**

9.1. **Indemnification.**

**COMPANY, AT NO COST TO THE CITY, AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO COMPANY'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) COMPANY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF COMPANY, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY) OR SUBCONTRACTORS, RELATED TO THE LAND, IMPROVEMENTS ON THE LAND, INCLUDING THE PROJECT IMPROVEMENTS, AND ANY OPERATIONS AND ACTIVITIES THEREON, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT.**

9.2. **Release.**

**THE CITY HEREBY RELEASES AND AGREES TO HOLD HARMLESS COMPANY, ITS OFFICERS, AGENTS, AFFILIATES AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) THE CITY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF THE CITY, ITS OFFICERS, SERVANTS, AGENTS, ASSOCIATES, EMPLOYEES CONTRACTORS (OTHER THAN COMPANY) OR SUBCONTRACTORS, RELATED TO THE LAND, IMPROVEMENTS ON THE LAND, INCLUDING THE PROJECT IMPROVEMENTS, AND ANY**



**OPERATIONS AND ACTIVITIES THEREON, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT.**

**10. NOTICES.**

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

**City:**

**Company:**

City of Fort Worth  
Attn: City Manager  
200 Texas St.  
Fort Worth, TX 76102

Winner LLC  
Attn: Data Center Counsel  
1 Hacker Way  
Menlo Park, CA 94025

*with copies to:*

the City Attorney and  
Economic Development Department  
Director at the same address

**11. ASSIGNMENT AND SUCCESSORS.**

**11.1. Affiliates.**

Company may at any time assign, transfer or otherwise convey any of its rights or obligations under this Agreement to an Affiliate that is in good standing to do business in the State of Texas, as determined by the Texas Secretary of State, without the consent of the City Council so long as Company, the Affiliate and the City first execute an agreement under which the Affiliate (and, if applicable, the owner of the Land) agrees to assume and be bound by all covenants and obligations of Company under this Agreement. Notwithstanding the foregoing, if the Affiliate is not the owner of the Land, the Agreement must also be assigned to the owner of the Land in accordance with Section 11.4.

**11.2. Collateral Assignment.**

Company may assign its rights and obligations under this Agreement to a financial institution or other lender for purposes of granting a security interest in the Land and/or improvements thereon without the consent of the City Council, provided that Company and the financial institution or other lender first execute a written agreement with the City in substantially the same form as that attached hereto as Exhibit "C", together with such other terms and conditions as may be

agreed by the City, Company and the financial institution or other lender with respect to such security interest (a "Consent to Collateral Assignment Agreement").

**11.3. Sale/Leaseback.**

So long as Company or an Affiliate to which this Agreement has been assigned under Section 11.1 remains the ground lessee, or its substantial equivalent, Company may, with consent of the City Council in accordance with Section 11.3, which shall not be unreasonably withheld, transfer fee simple title to the Land to a third party and continue to exercise its rights and obligations under this Agreement, including but not limited to the Abatement, so long as the third party owner and Company or its Affiliate first execute a written agreement with the City under which both the third party owner of the Land and Company or its Affiliate, jointly or severally as may be appropriate under the circumstances, agree to be bound by all covenants and obligations of Company under this Agreement.

**11.4. Other Assignment.**

Except as otherwise provided by Sections 11.1 and 11.2, Company may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the consent of the City Council, which consent shall not be unreasonably withheld, conditioned on (i) the prior approval of the assignee or successor and a finding by the City Council that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the City under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Company under this Agreement. Any attempted assignment without the City Council's prior consent shall constitute grounds for termination of this Agreement following ten (10) calendar days of receipt of written notice from the City to Company and failure to cure. Any lawful assignee or successor in interest of Company of all rights under this Agreement shall be deemed "Company" for all purposes under this Agreement.

**12. ESTOPPEL CERTIFICATE.**

Upon written request by Company to the City, as reasonably necessary to Company, the City will provide Company with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Company is in breach of this Agreement, the nature of the breach; (ii) a statement as to whether this Agreement has been amended and, if so, the identity of each amendment; and (iii) any other factual matters reasonably requested that relate to this Agreement.

**13. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.**

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter and ordinances, as amended.

**14. GOVERNMENTAL POWERS.**

It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.

**15. ADDITIONAL PROVISIONS.**

**15.1. Future Land Uses and Zoning.**

The City acknowledges that Company's proposed land use is consistent with the current industrial zoning classification of the Land. Moreover, the current Comprehensive Plan provides that uses consistent with this zoning classification are the most appropriate for the Land. In the event that the City receives any request for a residential zoning classification within 250 feet of the Land, the City will use reasonable efforts to provide Company with written notice of such request.

**15.2. Expedited Permitting.**

During the Term, if requested by Company in writing, the City shall expedite the review and any response to the permits, approvals, maps, plans, inspections, applications and other administrative requests in connection with the Land and Project Improvements. The City shall use its best efforts to appoint an appropriate staff member with knowledge and experience in the relevant subject area for such permit or approval to organize and expedite such review.

**16. NO WAIVER.**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

17. VENUE AND JURISDICTION.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.

18. SEVERABILITY; CONFLICTING LAW.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. If any law is enacted after the Effective Date that prohibits either party from materially performing its duties and obligations under this Agreement, the parties agree to meet and confer in good faith for a period of no less than thirty (30) and no more than ninety (90) days to seek to effectuate an amendment to this Agreement that preserves, to the extent reasonably possible, the original intentions of the parties under this Agreement, with the understanding that this Agreement cannot be amended without the approval of the City Council, as specified in Section 25.

19. CONFIDENTIAL INFORMATION.

The City acknowledges that some information it receives from Company under this Agreement may be considered confidential. Company understands and agrees that the City is subject to the Texas Public Information Act, Chapter 552, Texas Government Code. The Parties agree to comply with the terms and conditions of that certain Single Party Non-Disclosure Agreement between the City and Company that is on file in the City Secretary's Office as City Secretary Contract No. 46664 to the extent that it relates to the rights, obligations, documents and/or information related to this Agreement.

20. MUTUAL ASSISTANCE; DISPUTE RESOLUTION.

The City and Company will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, including without limitation, the City facilitating approval of City permits, documents, and other instruments as may be reasonably necessary in carrying out such objectives. In case of any disputes arising under this Agreement, the City and Company agree to attempt to resolve such disputes through good faith negotiations between authorized representatives of both parties. If necessary, both parties agree to submit a dispute to a non-binding mediation. If a dispute cannot be resolved through non-binding mediation, either party may pursue any available legal remedies in any court of competent jurisdiction that satisfies the requirements of Section 17, or, if both parties mutually agree, the dispute

may be submitted to binding arbitration in accordance with procedures to which both parties agree.

**21. NO THIRD PARTY RIGHTS.**

The provisions and conditions of this Agreement are solely for the benefit of the City and Company, and any lawful assign or successor of Company, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

**22. FORCE MAJEURE.**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, strike, inclement weather, shortages or unavailability of labor or materials, unreasonable delays by the City (based on the then-current workload of the City department(s) responsible for undertaking the activity in question) in issuing any permits, consents, or certificates of occupancy or conducting any inspections of or with respect to the Land and Project Improvements, or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement and the Completion Deadline shall be extended for a period of time equal to the period such party was delayed. Notwithstanding anything to the contrary herein, it is specifically understood and agreed that any failure to obtain adequate financing necessary to meet the Real Property Improvement Commitment or the Personal Property Commitment shall not be deemed to be an event of force majeure and that this Section 22 shall not operate to extend the Completion Deadline in such an event.

**23. INTERPRETATION.**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

**24. CAPTIONS.**

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

25. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Company, and any lawful assign and successor of Company, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

26. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

27. BONDHOLDER RIGHTS.

The development will not be financed by tax increment bonds. This Agreement is subject to the rights of holders of outstanding bonds of the City.

28. CONFLICTS OF INTEREST.

Neither the Land nor any improvements thereon are owned or leased by any member of the City Council, any member of the City Plan or Zoning Commission or any member of the governing body of any taxing unit with jurisdiction in the Zone.

[SIGNATURES IMMEDIATELY FOLLOW ON NEXT THREE (3) PAGES]

**EXECUTED** as of the last date indicated below:

**CITY CONTRACT COMPLIANCE MANAGER:**

By signing below, I hereby acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements:

By:



Name of City Employee: Robert Struis  
Title: Director

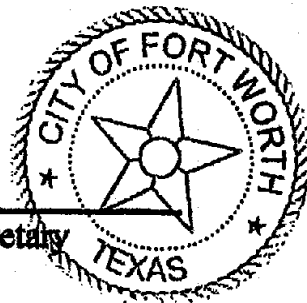


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**CITY OF FORT WORTH:**

By: Susan Alanis  
Susan Alanis  
Assistant City Manager

Attested by:  
Mary J. Kayser  
Mary J. Kayser, City Secretary



Date: 4/10/19

**APPROVED AS TO FORM AND LEGALITY:**

By: Peter Vaky  
Peter Vaky  
Deputy City Attorney

M&C: C-29080 03-26-2019

Form 1295: 2019-461427

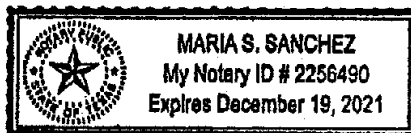
**STATE OF TEXAS §**

**COUNTY OF TARRANT §**

BEFORE ME, the undersigned authority, on this day personally appeared Susan Alanis, Assistant City Manager of the CITY OF FORT WORTH, a municipal corporation organized under the laws of the State of Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the CITY OF FORT WORTH, that she was duly authorized to perform the same by appropriate resolution of the City Council of the City of Fort Worth and that she executed the same as the act of the CITY OF FORT WORTH for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of April, 2019.

Maria S. Sanchez  
Notary Public in and for  
the State of Texas  
MARIA S. SANCHEZ  
Notary's Printed Name





WINNER LLC,  
a Delaware limited liability company:

By: [Signature]  
Name: Robby Hollis  
Title: Authorized Representative  
Date: 4/18/19

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_  
of \_\_\_\_\_  
known to me to be the person whose name is subscribed to the foregoing instrument, and  
acknowledged to me that s/he executed the same for the purposes and consideration therein  
expressed, in the capacity therein stated and as the act and deed of \_\_\_\_\_.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this  
day of \_\_\_\_\_, 2019.

Notary Public in and for  
the State of \_\_\_\_\_

Notary's Printed Name \_\_\_\_\_

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Mateo )

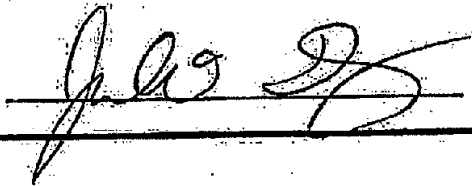
On April 8, 2019 before me, Jacqueline Dory, notary public  
(insert name and title of the officer)

personally appeared Bobby J. Hollis  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

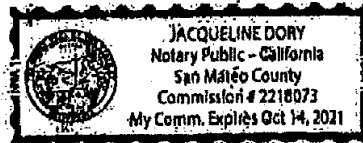
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



**EXHIBITS**

- "A" – Legal Description of the Land**
- "B" – Company's Tax Abatement Application**
- "C" – Form of Consent to Collateral Assignment**

**EXHIBIT "A"**

**Legal Description of the Land**

Lot 4R-1R, Block 3, Alliance Gateway North, an Addition to the City of Fort Worth, according to the Plat recorded in Instrument No. D219062890, Official Public Records of Tarrant County, Texas.

Lot 4R-4, Block 3, Alliance Gateway North, an Addition to the City of Fort Worth, according to the Plat recorded in Instrument No. D219062890, Official Public Records of Tarrant County, Texas.

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**EXHIBIT "B"**

**Tax Abatement Application**

Tax Abatement Agreement between  
City of Fort Worth and Winner LLC (2019 Expansion)



# **Economic Development Incentive Application**

**Economic Development Department  
1150 South Freeway  
Fort Worth, Texas 76104  
(817) 871-6021**

# Incentive Application

## APPLICANT INFORMATION

Date: \_\_\_\_\_

Company Name: Winner LLC d/b/a Ernst LLC

Company Address: 1 Hacker Way

City: Menlo Park

State: CA

Zip: 94025

Contact Person: Richie Kurtzman

Title/Position: Economic Development Manager

Telephone Number: \_\_\_\_\_

Mobile Telephone Number: 773-209-8344

Fax Number: \_\_\_\_\_

E-Mail Address: rkurtzman@fb.com

**1. If the applicant represents a Company: (If a Developer and not a Company, proceed to #2.)**

A. Company Ownership (check one):  Publicly Traded Stock  Privately Held

B. Form of Business (choose one): Corporation

C. How long has the company been in operation (Years)? \_\_\_\_\_

D. Company Industry: Data Center

E. Describe the Company's principal business:

Winner LLC is a special purpose entity whose sole and principal business will be the operation and maintenance of the proposed data center for its parent company. Winner LLC's parent company is Facebook, Inc.

F. Describe the Company's international presence, if any:

None

G. Describe the Company's corporate citizenship practices:

**2. If the applicant represents a Developer:**

A. Describe the Developer's experience and background. Please include similar projects that you have constructed including the project type and location (attach additional sheets as necessary):

N/A

B. Development Partners (Architect, Engineering Team, Interior Design, General Contract, etc.)

N/A



**II. PROJECT INFORMATION**

Please include below the project description, project benefits and how the project positively impacts the community. Any incentives given by the City should be considered only "gap" financing and should not be considered a substitute for debt and equity. However, the City is under no obligation to provide gap financing just because a gap exists. In order for a Company or Developer to be eligible to receive incentives for a project, the Company/Developer:

- A. Must complete and submit this application and the application fee to the City;
- B. Company/Developer or Company/Developer's principals must not be delinquent in paying property taxes for any property owned in Fort Worth;
- C. Company/Developer or Company/Developer's principals must not have ever been subject to the City of Fort Worth's Building Standards Commission's Review;
- D. Company/Developer or Company/Developer's principals must not have any City of Fort Worth liens filed against any other property owned by the applicant property owner/developer. "Liens" includes, but is not limited to, weed liens, demolition liens, board-up/open structure liens and paving liens.

1. Project Description (attach additional sheets as necessary):

See Exhibit A.

2. In what way will the project benefit the surrounding area or serve as a catalyst for additional development and/or business opportunities for the local economy (i.e. attract suppliers or customers)?

See Attached.

3. Describe how the project positively impacts the community.

See Attached.

**III. PROJECT DETAILS**

1. Proposed Project Site Address: 14100 Park Vista Blvd., Fort Worth, TX 76177

2. Proposed Project Site Land Size (Acres): 51.9

3. Will environmental remediation be required? No

4. Is this an existing facility or will a new facility be constructed?  New  Existing

A. If new, what is the construction: Anticipated Start Date: N/A Anticipated Completion Date: N/A

B. If existing, is this an adaptive reuse? Yes

5. Type of Project (choose one): Commercial/Industrial

6. Building Area (Square Feet) Requirements:

(a) Office 3,500

(b) Manufacturing \_\_\_\_\_

(c) Warehouse \_\_\_\_\_

(d) Showroom/Retail \_\_\_\_\_

(e) Other 322,000

Total Area (a+b+c+d+e): 325,500 SF

7. Will this facility be LEED certified, and if so, at what level? No

8. Public open space included within the proposed project site: 0 SF/Acres

**III. PROJECT DETAILS (Continued)**

**9. If the applicant represents a Company: (If a Developer and not a Company, proceed to #10.)**

A. Is the Company expanding its existing local operations or relocating its operations from somewhere else to our area?

Expansion  Relocation

B. If a relocation, where is the company currently located? \_\_\_\_\_

C. Does the company plan to lease or own the facility in Fort Worth?  Lease  Own

D. If the company is planning to lease space in Fort Worth, what is the lease term? 20 Years

E. Describe the specific operations and services to be provided or products to be manufactured at the proposed Fort Worth facility (attach additional sheets as necessary):

Winner would provide data hosting services to its parent company, Facebook. Facebook would have remote access to the content hosted in the data center.

**10: Development requests that will be sought for the project (select all that apply):**

Replat

Rezoning Current Zoning: N/A Requested Zoning: N/A

Variances If yes, please describe: \_\_\_\_\_

Downtown Design Review Board

Landmark Commission

Public Infrastructure Assistance

**11. Real Estate Investment**

A. Current Assessed Valuation of: Land \$ 8,927,012 Improvements \$ 41,072,988

B. Total Construction Costs: \$ 25,000,000

C. Hard Construction Costs: \$ 12,500,000

**12. Business Personal Property and Inventory**

**A. Business Personal Property**

Total investment on equipment, machinery, furnishing, etc.: \$ 125,000,000  Lease  Purchase

\*Estimated taxable value of equipment, machinery, furnishing, etc.: \$ 125,000,000

*\*This is the value that will be on the tax rolls which includes all tangible property.*

**B. Inventory and Supplies**

Value of Inventory: \$ N/A Value of Supplies: \$ N/A

Percent of inventory eligible for Freeport Exemption (inventory, exported from Texas within 175 days) N/A %

**13. Total Capital Investment (Real Estate and Business Personal Property):** \$ 150,000,000

**IV. EMPLOYMENT AND JOB CREATION**

**On the Project Site**

1. How many persons are currently employed? 0

2. What percent of current employees above are Fort Worth residents? 0 %

3. What percent of current employees above are Central City residents? 0 %

**IV. EMPLOYMENT AND JOB CREATION (Continued)**

4. Please complete the following table for new jobs to be created from direct hire by applicant.

	Currently	At Completion	Estimated By Fifth Year	Estimated By Tenth Year
Retained Jobs	0	0	0	0
New Jobs to be Created	0	TBD	TBD	TBD
Total Jobs at Project Site	0	TBD	TBD	TBD
% of Net Jobs to be filled by Fort Worth Residents	N/A	TBD	TBD	TBD
% of Net Jobs to be filled by Central City residents	N/A	TBD	TBD	TBD

5. Please attach a description of the jobs to be created, tasks to be performed for each and wage rate for each classification.

6. Does the applicant provide the following benefits:  Retirement  Health  Dental  Domestic Partner

7. Average wage paid to employees to be located at the project site: \$ 114,073

8. Describe the Company's talent recruitment efforts:

The expansion will allow continued investment and growth at the existing data center. Although exact job numbers are not known at this time, it is expected that the lease will allow for continued headcount expansion on site.

**V. INCENTIVES REQUEST**

Incentive(s) Requested:  Tax Abatement  Chapter 380 Economic Development Program Grant

Do you intend to pursue abatement of County taxes?  Yes  No

*If requesting a Tax Abatement, please refer to the Tax Abatement Policy for a comprehensive explanation of eligibility requirements.*

**VI. LOCAL COMMITMENTS**

**During Construction**

1. What percent of the total construction costs described in Section III, Question 11 will be committed to:

A. Fort Worth businesses? \_\_\_\_\_ %

B. Fort Worth Certified Minority and Women Business Enterprises? \_\_\_\_\_ %

**For Annual Supply and Service Needs**

Regarding discretionary supply and service expenses (i.e landscaping, office or manufacturing supplies, janitorial services, etc., excluding utilities):

2. What is the annual amount of discretionary supply and service expenses? \$ 500,000

3. What percentage will be committed to Fort Worth businesses? \_\_\_\_\_

4. What percentage will be committed to Fort Worth Certified Minority and Women Business Enterprises? \_\_\_\_\_

**VII. DISCLOSURES**

Is any person or firm receiving any form of compensation, commission or other monetary benefit based on the level of incentive obtained by the applicant from the City of Fort Worth? If yes, please explain and/or attach details.

No

**VIII. ADDITIONAL INFORMATION (TO BE ATTACHED)**

These documents must be submitted with the application, otherwise the application will be deemed incomplete and will not be reviewed:

- a.) Attach a site plan of the project.
- b.) Explain why incentives are necessary for the success of this project. Include a business pro-forma or other documentation to substantiate your request.
- c.) Describe any environmental impacts associated with this project.
- d.) Describe the infrastructure improvements (water, sewer, streets, etc.) that will be constructed as part of this project.
- e.) Attach a talent recruitment plan, if applicable.
- f.) Attach a legal description or surveyor's certified metes and bounds description.
- g.) Attach a copy of the most recent property tax statement from the appropriate appraisal district for all parcels involved in the project.
- h.) Attach a brief description of the employee benefit package(s) offered (i.e. health insurance, retirement, public transportation assistance, day care provisions, etc.) including portion paid by employee and employer respectively.
- i.) Attach a plan for the utilization of Fort Worth Certified M/WBE companies.
- j.) Attach a listing of the applicant's Board of Director's, if applicable.
- k.) Attach a copy of Incorporation Papers noting all principals, partners, and agents and all Fort Worth properties owned by each.
- l.) Attach the purchasing representative's company contact information if known.

The company is responsible for paying \$5,000 as an application fee. If the application is withdrawn before the project is presented to City Council in Executive Session, the fee is refunded. Upon presentation to City Council in Open Session, \$2,000 is non-refundable and is applied to offset costs incurred by the Economic Development Department. Upon approval by City Council, the balance of \$3,000 can be credited towards required building permits, inspections fees, replatting fees, and other costs of doing business with the City related to the development. Any unused credit balance upon completion of the project will be refunded upon request from the company.

**IX. CERTIFICATION**

On behalf of the applicant, I certify the information contained in this application, including all attachments to be true and correct. I further certify that, on behalf of the applicant, I have read the current Incentive Policy and all other pertinent City of Fort Worth policies and I agree with the guidelines and criteria state therein.

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**EXHIBIT "C"**

**Form of Consent to Collateral Assignment**

**CONSENT TO ASSIGNMENT  
FOR SECURITY PURPOSES OF  
TAX ABATEMENT AGREEMENT  
BETWEEN CITY OF FORT WORTH AND WINNER LLC  
(CITY SECRETARY CONTRACT NO. \_\_\_\_\_)**

This CONSENT TO ASSIGNMENT FOR SECURITY PURPOSES OF TAX ABATEMENT AGREEMENT ("Consent") is entered into by and between the CITY OF FORT WORTH ("City"), a home rule municipal corporation organized under the laws of the State of Texas; and WINNER LLC ("Company"), a Delaware limited liability company; and \_\_\_\_\_ ("Lender"), a \_\_\_\_\_.

**RECITALS**

The City, Company and Lender hereby agree that the following statements are true and correct and constitute the basis upon which the parties have entered into this Consent:

A. The City and Company previously entered into that certain Tax Abatement Agreement, dated as of \_\_\_\_\_, 2019 (the "Agreement") pursuant to which the City agreed to abate certain City ad valorem taxes in return for construction of a data center of approximately 100,000 square feet on property located at \_\_\_\_\_, as more specifically outlined in the Agreement (the "Project Improvements"). The Agreement is a public document on file in the City Secretary's Office as City Secretary Contract No \_\_\_\_\_.

B. Section 11 of the Agreement allows Company to assign its rights and obligations under the Agreement to a financial institution or other lender for purposes of granting a security interest in the Land and/or Project Improvements without the approval of the City Council, provided that Company and the financial institution or other lender first execute a written agreement with the City governing the rights and obligations of the City, Company, and the financial institution or other lender with respect to such security interest.

C. Company wishes to obtain a loan from Lender in order to [state reason for loan] (the "Loan"). As security for the Loan, certain agreements between Company and Lender governing the Loan and dated \_\_\_\_\_, including, but not limited to, that certain Loan Agreement and [list other related documents] (collectively, the "Loan Documents") require that Company assign, transfer and convey to Lender all of Company's rights, interest in and to the Agreement until such time as Company has fully

satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender's security interest in the Agreement (the "Assignment").

D. The City is willing to consent to this Assignment specifically in accordance with the terms and conditions of this Consent.

### AGREEMENT

1. The City, Company and Lender hereby agree that the recitals set forth above are true and correct and form the basis upon which the City has entered into this Consent.

2. The City hereby consents to the Assignment at the request of Company and Lender solely for the purpose of Lender's securing the Loan pursuant to and in accordance with the Loan Documents. Notwithstanding such consent, the City does not adopt, ratify or approve any of the particular provisions of the Loan Documents and, unless and to the extent specifically acknowledged by the City in this Consent, does not grant any right or privilege to Lender or any assignee or successor in interest thereto that is different from or more extensive than any right or privilege granted to Company under the Agreement.

3. In the event that the City is required by the Agreement to provide any kind of written notice to Company, including notice of breach or default by Company, the City shall also provide a copy of such written notice to Lender, addressed to the following, or such other party or address as Lender designates in writing, by certified mail, postage prepaid, or by hand delivery:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other address(es) as Lender may advise City from time to time.

4. If Company fails to cure any default under the Agreement, the City agrees that Lender, its agents or designees shall have an additional thirty (30) calendar days or such greater time as may specifically be provided under the Agreement to perform any of the obligations or requirements of Company imposed by the Agreement and that the City will accept Lender's performance of the same as if Company had performed such obligations or requirements; provided, however, that in the event such default cannot be cured within such time, Lender, its agents or designees, shall have such additional time as may be reasonably necessary if within such time period Lender has commenced and is diligently pursuing the remedies to cure such default, including, without limitation, such time as may be required for lender to gain possession of Company's interest in the Company property pursuant to the terms of the Loan Documents.

5. If at any time Lender wishes to exercise any foreclosure rights under the Loan Documents, before taking any foreclosure action Lender shall first provide written notice to the City of such intent (a "Notice"). Lender shall copy Company on the Notice and deliver such Notice to Company by both first class and certified mail return receipt concurrent with its transmittal of the Notice to the City and represent in the Notice that it has done so. Notwithstanding anything to the contrary herein, unless Lender enters into a written agreement with the City to assume and be bound by all covenants and obligations of Company under the Agreement, Lender understands and agrees that the City shall not have any obligation to Lender under the Agreement. In addition, Lender understands and agrees that if Lender wishes to sell all or any portion of the Land or Project Improvements to a third party following Lender's exercise of any foreclosure rights under the Loan Documents, the City shall not owe any obligation to such third party pursuant to the Agreement unless Lender and such third party comply with the procedure for assignment set forth in Section 11 of the Agreement, including the obligation of such third party to enter into a written agreement with the City to assume and be bound by all covenants and obligations of Company under the Agreement.

6. In the event of any conflict between this Consent and the Agreement or any of the Loan Documents, this Consent shall control. In the event of any conflict between this Consent and any of the Loan Documents, this Consent shall control. In the event of any conflict between the Agreement and any of the Loan Documents, the Agreement shall control.

7. This Consent may not be amended or modified except by a written agreement executed by all of the parties hereto. Notwithstanding anything to the contrary in the Loan Documents, an amendment to any of the Loan Documents shall not constitute an amendment to this Consent or the Agreement.

8. Once Company has fully satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender's security interest in the Agreement and such security interest is released, Lender shall provide written notice to the City that Lender has released such security interest, in which case this Consent shall automatically terminate.

9. This Consent shall be construed in accordance with the laws of the State of Texas. Venue for any action arising under the provisions of this Consent shall lie in state courts located in Tarrant County, Texas or in the United States District Court for the Northern District of Texas, Fort Worth Division.

10. Capitalized terms used but not specifically defined in this Consent shall have the meanings ascribed to them in the Agreement.

11. This written instrument contains the entire understanding and agreement between the City, Company and Lender as to the matters contained herein. Any prior or



contemporaneous oral or written agreement concerning such matters is hereby declared null and void to the extent in conflict with this Consent.

12. This Consent shall be effective on the later date as of which all parties have executed it. This Consent may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Consent, or any counterpart hereof, shall not relieve the other signatories from their obligations from their obligations hereunder.

**EXECUTED** as of the last date indicated below:

**[SIGNATURES IMMEDIATELY FOLLOW ON NEXT PAGE]**



**CITY OF FORT WORTH:**

**APPROVED AS TO FORM  
AND LEGALITY:**

By: \_\_\_\_\_  
Name:  
Assistant City Manager

By: \_\_\_\_\_  
Name:  
Assistant City Attorney

Date: \_\_\_\_\_

M&C: none required

**WINNER LLC,  
a Delaware limited liability company:**

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

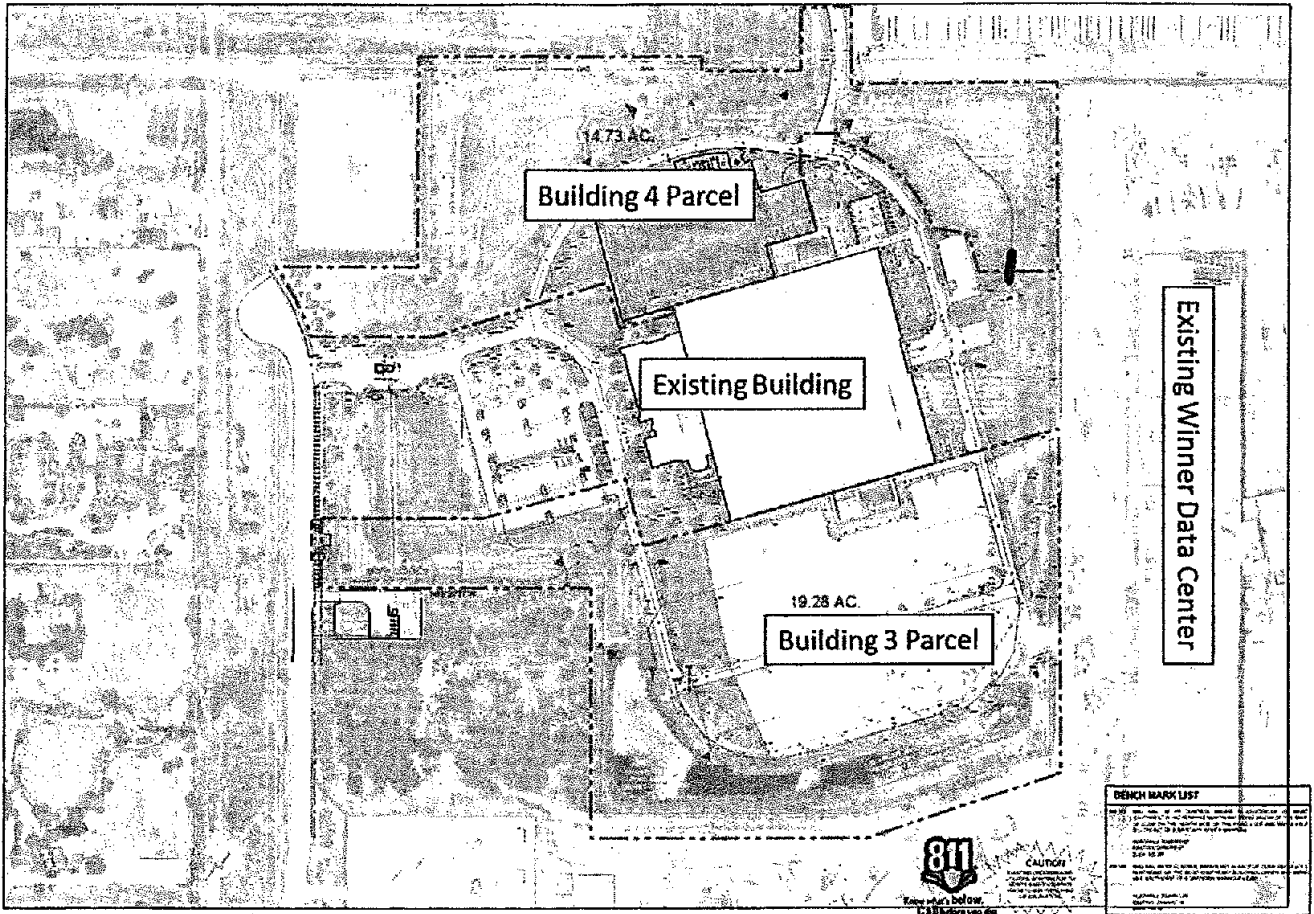
**EXHIBIT "C"**  
**DESCRIPTION AND DEPICTION OF**  
**ELIGIBLE PROPERTY IMPROVEMENTS**

Descriptive list and value of real and personal property improvements

In total, data center construction and equipping would involve a capital investment of at least \$100 million over a three-year period. The proposed qualified investment would include:

- The contractual use of an existing data center adjacent to the original Winner LLC project
- The expansion of the current data center building footprint.
  - The expansion would be specifically designed to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power and cooling equipment, (which would include an uninterruptible power source and generator backup power) used primarily to provide data center services to applicant's parent company and parent's affiliates.
  - The proposed expansion would have a complete fire alarm system, which would include sprinklers and fire smoke dampers. There would be physical security that would restrict access to the data center in addition provide surveillance, and electronic systems to monitor the site.
  - The proposed expansion would be comprised of multiple phases. Only Phases I and IV will be committed to if approved. Phases 2 and 3 would be expansion areas.
    - Phase 1: 13,000 sq. ft.
    - Phase 2: 42,000 sq. ft.
    - Phase 3: 176,000 sq. ft.
    - Phase 4: 91,000 sq. ft.
- Equipment purchased for use within the proposed data center would include but not be limited to:
  - Computer servers;
  - Chassis;
  - Storage heads;
  - Flash storage cards;
  - Network switches;
  - Routers;
  - Blades;
  - Racks; and
  - Miscellaneous server components.

Proposed Data Center Layout



**EXHIBIT "D"**  
**APPLICATION FOR TAX ABATEMENT**



# Tarrant County Application for Tax Abatement/Reinvestment Zone

## I. APPLICANT INFORMATION

**Applicant/Property Owner:** Winner LLC d/b/a Ernst LLC

**Company/Project Name:** Winner LLC d/b/a Ernst LLC

**Mailing Address:** 1 Hacker Way, Menlo Park, CA 94025

**Telephone:** See Applicant's Telephone Below      **Fax:** N/A

**Applicant's Representative for contact regarding abatement request:**

**Name and Title:** Richie Kurtzman, Economic Development Manager

**Mailing Address:** 1 Hacker Way, Menlo Park, CA 94025

**Telephone:** 773-209-8344      **Fax:** N/A      **E-mail:** rkurtzman@fb.com

## II. PROPERTY AND PROJECT DESCRIPTION

**Address and legal description of property to be considered for Tax Abatement/Reinvestment Zone:**

14100 Park Vista Blvd., Fort Worth, TX 76177 ; legal description attached

**Project Description:** Winner LLC currently owns and operates a data center adjacent to the proposed project site. The project under consideration features a 20-year contract to retrofit and build out an existing data center building with company owned network and computer equipment. Future phases of the project could involve expansion of the existing building footprint. A site plan is attached to this application.

**Description of activities, products, or services produced and/or provided at project location:** Winner LLC would provide data hosting services to its parent company, Facebook. Facebook would have remote access to the content hosted in the data center.

**Current Assessed Value:** Real Property: \$ 50,000      Personal Property:

**Estimated start date of construction/site improvements:** Q2 2019

**Projected date of occupancy/commencement of operations at project site:**

Q1 2020 (first data halls provisioned) – Q4 2021 (all phases completed)

**Please indicate dates for phases if applicable:** N/A

**Location of existing company facilities:** 4500 Like Way, Fort Worth, TX 76177

**Requested level of Tax Abatement:** 100% of eligible property for 10 years.

**Explain why tax abatement is necessary for the success of this project. Include business pro-formas or other information to substantiate your request.** The business demands from Winner LLC's parent company, Facebook, Inc. have increased over the past few years such that this initial Winner LLC project cannot sufficiently provide the storage and capacity at its current footprint. Allowing Winner LLC to expand beyond its existing footprint is critical to the operations of the company and the requested abatement would allow Winner to lower the significant capital and operational expenses associated with expanding in this particular region.

## III. PROJECTED VALUE OF IMPROVEMENTS

Estimated Value of Real Property Improvements \$ 50,000,000

Estimated Value of Personal Property Improvements \$ 50,000,000

Will any infrastructure improvements (roads, drainage, etc.) be requested of Tarrant County for this project?

Yes  No

If yes, describe requested infrastructure improvements: N/A

**Detail any direct benefits to Tarrant County as a result of this project (i.e., inventory tax, etc.):** Expansion of the existing Winner LLC data center would allow for additional capital investment up front as well as over time through the purchase of network and computer equipment. Construction would be extended past when initially projected for the first Winner LLC project, which enables continued growth within the local economy. Furthermore, the existing data center building has a much smaller footprint than the proposed Winner LLC expansion, therefore the assessed value at this particular property will increase upon completion.

#### IV. EMPLOYMENT IMPACT AT PROJECT LOCATION

##### A. NEW EMPLOYMENT

**Projected number of new jobs created as a result of the proposed improvements:**

Full-time 4 Part-Time 0

**Provide types of jobs created and average salary levels:** The expansion will allow continued investment and growth at the existing data center.

**Start date and annual payroll of new permanent positions (if positions to be phased in, provide figures for each phase year):** \$300,000 in 2020

**Percentage of new jobs too be filled be Tarrant County residents:** TBD

**Number of employees transferring from other company locations:** 0

##### B. CONSTRUCTION RELATED EMPLOYMENTS

**Projected number of construction related jobs:** 200-300 construction workers on site daily

**Estimated total construction payroll:** \$ TBD but construction payroll will be commensurate with the local market.

**Commitment as to percentage of construction dollars to be spent with Tarrant County contractors or subcontractors:** Our goal is to utilize as many local and MWBE vendors as possible, but at this time that percentage is unknown. This will be supplemented at a later date.

**Commitment as to percentage & total dollars of construction contracts to be awarded to DBE:** Our goal is to utilize as many local and MWBE vendors as possible, but at this time that percentage is unknown. This will be supplemented at a later date.

##### C. CURRENT COMPANY/PROJECT LOCATION EMPLOYMENT

**Current Number of Employees:** Full-time 61 Part-time 0

**Average annual payroll:** \$ 114,073 [Average annual salary]

**Detail on workforce diversity – percentage breakdown of current employees by gender and ethnicity:**

**\*\*We consider this information confidential and decline to disclose. That said, we have a strong company- wide commitment to diversity.**

Please see our Equal Opportunity and Affirmative Action Policy on our careers website at <https://www.facebook.com/careers/>.

**D. COMPANY SPONSORED HEALTH CARE BENEFITS ARE AVAILABLE**

Full-time Employees  Part-time Employees  Employee Dependents  Not Available

Average monthly employee cost for health care benefits: Individual: \$ 0 Family: \$ 302

**Other employee benefits provided or offered:**

Life & AD&D Insurance, 401k, childcare reimbursement, wellness reimbursement, FSA plans, dental insurance, vision insurance, food, tax support, survivor benefits, baby gift, financial planning, estate planning, legal help, PTO, paid family leave, unlimited sick time, paid holidays, paid recharge sabbatical, paid bereavement leave, paid military leave, long and short term disability, paid parental leave.

**V. LOCAL BUSINESS & DISADVANTAGED BUSINESS ENTERPRISES (DBE) IMPACT**

Estimated amount of annual supply and services expenses: \$ 500,000

Detail any supply/services expenses that are sole source: TBD

Percentage of total supplier/services expenses committed to Tarrant County businesses: TBD

Percentage of total supplier and services expenses committed to DBE: Our goal is to utilize as many local and MWBE vendors as possible, but at this time that percentage is unknown. This will be supplemented at a later date.

**VI. ENVIRONMENTAL IMPACT OF PROJECT**

Indicate if development, construction, equipment, distribution methods, and/or operational processes may impact the environment in the following areas, attach detail if necessary: \*\*Environmental impacts of the project will be extremely minimal, see attached for more details.

Air Quality  Water Quality  Solid Waste Disposal  Storm/Water Runoff

Floodplain/Wetlands  Noise levels  Other (specify)  "[Response]"

Provide detail on existing and new fleet vehicles, specifying types of vehicles, quantities and fuel used (gasoline, diesel, LP gas, CNG, etc.): None

**VII. ADDITIONAL INFORMATION (TO BE ATTACHED)**

- Letter addressing Economic Qualifications and additional criteria for abatement, Section III (h) and (i) of Tarrant County Tax Abatement Policy
- Descriptive list and value of real and personal property improvements
- Plat/Map of Project Location
- Project Time Schedule
- Owner's policy regarding use of disadvantaged Business Enterprises
- Owner's policy addressing regional air quality/non-attainment status (use of alternative fuels, employee trip reduction, etc.) and plan for participation in regional Ozone Action Program
- Tax Certificate showing property taxes paid for most recent year



**VIII. CERTIFICATION**

Upon receipt of a completed application, Tarrant County may require such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant.\*

I certify the information contained in this application (including all attachments) to be true and correct to the best of my knowledge. I further certify that I have read the "Tarrant County Tax Abatement Policy" and agree to comply with the guidelines and criteria stated therein.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

Return completed application and attachments to:

Economic Development Coordinator  
Tarrant County Administrator's Office  
100 E. Weatherford Street, Suite 404  
Fort Worth, Texas 76196-0609

You may also forward an electronic copy of the completed report to:

[lmcmillan@tarrantcounty.com](mailto:lmcmillan@tarrantcounty.com)

Please note that if you do submit this form electronically, you must also submit an original hard copy of the report to the above stated physical address for proper filing and review.

For assistance call: (817) 884-2643

*\* As per Section IV (f) of the Tarrant County Tax Abatement Policy Guidelines and Criteria, this application must be filed prior to commencement of construction or installation of improvements in order to be eligible for County tax abatement.*

Letter addressing economic qualifications and additional criteria for abatement

Dear Sir/Madam:

On behalf of Winner LLC d/b/a Ernst LLC ("Winner"), this letter addresses the economic qualifications and additional criteria for abatement outlined in Section III (h) and (i) of the Tarrant County Tax Abatement Policy.

Section III (h):

- Winner has an existing data center in Tarrant County;
- If ultimately approved for Tarrant County, Winner is estimated to produce a minimum added value exceeding \$3 million in real and personal property as a result of the expansion project;
- If ultimately approved for Tarrant County, Winner reasonably expects to sustain existing employment levels;
- Winner must expand its existing data center footprint in order to meet growth demands from its parent company.

Section III (i):

- If ultimately approved for Tarrant County, Winner will use its best efforts to utilize Disadvantaged Business Enterprises ("DBE") and Tarrant County Businesses wherever possible and will make it a priority when evaluating potential construction and annual supply and service contracts.
- If ultimately approved for Tarrant County, environmental impacts are anticipated to be extremely minor, but may include the following:
  - Minor traffic increases around the site may have a small impact on air quality from the minimal traffic increase.
  - Onsite generators would have a small impact on air quality. This impact will be extremely minimal given that they will only run in the rare case of utility loss and short maintenance periods.
  - The data center would be run with 100% clean and renewable energy. This will have an extremely positive environmental impact.
  - Lastly, the proposed data center expects to meet or exceed all requirements for erosion control, storm water management and landscaping.
- Winner plans to continue to offer a health benefit plan to its full-time employees at a rate that is reasonable to the majority of its employees and allows access to the plan by the employees' dependents.

Thank you in advance for your cooperation and consideration of this tax abatement application. Should you or your staff have any questions or concerns, please do not hesitate to contact Richie Kurtzman at [rkurtzman@fb.com](mailto:rkurtzman@fb.com).

Respectfully submitted,

Richie Kurtzman

### Descriptive list and value of real and personal property improvements

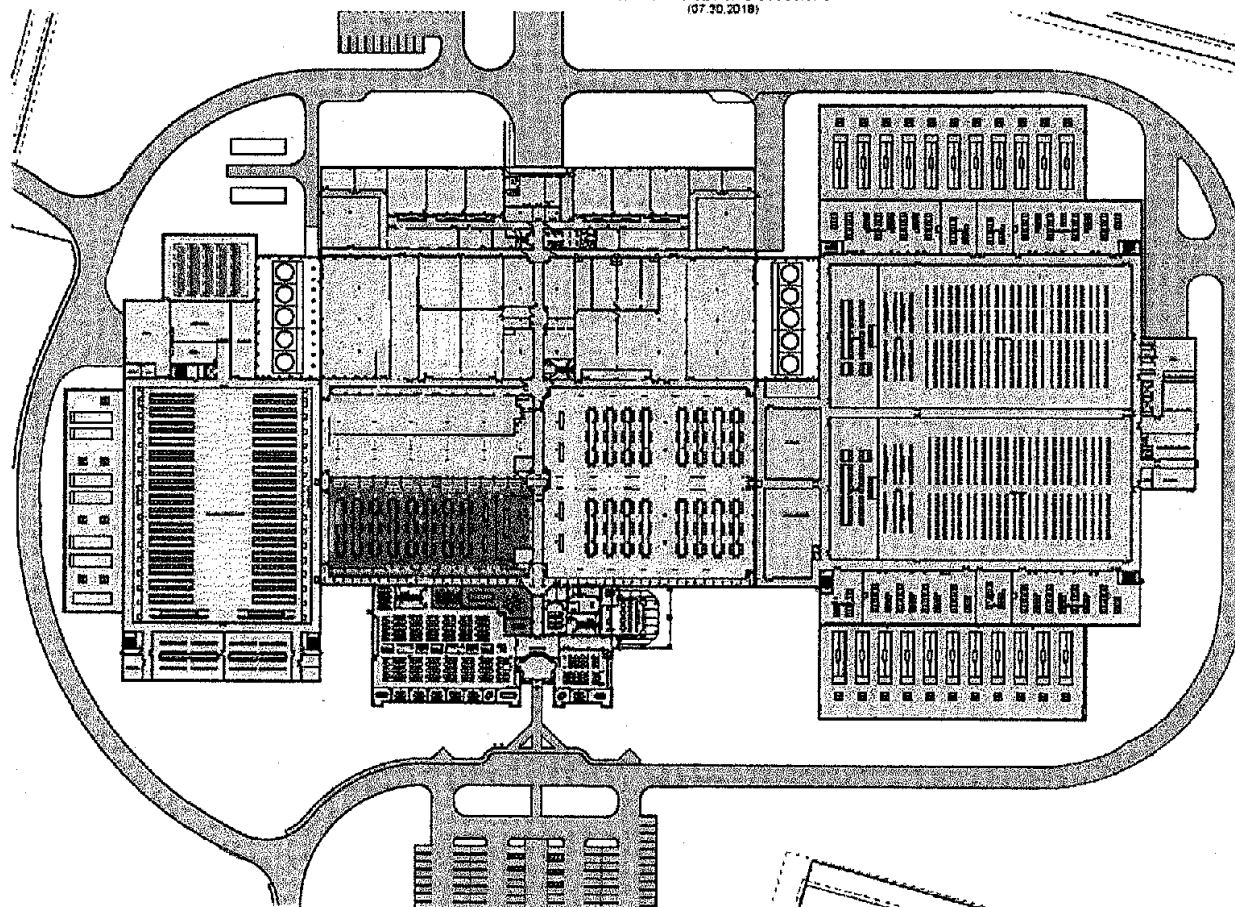
In total, data center construction and equipping would involve a capital investment of at least \$100 million over a three-year period. The proposed qualified investment would include:

- The contractual use of an existing data center adjacent to the original Winner LLC project
- The expansion of the current data center building footprint.
  - The expansion would be specifically designed to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power and cooling equipment, (which would include an uninterruptible power source and generator backup power) used primarily to provide data center services to applicant's parent company and parent's affiliates.
  - The proposed expansion would have a complete fire alarm system, which would include sprinklers and fire smoke dampers. There would be physical security that would restrict access to the data center in addition provide surveillance, and electronic systems to monitor the site.
  - The proposed expansion would be comprised of multiple phases. Only Phases I and IV will be committed to if approved. Phases 2 and 3 would be expansion areas.
    - Phase 1: 13,000 sq. ft.
    - Phase 2: 42,000 sq. ft.
    - Phase 3: 176,000 sq. ft.
    - Phase 4: 91,000 sq. ft.
- Equipment purchased for use within the proposed data center would include but not be limited to:
  - Computer servers;
  - Chassis;
  - Storage heads;
  - Flash storage cards;
  - Network switches;
  - Routers;
  - Blades;
  - Racks; and
  - Miscellaneous server components.

**Plat/Map and Legal Description of project location**

# PROPOSED QTS FORT WORTH DEVELOPMENT -- CONFIDENTIAL

CAPTURING DESIGN DISCUSSIONS  
(07.20.2018)



**PHASE 1**  
(1) 13,000 SF DATA HALL  
1 MW NETWORK  
2.5 MW DATA HALL  
3 MW TOTAL CRITICAL

**PHASE 2**  
(2) 21,000 SF DATA HALLS - 42,000 SF TOTAL  
4.5 MW EACH DATA HALL  
9 MW TOTAL CRITICAL

**PHASE 3**  
(4) 44,000 SF DATA HALL - 176,000 SF TOTAL  
30 MW CRITICAL DATA HALL  
6 MW CRITICAL NETWORK  
36 MW TOTAL CRITICAL

**PHASE 4**  
(2) 45,500 SF DATA HALL/TAPE STORAGE - 91,000 SF TOTAL  
6 MW CRITICAL DATA HALL  
1.5 MW CRITICAL NETWORK  
7.5 MW TOTAL CRITICAL

**DEDICATED OFFICE**  
3,500 SF

**MASTER PLAN TOTALS**  
47 MW CRITICAL DATA HALL  
9.5 MW CRITICAL NETWORK  
56.5 MW TOTAL CRITICAL

Site Plan

## Project Time Schedule

DC Supply		Q4'18	Q1'19	Q2'19	Q3'19	Q4'19	Q1'20	Q2'20	Q3'20	Q4'20	Q1'21	Q2'21	Q3'21
LRP Plan	Offline LRP Placeholder (MW)				5MW	9MW	16MW						
Proposal	Offline QTS Phase 1 DH1 - 3MW	◆	◆	◆	◆								
	Offline QTS Phase 2 DH3 - 4.5MW	◆	◆	◆	◆	◆							
	Offline QTS Phase 2 DH4 - 4.5MW	◆	◆	◆	◆	◆	◆						
	Offline QTS Phase 3 - 36MW (optionality)					◆			◆		◆	◆	

- ◆ Construction
- ◆ Early Access
- ◆ Fit-out complete
- ◆ Provision Ready

**Owner's policy regarding use of disadvantaged business enterprises ("DBE")**

The following targeted procurement approach will be utilized to achieve goals:

1. Civil, structural, and architectural (CSA) scope
  - a. CSA plan will involve the following approaches:
    - i. Solicitation of DBE subcontractors in a primary sub role.
    - ii. Encourage primary CSA subcontractors to provide sub tier work to DBE firms.
    - iii. Breaking up larger CSA scopes into multiple small packages to attract DBE participation.
  - b. Example scopes of work:
    - i. Landscaping
    - ii. Flagging
    - iii. Truck, Hauling & Shipping
    - iv. Metal Stud Framing & Drywall
    - v. Glazing
    - vi. Painting
    - vii. Flooring
    - viii. Interior Finishes
    - ix. Interim/Final Clean
    - x. Construction Site Services
2. Mechanical, electrical and plumbing (MEP) scope
  - a. Encourage primary mechanical and electrical subs to contract with DBE firms.
  - b. DBE firms must participate in specifically designated bid packages to ensure opportunities are presented and market competition is achieved.
  - c. General contractor to work with mechanical and electrical subs to develop specific sub tier bid scopes
  - d. Examples of scopes:
    - i. General contracting activities
    - ii. Piping insulation
    - iii. Trucking and shipping
    - iv. Other – TBD

**Owner's policy addressing regional air quality/non-attainment status and plan for participation in regional Ozone Action Program**

Environmental impacts are anticipated to be extremely minor, but may include the following:

- Minor traffic increases around the site will have a small impact on air quality from the minimal traffic increase.
- Onsite generators will have a small impact on air quality. This impact will be extremely minimal given that they will only run in the rare case of utility loss and short maintenance periods.
- The data center will be run with 100% clean and renewable energy. This will have an extremely positive environmental impact.
- Lastly, the proposed data center will meet or exceed all requirements for erosion control, storm water management and landscaping.



**Tax certificate showing property taxes paid for the most recent tax year**



**RON WRIGHT**  
**TARRANT COUNTY**  
**TAX ASSESSOR-COLLECTOR**

@TarrantCoTax  
 Facebook.com/TarrantCountyTAC

100 E. Weatherford, Fort Worth, TX 76196  
 (817) 884-1100  
 e-mail: taxoffice@tarrantcounty.com  
 web: www.tarrantcounty.com

DATE: 08/29/2018

**2017 TAX STATEMENT**

ACCOUNT: 00041467752

LEGAL: ALLIANCE GATEWAY NORTH ADDN  
 BLOCK 3 LOT 4R BALANCE IN  
 DENTON COUNTY

**e-STATEMENT**

OWNER: QTS INVESTMENTS PROPERTIES FORT WORTH LLC  
 PARCEL ADDRESS: 0014100 PARK VISTA BLVD  
 EXEMPTIONS: AB001

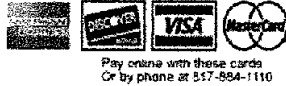
V1.4

**IMPORTANT** - Legislative Changes  
 5 - Year Comparison on back of statement.  
**IMPORTANT** - Cambios Legislativos  
 Comparación de 5 - Años detras del Cobro.

LAND VALUE	IMPROVEMENT VAL	APPRAISED VAL				
8,927,012	41,072,988	50,000,000				
TAXING ENTITIES	APPRAISED VALUE	EXEMPTION AMOUNT	TAXABLE VALUE	TAX RATE PER \$100	BASE TAX	TAXES DUE CURRENTLY
FT WORTH CITY	50,000,000	19,095,538	30,904,462	0.805000	248780.92	0.00
TARRANT COUNTY	50,000,000	0	50,000,000	0.244000	122000.00	0.00
T C HOSPITAL	50,000,000	0	50,000,000	0.224429	112214.50	0.00
T C COLLEGE	50,000,000	0	50,000,000	0.140080	70030.00	0.00
<b>TOTAL TAXES</b>					<b>553,025.42</b>	<b>0.00</b>

**TOTAL AMOUNT DUE** 0.00  
 INCLUDES PAYMENTS RECEIVED

**Pay by Credit Card or eCheck**



IN COPY PRINT

**\*\*YOUR CHECK WILL BE CONVERTED INTO AN ELECTRONIC FUND TRANSFER\*\***

QTS INVESTMENTS PROPERTIES FORT WORTH LLC  
 AB001

**RETURN WITH PAYMENT**

\*00041467752\*  
 \*00041467752\*

**PAY THIS AMOUNT** \$0.00  
 Delinquent after: 10/31/2018

00041467752 2017  
 \*74190940\*  
 \*74190940\*

H0

IF PAID IN	AMOUNT DUE
SEP	0.00
OCT	0.00

QTS INVESTMENTS PROPERTIES FORT  
 WORTH LLC  
 12851 FOSTER ST STE 205  
 OVERLAND PARK, KS 66213

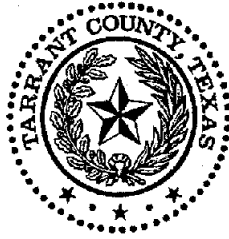
Make checks payable to:  
 RON WRIGHT, TAX-ASSESSOR-COLLECTOR

PO BOX 961018  
 FORT WORTH TX 76161-0018

00041467752 000000000 000000000 000000000 0829201800000

**EXHIBIT "E"**

**TARRANT COUNTY TAX ABATEMENT POLICY AND GUIDELINES**



## TARRANT COUNTY

### TAX ABATEMENT POLICY GUIDELINES AND CRITERIA

#### I. GENERAL PURPOSE AND OBJECTIVES

As authorized under Chapter 312 of the Texas Tax Code, Tarrant County has established this policy so as to work in concert with other taxing authorities as part of an overall publicly supported incentive program designed to create job opportunities that bring new economic advantages or strengthen the current economic base of our community.

It is the intent of the Commissioners Court to consider approval or denial of any request for tax abatement for projects in unincorporated Tarrant County or participation in any tax abatement agreement agreed to and adopted by an incorporated city, which meets the minimum eligibility criteria as set forth in this policy, following the filing of a formal application for tax abatement from the County. As prescribed by Section 312.206 of the Tax Code, the Commissioners Court may approve participation with a municipality in a tax abatement agreement no later than the 90th day after the date the municipal agreement is executed. Further it is the intent of Tarrant County that the County will not approve nor join an abatement agreement that provides one Tarrant County city a competitive advantage over another Tarrant County city seeking the same project or encourages an applicant to move from one Tarrant County city to another, unless such agreement is agreeable to both such incorporated cities and both parties have indicated their approval in writing to Tarrant County.

In the case where the property is located within a municipality's extraterritorial jurisdiction, the municipality shall be the initiating taxing entity unless expressly deferred to the County. For those areas within Tarrant County that are not located within the boundaries of an incorporated municipality and a municipality has deferred to the County or in unincorporated areas not located in a municipality's extraterritorial jurisdiction, the guidelines and criteria contained in this policy will be applied by the Commissioners Court when considering the establishment of a reinvestment zone and the adoption of an abatement agreement.

#### II. DEFINITIONS

- (a) "Abatement" means the full or partial exemption from ad valorem taxes of certain real and/or personal property in a reinvestment zone designated for economic development purposes.

- (b) **"Eligible Jurisdiction"** means Tarrant County and any municipality, school district, college district, or other entity, which is located in Tarrant County, that levies ad valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone.
- (c) **"Agreement"** means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purposes of tax abatement.
- (d) **"Base Year Value"** means the assessed value of the applicant's real and personal property located in a designated reinvestment zone on January 1 of the year of the execution of the agreement, plus the agreed upon value of real and personal property improvements made after January 1, but before the execution of the agreement.
- (e) **"Economic Life"** means the number of years a property improvement is expected to be in service in a facility.
- (f) **"Deferred Maintenance"** means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (g) **"Disadvantaged Business Enterprise (DBE)"** means:
  - (1) a corporation formed for the purpose of making a profit and at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially or economically disadvantaged because of their identification as members of certain groups that have been subject to racial or ethnic prejudice or cultural bias without regard to their qualities as individuals or capabilities as a business, and whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. "DBE" includes the State of Texas definition of historically underutilized businesses (HUBs) as defined in Texas Government Code 407.101 and as it may be updated.
  - (2) a sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively by one or more persons described in paragraph (1);
  - (3) a partnership that is formed for the purpose of making a profit in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by paragraph (1), and in which minority or women partners have proportionate interest in the control, operation, and management of the partnership affairs.

- (h) **"Expansion"** means the addition of buildings, structures, fixed machinery and equipment, and fixed personal property for the purposes of increasing production capacity.
- (i) **"Facility"** means property improvements completed or in the process of construction which together comprise an integral whole.
- (j) **"Fixed Machinery and Equipment and/or Personal Property"** means tangible machinery, equipment, or personal property that is securely placed or fastened and stationary within a building or structure, or which is movable but remains at and is used solely at the project site.
- (k) **"Manufacturing Facility"** means buildings and structures, including fixed machinery and equipment, and fixed personal property, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- (l) **"Modernization"** means the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation, and extends the economic life of the facility. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery and equipment, and fixed personal property. It shall not be for the purpose of reconditioning, refurbishing, repairing, or completion of deferred maintenance.
- (m) **"New Facility"** means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- (n) **"Other Basic Industry"** means buildings and structures including fixed machinery and equipment, and fixed personal property not elsewhere described, used or to be used for the production of products or services which primarily serve a market outside Tarrant County [or the Fort Worth Consolidated Metropolitan Statistical Area] and result in the creation of new permanent jobs and bring new wealth in to Tarrant County.
- (o) **"Regional Distribution Center Facility"** means building and structures, including fixed machinery and equipment, and fixed personal property, used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility operator.
- (p) **"Non-Manufacturing Facilities"** means buildings and structures, used to service and/or house individuals on a permanent or temporary basis.
- (q) **"Regional Service Facility"** means building and structures, including fixed machinery and equipment, and fixed personal property, used or to be used to service goods.

- (r) "Reinvestment Zone" is an area designated as such for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code.
- (s) "Regional Entertainment Facility" means buildings and structures, including machinery and equipment, used or to be used to provide entertainment through the admission of the general public where the majority of the users reside at least 100 miles from its location in the County.
- (t) "Regional Retail Facility" means buildings and structures including fixed machinery and equipment used or to be used to provide retail services from which a large portion of the revenues generated by the activity at the facility are derived from users outside the County.
- (u) "Research Facility" means building and structures, including fixed machinery and equipment, and fixed personal property, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

### **III. ABATEMENT AUTHORIZED**

- (a) **Authorized Facility.** A facility may be eligible for abatement if it is a Manufacturing Facility, a Research Facility, a Regional Distribution Center Facility, A Regional Service Facility, a Regional Entertainment Facility, Regional Retail Facility; a Non-Manufacturing Facility, or Other Basic Industry as defined. The economic life of a facility and any improvements must exceed the life of the abatement agreement.
- (b) **Creation of New Value.** Abatement may be only granted for the additional value of eligible property improvements made subsequent to and listed in an abatement agreement between the County and the property owner and lessee, subject to such limitations as Commissioners Court may require.
- (c) **New and Existing Facilities.** Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.
- (d) **Eligible Property.** Abatement may be extended to the value above the Base Year Value of buildings, structures, fixed machinery and equipment, fixed personal property, and site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility.
- (e) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for abatement: land; inventories; supplies; tools; furnishings, and other forms of movable personal property; vehicles; vessels; private aircraft; deferred maintenance investments; property to be rented or leased except as provided in Section 3 (f); also, any property included in the calculation of base year value as defined.

- (f) **Owned/Leased Facilities.** If a leased facility is granted abatement the agreement shall be executed with the lessor and the lessee.
- (g) **Value and Term of Abatement.** Abatement shall be granted effective with the execution of the agreement. The value of the abatement will be determined based on the merits of the project, including, but not limited to, total capital investment value and added employment. Up to one hundred percent of the value of new eligible properties may be abated for a total term of abatement not to exceed ten years. However, a project must provide an extraordinary economic benefit to the County to be considered for a one hundred percent abatement.
- (h) **Economic Qualification.** In order to be eligible for designation as a County reinvestment zone and/or receive County tax abatement, the planned improvement:
- (1) for new businesses, must be reasonably expected to produce a minimum added value of Five Million Dollars (\$5,000,000) in real and personal property to Tarrant County and create and sustain a minimum of 25 new full-time jobs.
  - (2) for expansions or modernizations of existing businesses, must be reasonably expected to produce a minimum added value of Three Million Dollars (\$3,000,000) in real and personal property improvements to Tarrant County, and sustain existing employment levels.
  - (3) must not be expected to solely or primarily have the effect of transferring employment from one part of Tarrant County to another without a majority vote of approval from the Commissioners Court.
  - (4) must be necessary for expansion and/or modernization because the capacity cannot be provided efficiently utilizing existing improved property when reasonable allowance is made for necessary improvements.
  - (5) the above investment and employment minimums may be waived at the discretion of the Commissioners Court for projects located in Federal or State designated Enterprise Zones.
- (i) **Additional Criteria For Abatement.** To be eligible for abatement, the project must be expected to meet the specific goals and requirements as noted below. If a company is unable to meet the minimum requirements of this section, a variance must be requested with a detailed explanation as to the circumstances that preclude the company from meeting the minimum requirements.
- (1) **Use of DBE and Tarrant County Businesses.** The project must provide for the utilization of Disadvantaged Business Enterprises for a minimum of 15% of the total costs for construction contracts and annual supply and service contracts.

Additionally, the project must provide for the utilization of Tarrant County businesses for a minimum of 25% of the total costs for construction contracts and annual supply and services contracts.

- (2) **Tarrant County Employment.** The company must hire Tarrant County residents for a minimum of 25% of the new full time jobs to be created by the project. Residents, for the purpose of this policy, are those employees who reside in Tarrant County, whether through relocation or existing residency.
  - (3) **Environmental Impacts.** Environmental impact information must be provided, noting any anticipated impacts of the project on the environment, including, but not limited to, water quality, storm water and runoff, floodplain and wetlands, solid waste disposal, noise levels, and air quality. Additionally, the company must provide a written company policy on air quality mitigation, the company's plan for participation in the region's Ozone Action Program, and a report of employer assistance in encouraging alternative commute programs and employee trip reductions. For companies new to the region, the above policies and plan must be completed and presented within the first year of the abatement.
  - (4) **Employee Benefits.** The company must offer a health benefit plan to its full-time employees at a rate that is reasonable to the majority of its employees and which allows access to the plan by the employees' dependents. For additional consideration, the company may provide information on other employee benefits provided, such as retirement/pension programs and subsidies for education, job-training, transportation assistance and child/elderly care.
- (j) **Taxability.** From the execution of the abatement to the end of the agreement period taxes shall be payable as follows:
- (1) The value of ineligible property as provided in Section III (e) shall be fully taxable;
  - (2) The base year value of existing eligible property shall be fully taxable, as well as the value of any existing personal property currently on the tax rolls in Tarrant County that is either moved to a new abated location or is replaced due to modernization or expansion.
  - (3) The additional value of new eligible property shall be taxable in the manner and for the period provided for in the abatement agreement, subject to the terms described in Section III (g); and
  - (4) The additional value of new eligible property shall be fully taxable at the end of the abatement period.



#### **IV. APPLICATION**

- (a) Any present or potential owner of taxable property in Tarrant County may request the creation of a reinvestment zone and/or tax abatement by filing a written request with the County Judge.**
- (b) The application shall consist of a completed application form including, but not limited to: a general description of the new improvements to be undertaken; a descriptive list of the improvements for which an abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a map and property description; a time schedule for undertaking and completing the proposed improvements; employment and contract information; the location of existing company locations in Tarrant County and the surrounding counties and the expected number of transferring employees; details of the environmental impacts of the project, and employee benefit information. In the case of modernization a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The County may require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors pertaining to the applicant, to be attached to the application.**
- (c) All applications for creation of reinvestment zones or abatements shall incorporate a feasibility study estimating the economic effect of the proposed reinvestment zone and tax abatement on Tarrant County, other eligible participating jurisdictions, and the applicant.**
- (d) Upon receipt of a completed application for creation of a reinvestment zone, the County Judge shall notify in writing and provide a copy of the application to the presiding officer of the governing body of each eligible jurisdiction.**
- (e) Upon receipt of a completed application and/or request to participate with a municipality in an abatement agreement, Tarrant County Administrator's Office must review and provide recommendation to the Commissioners Court within 30 days and before the public hearing.**
- (f) The County shall not establish a reinvestment zone, nor participate in an abatement, if it finds that the application for County reinvestment zone/tax abatement was filed after the commencement of construction, alteration, or installation of improvements related to the proposed modernization, expansion or new facility.**
- (g) Variance. Request for variance from the provisions of this policy must be made in written form to the County Judge and submitted with the application for abatement, provided, however, the total duration of an abatement shall in no instance exceed ten years. Such request shall include a complete description of the circumstances explaining why the applicant should be granted a variance. Request for variance must**

be approved by a majority vote of the Commissioners Court.

**V. PUBLIC HEARINGS AND APPROVAL**

- (a) For projects in unincorporated Tarrant County, the Commissioners Court may not adopt a resolution designating a County reinvestment zone until it has held a public hearing at which interested persons are entitled to speak and present evidence for or against the designation. Notice of the hearing shall be clearly identified on the Commissioners Court agenda at least 30 days prior to the hearing. The presiding officers of eligible jurisdictions shall be notified in writing at least 15 days prior to the hearing.
- (b) Prior to entering into a tax abatement agreement the Commissioners Court may, at its option, hold a public hearing at which interested persons shall be entitled to speak and present written materials for or against the approval of the tax abatement agreement.
- (c) In order to enter into a tax abatement agreement, the Commissioners Court must find that the terms of the proposed agreement meet these Guidelines and Criteria and that:
  - (1) there will be no substantial adverse affect on the provision of the jurisdiction's service or tax base: and
  - (2) the planned use of the property will not constitute a hazard to public safety, health or morals.
- (d) Any application requesting a variance under Section IV (g) shall be approved by a majority vote of the Commissioners Court. No application which deviates from the requirements of these Guidelines and Criteria shall be approved unless accompanied by a request for variance as provided under Section IV (g).

**VI. AGREEMENT**

- (a) After approval the County shall formally pass a resolution and execute an agreement with the owner of the facility and lessee as required. The Court Order shall include:
  - (1) estimated value of real and personal property to be abated and the base year value;
  - (2) percent of value to be abated each year as provided in Section III (g);
  - (3) the commencement date and the termination date of abatement;
  - (4) the proposed use of the facility; nature of construction, time schedule, map, property description and improvement list as provide in Section IV (b);

- (5) contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections III (a), III (e), III (g) VII, VIII, and IX, or other provisions that may be required for uniformity or by state law, and;
- (6) a statement of the facility owner's policy regarding Disadvantaged Business Enterprises (DBEs), and the estimated dollar amount and percentage of total contracts to be awarded to DBEs for construction, professional services, purchases of equipment and supplies and other services required for the abated improvements;
- (7) amount of investment and average number of jobs involved; and
- (8) an assessment of the environmental impacts of the project, including a statement of the owner's policy addressing regional air quality and information on the use of alternative fuels in fleet vehicles.
- (9) a statement indicating the provision of a health care benefit plan for employees and dependents.

Such agreement shall normally be executed within 60 days after the applicant has forwarded all necessary information and documentation to the County.

- (b) Participation in tax abatement agreements with municipalities requires additional information to be included in the Court Order approving the agreement, as follows:
  - (1) a copy of the agreement between the applicant and municipality shall be attached and made apart of the Court Order for all purposes;
  - (2) authorization for the County Judge to execute a signatory page on behalf of the Commissioners Court which shall be attached and made part of the original agreement.

## **VII. RECAPTURE**

Commissioners Court reserves the right to review compliance for full or partial recapture in the event that the applicant fails to perform in "good faith." If a project is not completed as specified in the tax abatement agreement, the County has the right to cancel the abatement agreement and abated taxes shall become due to the County and other affected taxing units as provided by law. If any of the provisions contained in the tax abatement agreement, i.e., employment, amount of investment, etc., are not met, the County shall have the right to reduce or cancel the abatement agreement. If a project granted a tax abatement ceases to operate or is no longer in conformance with the tax abatement agreement, the agreement shall not be in

effect for the period of time during which the project is not operating or is not in conformance.

### **VIII. ADMINISTRATION**

- (a) **The Chief Appraiser of the County shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving abatement shall furnish the assessor with such information as may be necessary for the abatement. Once value has been established, the chief Appraiser shall notify the affected jurisdictions which levies taxes of the amount of the assessment.**
  
- (b) **The agreement shall stipulate that employees and/or designated representatives of the County will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.**
  
- (c) **Upon completion of construction the County and/or the jurisdiction creating the reinvestment zone shall annually (or at such other times as deemed appropriate by the Commissioners Court) evaluate each facility receiving abatement to ensure compliance with the agreement and report possible violations to the contract and agreement to the Commissioners Court and the District Attorney. On or before April 30th of every year during the life of the abatement agreement, the company or individual receiving the abatement shall complete and file a Tax Abatement Evaluation Report, along with other required written documentation, detailing and certifying the abatement recipient's compliance with the terms of the abatement agreement. Failure to provide information requested in the compliance evaluation by the prescribed deadline may result in taxes abated in the prior year being due and payable. The company or individual receiving a tax abatement shall provide information to the County for the evaluation which shall include, but not be limited to, the following:**
  - (1) **the number and dollar amounts of all construction contracts and subcontracts awarded on the project;**
  
  - (2) **the total number of employees of the company, their gross salaries, and the number of employees residing in Tarrant County and their gross salaries, reported in job classifications appropriate to the employee;**
  
  - (3) **the gross dollars spent on supplier and professional service contracts, indicating the amounts by contract awarded and performed by Tarrant County business and individuals;**

- (4) the dollar amount of contracts awarded to Disadvantaged Business Enterprises;
- (5) detail of actions taken to mitigate any adverse environmental impacts of the project, if applicable; and
- (6) should the dollars, percentages, or actions not meet the original or modified requirements of the abatement agreement, a statement shall be provided explaining the reason for the failure to meet the requirements and a recommended course of rectification.

#### **IX. ASSIGNMENT**

Tax abatement agreements may be assigned to a new owner or lessee of the facility with the written consent of the Commissioners Court, which consent shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the agreement. Any assignment of a tax abatement agreement shall be to an entity that contemplates the same improvements or repairs to the property, except to the extent such improvements or repairs have been completed. No assignment shall be approved if the assignor or the assignee are indebted to the County for ad valorem taxes or other obligations.

#### **X. SUNSET PROVISION**

These Guidelines and Criteria are effective on January 1 of the year following the date of their adoption and will remain in force for two years, at which time all reinvestment zones and tax abatement contracts created pursuant to its provisions will be reviewed by the County to determine whether the goals have been achieved. Based on that review, the guidelines and Criteria will be modified, renewed or eliminated. These Guidelines and Criteria may be amended by Commissioners Court at any time during their effective period.

**EXHIBIT "F"**

**FORM OF CONSENT TO COLLATERAL ASSIGNMENT**

**CONSENT TO ASSIGNMENT  
FOR SECURITY PURPOSES OF  
TAX ABATEMENT AGREEMENT  
BETWEEN TARRANT COUNTY AND**

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This **CONSENT TO ASSIGNMENT FOR SECURITY PURPOSES OF TAX ABATEMENT AGREEMENT** ("**Consent**") is entered into by and between the **TARRANT COUNTY, TEXAS** ("**County**"); \_\_\_\_\_ ("**Owner**"), a \_\_\_\_\_; and \_\_\_\_\_ ("**Lender**"), a \_\_\_\_\_.

**RECITALS**

The County, Owner and Lender hereby agree that the following statements are true and correct and constitute the basis upon which the parties have entered into this Consent:

A. The County and Owner previously entered into that certain Tax Abatement Agreement, dated as of \_\_\_\_\_, 2019 (the "**Agreement**") pursuant to which the County agreed to abate a percentage of Owner's ad valorem real and personal property taxes in return for Owner's construction of \_\_\_\_\_, as more specifically outlined in the Agreement (the "**Project Improvements**"). The Agreement is a public document on file in the County's offices.

B. Section VIII of the Agreement allows Owner to assign its rights and obligations under the Agreement to a financial institution or other lender for purposes of granting a security interest in the Land and/or Project Improvements without the approval of the Commissioners' Court, provided that Owner and the financial institution or other lender first execute a written agreement with the County governing the rights and obligations of the County, Owner, and the financial institution or other lender with respect to such security interest.

C. Owner wishes to obtain a loan from Lender in order to [*state reason for loan*] (the "**Loan**"). As security for the Loan, certain agreements between Owner and Lender governing the Loan and dated \_\_\_\_\_, including, but not limited to, that certain Loan Agreement and [*list other related documents*] (collectively, the "**Loan Documents**") require that Owner assign, transfer and convey to Lender all of Owner's rights, interest in and to the Agreement until such time as Owner has fully satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender's security interest in the Agreement (the "**Assignment**").

D. The County is willing to consent to this Assignment specifically in accordance with the terms and conditions of this Consent.

## AGREEMENT

1. The County, Owner and Lender hereby agree that the recitals set forth above are true and correct and form the basis upon which the County has entered into this Consent.
2. The County hereby consents to the Assignment at the request of Owner and Lender solely for the purpose of Lender's securing the Loan pursuant to and in accordance with the Loan Documents. Notwithstanding such consent, the County does not adopt, ratify or approve any of the particular provisions of the Loan Documents and, unless and to the extent specifically acknowledged by the County in this Consent, does not grant any right or privilege to Lender or any assignee or successor in interest thereto that is different from or more extensive than any right or privilege granted to Owner under the Agreement.
3. In the event that the County is required by the Agreement to provide any kind of written notice to Owner, including notice of breach or default by Owner, the County shall also provide a copy of such written notice to Lender, addressed to the following, or such other party or address as Lender designates in writing, by certified mail, postage prepaid, or by hand delivery:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other address(es) as Lender may advise County from time to time.

4. If Owner fails to cure any default under the Agreement, the County agrees that Lender, its agents or designees shall have an additional thirty (30) calendar days or such greater time as may specifically be provided under the Agreement to perform any of the obligations or requirements of Owner imposed by the Agreement and that the County will accept Lender's performance of the same as if Owner had performed such obligations or requirements; provided, however, that in the event such default cannot be cured within such time, Lender, its agents or designees, shall have such additional time as may be reasonably necessary if within such time period Lender has commenced and is diligently pursuing the remedies to cure such default, including, without limitation, such time as may be required for lender to gain possession of Owner's interest in the Owner property pursuant to the terms of the Loan Documents.
5. If at any time Lender wishes to exercise any foreclosure rights under the Loan Documents, before taking any foreclosure action Lender shall first provide written notice to the County of such intent (a "Notice"). Lender shall copy Owner on the Notice and deliver such Notice to Owner by both first class and certified mail return receipt concurrent with its transmittal of the Notice to the County and represent in the Notice that it has done so. Notwithstanding anything to the contrary herein, unless Lender enters into a written agreement with the County to assume and be bound by all covenants and obligations of Owner under the Agreement, Lender understands and agrees that the County shall not have any obligation to Lender under the Agreement. In addition, Lender understands and agrees that if Lender wishes



to sell all or any portion of the Land or Project Improvements to a third party following Lender's exercise of any foreclosure rights under the Loan Documents, the County shall not owe any obligation to such third party pursuant to the Agreement unless Lender and such third party comply with the procedure for assignment set forth in Section VIII of the Agreement, including the obligation of such third party to enter into a written agreement with the County to assume and be bound by all covenants and obligations of Owner under the Agreement.

6. In the event of any conflict between this Consent and the Agreement or any of the Loan Documents, this Consent shall control. In the event of any conflict between this Consent and any of the Loan Documents, this Consent shall control. In the event of any conflict between the Agreement and any of the Loan Documents, the Agreement shall control.

7. This Consent may not be amended or modified except by a written agreement executed by all of the parties hereto. Notwithstanding anything to the contrary in the Loan Documents, an amendment to any of the Loan Documents shall not constitute an amendment to this Consent or the Agreement.

8. Once Owner has fully satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender's security interest in the Agreement and such security interest is released, Lender shall provide written notice to the County that Lender has released such security interest, in which case this Consent shall automatically terminate.

9. This Consent shall be construed in accordance with the laws of the State of Texas. Venue for any action arising under the provisions of this Consent shall lie in state courts located in Tarrant County, Texas or in the United States District Court for the Northern District of Texas, Fort Worth Division.

10. Capitalized terms used but not specifically defined in this Consent shall have the meanings ascribed to them in the Agreement.

11. This written instrument contains the entire understanding and agreement between the County, Owner and Lender as to the matters contained herein. Any prior or contemporaneous oral or written agreement concerning such matters is hereby declared null and void to the extent in conflict with this Consent.

12. This Consent shall be effective on the later date as of which all parties have executed it. This Consent may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Consent, or any counterpart hereof, shall not relieve the other signatories from their obligations from their obligations hereunder.

**EXECUTED** as of the last date indicated below:

[SIGNATURES IMMEDIATELY FOLLOW ON NEXT PAGE]

**WINNER, LLC,**  
a limited liability company:

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

**TARRANT County, TEXAS**

By: \_\_\_\_\_

B. Glen Whitley

County Judge

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM\*:

\_\_\_\_\_  
Deputy County Clerk

\_\_\_\_\_  
Asst. Criminal District Attorney

*\*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.*

**EXHIBIT "G"**

**FORM OF TAX ABATEMENT EVALUATION REPORT**



# Tarrant County Annual Tax Abatement Evaluation Report

Reporting Period: January 1, 20\_\_ to December 31, 20\_\_

## I. PROJECT INFORMATION

Property Owner: "[Response]"

Company/Project Name: "[Response]"

Project Contact: "[Response]" Title: "[Response]"

Telephone: "[Response]" Fax: "[Response]" E-mail: "[Response]"

Property Owner Address: "[Response]"

Company Address (if different): "[Response]"

Address of Property Subject to Abatement: "[Response]"

TAD Tax Account Number(s) of Property Subject to Abatement:

Has construction/installation of planned improvements commenced? Yes  No

If Yes, on what date? "[Response]"

If No, please explain. "[Response]"

Has construction/installation of planned improvements been completed? Yes  No

If Yes, on what date? "[Response]"

If No, please estimate completion date *and* attach a current time schedule for the project:

"[Response]"

Date on which *Certificate of Occupancy* from City was received: "[Response]"

## II. INVESTMENT / VALUATION

### REAL PROPERTY

Beginning Year Appraised Value – Land: \$"[Response]"

Beginning Year Appraised Value – Improvements: \$"[Response]"

Construction Costs Incurred This Reporting Period: \$"[Response]"

Appraised Value of Improvements Added This Period: \$"[Response]"

### PERSONAL PROPERTY

Beginning Year Appraised Value – Machinery, Equipment, Other Business Personal Property: \$ "[Response]"

New M&E, and other Business Personal Property Value Added During Period: \$"[Response]"

Beginning Year Appraised Value Inventory and Supplies: \$"[Response]"

New Inventory Value Added This Period: \$"[Response]"

Percentage/Amount of Inventory Subject to Exemption (i.e., Freeport/Foreign Trade Zone): "[Response]" %

### III. JOB CREATION / RETENTION

Total Current Employees at End of Reporting Period: Full-time "[Response]" Part-time "[Response]"

Number of Current Employees Residing in Tarrant County: "[Response]"

Number of New Employees Added During Reporting Period: Full-time "[Response]" Part-time "[Response]"

Number of New Employees Added During Tax Abatement Term: Full-time "[Response]" Part-time "[Response]"

Current Workforce Diversity Percentages:

Gender: Male "[Response]" Female "[Response]"

Ethnicity: Caucasian "[Response]" Asian "[Response]" African American "[Response]"

Hispanic "[Response]" Other "[Response]"

Annual Payroll During Reporting Period: \$"[Response]"

Average Salary During Reporting Period: \$"[Response]"

### IV. CONSTRUCTION & SUPPLY/SERVICES EXPENDITURES

CONSTRUCTION:

Construction Dollars Spent This Reporting Period: \$"[Response]"

Number of Construction Related Jobs This Period: "[Response]"

Total Construction Payroll This Period: \$"[Response]"

CONSTRUCTION SPENDING WITH TARRANT COUNTY & DISADVANTAGED BUSINESS ENTERPRISES (DBE):

Total Dollars of Construction Spending with Tarrant County Contractors: \$"[Response]"

Percent of Total Construction Spending with Tarrant County Contractors: "[Response]" %

Total Dollars of Construction Spending with DBE Contractors: \$"[Response]"

Percent of Total Construction Spending with DBE Contractors: "[Response]" %

ANNUAL SUPPLY/SERVICES EXPENSES:

Total Number Supply/Services Contracts This Period: "[Response]"

Total Dollars Spent on Supply/Services Expenditures This Period: \$"[Response]"

Total Dollars of Supply/Services Expenditures with Tarrant County Businesses: "[Response]" %

Percent of Supply/Services Expenditures with Tarrant County Businesses: "[Response]" %

Total Dollars of Supply/Services Expenditures with DBE Businesses: "[Response]" %

Percent of Supply/Services Expenditures with to DBE Businesses: "[Response]" %

**V. EMPLOYEE AND ENVIRONMENTAL FACTORS**

Company Sponsored Health Care Benefits Are Available To (check all that apply):

Full-time  Part-time  No Employees

Number of Employees Enrolled in Health Care Plan at End of Period: "[Response]"

Name of Health Care/Insurance Provider: "[Response]"

Average Percentage of Monthly Health Insurance Premiums Paid by Company: "[Response]" %

Average Monthly Employee Cost for Health Care Benefits: Individual: \$"[Response]" Family: \$"[Response]"

List Other Company Benefits Provided (life insurance, pension plan, childcare, etc.): "[Response]"

Does Your Company Encourage, Facilitate, and/or Provide Subsidies/Initiatives for Alternative Commute Options (i.e., bus, vanpools, carpools, telecommuting, etc.)? Yes  No

If Yes, Please Describe: "[Response]"

Describe the Number, Type, and Fuels Used (Gas, Diesel, LPG, Electric, etc.) for Fleet Vehicles On Site:

**VI. ADDITIONAL INFORMATION (TO BE ATTACHED)**

- Copy of Personal Property List Rendered to the Tarrant Appraisal District
- Brief Narrative Highlighting The Progress And Status of the Project
- If Applicable, a Statement Addressing Any Failure to Meet Requirements of the Tax Abatement Agreement and a Plan for Recertification

**VII. CERTIFICATION**

I certify that, to the best of my knowledge and belief, the information and attachments provided herein are true and accurate and in compliance with the terms of the Tax Abatement Agreement with Tarrant County.

\_\_\_\_\_  
Name of Certifying Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Signature of Certifying Officer

\_\_\_\_\_  
Date

In order to remain eligible for the abatement of Tarrant County and/or Tarrant County Hospital District property taxes, you must return the completed report by April 30<sup>th</sup> to:

**Lisa McMillan**

**Economic Development Coordinator  
Tarrant County Administrator's Office  
100 E. Weatherford Street, Suite 404  
Fort Worth, Texas 76196-0609**

**You may also forward an electronic copy of the completed report to:**

**[lmcmillan@tarrantcounty.com](mailto:lmcmillan@tarrantcounty.com)**

**Please note that if you do submit this form electronically, you must also submit an original hard copy of the report to the above stated physical address for proper filing and review.**

**For assistance call: (817) 884-2643**



## RESOLUTION

### PARTICIPATION IN TAX ABATEMENT FOR WINNER LLC, FORT WORTH

**WHEREAS**, Winner LLC, duly authorized to do business in the State of Texas, and duly acting by and through their authorized officers, (hereafter referred to collectively as "Owner"), plans to construct and equip a Data Center on real property under its ownership, more particularly described in the Abatement Agreement attached hereto and incorporated herein by reference ("Real Property"), located in the City of Fort Worth; and

**WHEREAS**, the Real Property is located within Tarrant County (the "County"), a political subdivision of the State of Texas, which Real Property is located within the City of Fort Worth; and

**WHEREAS**, the Real Property and all improvements and tangible personal property thereon, whether now existing or hereinafter to be constructed or installed, are subject to ad valorem taxation by the City of Fort Worth and the County; and

**WHEREAS**, the Real Property and all improvements thereon are located in Reinvestment Zone No. 99 in the City of Fort Worth, being a reinvestment zone for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code, as amended (the "Code"); and

**WHEREAS**, on the City Council of the City of Fort Worth has approved and executed a tax abatement agreement as to certain improvements thereon; and

**WHEREAS**, the Tax Abatement Agreements (the "Agreements") between Tarrant County and Owner, provide for the construction and operation of a minimum 100,000 square foot Data Center facility and installation of certain improvements at an estimated investment of over \$100,000,000, to be completed and equipped by December 31, 2021; and

**WHEREAS**, the Agreements with the Owner are conditioned upon specific real and personal property improvements, continued operation of the facility and the addition of new jobs; and

**WHEREAS**, the Commissioners Court has been requested by the Owner to take the steps required pursuant to the Code to permit tax abatement with respect to that portion of the Real Property and the improvements thereon which are subject to the taxing jurisdiction of the County, and has further requested that the County enter in the Agreements; and

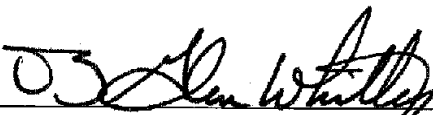


WHEREAS, the County has approved the Tarrant County Tax Abatement Policy Statement Guidelines and Criteria for granting tax abatement in reinvestment zones in Tarrant County;


NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Commissioners Court of Tarrant County, Texas:

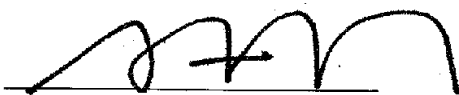
1. That all recitals set forth in the preamble are hereby found to be true and correct;
2. That the Commissioners Court shall have prudently reviewed each tax abatement agreement approved by a municipality having taxing jurisdiction with respect to property located in the County and within a reinvestment zone designated by such municipality; and according to the adopted guidelines and criteria for tax abatement of the County, shall prudently review and consider each proposed County tax abatement agreement providing participation in tax abatement with a municipality; and shall, solely at its discretion, approve those tax abatement agreements that it finds meet all constitutional and statutory criteria and requirements, and which it finds to be in the best interest of the taxpayers and citizens of the County; and
3. That the Commissioners Court hereby finds that the terms and conditions of the Agreements substantially meet its guidelines and criteria; that the Agreements for the abatement of certain Tarrant County and Tarrant County Hospital District taxes be and are hereby approved; that the County and its Commissioners Court hereby agree to enter into the Agreements as a party thereto; and the County Judge of the County be and is hereby authorized and directed to execute and deliver said Agreements on behalf of the County and its Commissioners Court, substantially in the form attached hereto, and carry out the terms thereof at the appropriate time(s).

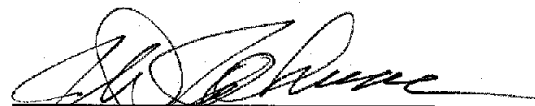
PASSED AND APPROVED, IN OPEN COURT, this 30<sup>th</sup> day of April, 2019, through Court Order No. 130032.

  
B. Glen Whitley, County Judge

Absent  
Roy C. Brooks  
Commissioner, Precinct 1

  
Devan Allen  
Commissioner, Precinct 2

  
Gary Fickes  
Commissioner, Precinct 3

  
J.D. Johnson  
Commissioner, Precinct 4

THE STATE OF TEXAS §

Tax Abatement Agreement

COUNTY OF TARRANT §

This Agreement is executed by and between **WINNER LLC**, a Delaware limited liability company (hereafter referred to as "**Owner**"), and **TARRANT COUNTY, TEXAS**, acting by and through its County Judge or his designee, (hereafter referred to as "**County**").

WITNESSETH:

- WHEREAS, the Tarrant County Commissioners Court has resolved that the County may elect to participate in tax abatement; and
- WHEREAS, the Commissioners Court, in accordance with law, has adopted a Policy Statement for Tax Abatement, herein contained as **Exhibit "E"**, which constitutes appropriate guidelines and criteria governing tax abatement agreements to be entered into by the County; and
- WHEREAS, the Land (as hereafter defined) and the Eligible Property (as hereafter defined) are located in Reinvestment Zone No. 99 in the City of Fort Worth, Texas, established by Ordinance No. 23620-03-2019 adopted on March 26, 2019, being a commercial-industrial reinvestment zone for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code, as amended; and
- WHEREAS, the City Council of the City of Fort Worth, Texas ("City") has approved and authorized the execution and delivery of a Tax Abatement Agreement as to the Eligible Property thereon, substantially in the form attached hereto as **Exhibit "B"**; and
- WHEREAS, Owner submitted an application for tax abatement to the County concerning the contemplated improvements to the Land (the "Application for Tax Abatement"), attached hereto and incorporated herein as **Exhibit "D"**; and
- WHEREAS, Owner intends to purchase approximately 33.81 acres of land, said land being located entirely within the Zone and more specifically defined in Section I.O. Contingent on receipt of the tax abatement herein, Owner intends to construct or cause to be constructed and operate or cause to be operated an approximately 100,000 square foot Data Center facility on the Land, with potential additional facilities to be constructed, resulting in an aggregate investment of more than \$50,000,000 in real and business personal property investments; and
- WHEREAS, the Commissioners Court finds that the contemplated use of the Land, the Eligible Property and the terms of this Agreement are consistent with encouraging development of the Zone in accordance with the purposes for its creation and are in compliance with the Policy Statement and other applicable law;

NOW THEREFORE, the County and Owner, for and in consideration of the mutual promises contained herein, do hereby agree, covenant and contract as set forth below:

**I.**  
**Definitions**

- A. "Abatement Term" has the meaning ascribed to it in Section IV.D.
- B. "Added Market Value" is defined as the market value of Eligible Property on the Land above the Base Year Value.
- C. "Affiliate" means all entities, incorporated or otherwise, under common control with, controlled by or controlling Owner. For purposes of this definition, "control" means fifty percent (50%) or more of the ownership determined by either value or vote.
- D. "Base Year Value" is defined as the tax year 2019 taxable value of real and personal property located on the Land in Reinvestment Zone No. 99 on January 1, 2019, as finally determined by the Tarrant Appraisal District.
- E. "City's Zoning Ordinance" means the Zoning Ordinance of the City, being Ordinance No. 13896, as amended, codified as Appendix "A" of the Code of The City of Fort Worth (1986).
- F. "Completion Date" means the date as of which a temporary or permanent certificate of occupancy has been issued by the City for at least 100,000 square feet of space within the Facility Improvement.
- G. "Completion Deadline" means December 31, 2021, subject to all extensions of time allowed by this Agreement.
- H. "Construction Costs" are defined as the aggregate of the following costs expended or caused to be expended by Owner for the Real Property Improvements: actual site development and construction costs, general contractor and subcontractor fees, and the costs of supplies, materials and construction labor; engineering fees; and architectural and design fees; zoning fees; building permit fees; sewer basin fees; water and sewer tap fees; water, wastewater and thoroughfare impact fees; other costs and fees customarily incidental to construction of a commercial project; and insurance and taxes directly related to the construction of the Real Property Improvements. Construction Costs specifically excludes any costs associated with the acquisition of the Land.
- I. "Data Center" means real and personal property consisting of buildings or structures specifically designed or modified to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power and cooling equipment, used primarily to provide, as a service to persons other than the company operating the data center, data and transaction processing services, outsource information technology services and computer equipment colocation services, or, used primarily to provide, to a single user, including the user's affiliates,

customers, lessees, vendors and other persons authorized by the user, data and transaction processing services.

- J. "DBE Companies" are defined as companies who are a Disadvantaged Business Enterprise (DBE), and the term "DBE" shall mean:
- i. a corporation formed for the purpose of making a profit and at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially or economically disadvantaged because of their identification as members of certain groups that have been subject to racial or ethnic prejudice or cultural bias without regard to their qualities as individuals or capabilities as a business, and whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. "DBE" includes the State of Texas definition of historically underutilized businesses (HUBs) as defined in Section 2161.001 of the Texas Government Code, and as it may be amended.
  - ii. a sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively by one or more persons described in J(i) above.
  - iii. a partnership that is formed for the purpose of making a profit in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by J(i) above, and in which minority or women partners have proportionate interest in the control, operation, and management of the partnership affairs.
  - iv. a limited liability company that is formed for the purpose of making a profit in which 51 percent of the assets and interest in the company is owned by one or more persons described by J(i) above.
- K. "Effective Date" has the meaning ascribed to it in Section IV.D.
- L. "Eligible Property" is defined as Real Property Improvements and Personal Property Improvements made for construction and operation of the Facility Improvement as generally described in **Exhibit "C"**, constructed, delivered to, installed or placed on the Land after January 1, 2019 and throughout the Abatement Term, as set forth in this Agreement.
- M. "Facility Improvement" means the improvements to be constructed and completed on the Land after the Effective Date of this Agreement, which must consist of, at a minimum, a data center facility containing at least 100,000 square feet of shell space and at least partially finished out with the equipment and supporting building systems and improvements necessary for Owner's intended use, as generally depicted in **Exhibit "C"**.

- N. "Job" means a job provided to one (1) individual by Owner or an Affiliate on the Land for (i) forty (40) hours per week or (ii) less than forty (40) hours per week if such other measurement is used to define full-time employment by Owner or an Affiliate in accordance with its then-current personnel policies and regulations. For example, if Owner or an Affiliate has a company-wide policy that considers full-time employment to be thirty-five (35) hours per week, a job on the Land provided by Owner or an Affiliate for at least thirty-five (35) hours per week shall be considered a Job for purposes of this Agreement. Outsourced or independent contractor positions shall not be included in this definition.
- O. "Land" means that certain parcel of land located within Tarrant County, Texas and more particularly described in **Exhibit "A"** attached hereto and hereby made a part of this Agreement for all purposes.
- P. "Personal Property Commitment" has the meaning ascribed to it in Section III.B.
- Q. "Personal Property Improvements" are defined as tangible personal property (except inventory or supplies) delivered to, installed or located on the Land for the Facility Improvement after the Effective Date of this Agreement.
- R. "Real Property Improvements" are defined as improvements to the Land, and for purposes of this Agreement shall include structures or fixtures erected or affixed to the Land for the Facility Improvement after the Effective Date of this Agreement.
- S. "Real Property Improvement Commitment" has the meaning ascribed to it in Section III.C.
- T. "Reinvestment Zone No. 99" is defined as the real property located in the City and described by City of Fort Worth Ordinance No. 23620-03-2019.
- U. "Supply and Service Expenditures" are defined as those local discretionary expenditures made by Owner directly for the operation and maintenance of Land and any improvements thereon, excluding utility service costs.
- V. "Tarrant County Companies" are defined as any corporation, partnership, limited liability company or sole proprietorship maintaining an addressed office location within Tarrant County from which such entity conducts all or a substantial part of its business operations within Tarrant County.
- W. "Term" has the meaning ascribed to it in Section IV.D.

## II.

### General Provisions

- A. The Land and Eligible Property are not an improvement project financed by tax increment bonds.