



00#123805

REFERENCE NUMBER

COMMISSIONERS COURT
COMMUNICATION

PAGE 1 OF

238

DATE: 10/25/2016

SUBJECT: CONSIDERATION OF A REQUEST FOR TAX ABATEMENT AND APPROVAL OF TAX ABATEMENT AGREEMENTS BETWEEN TARRANT COUNTY AND WINNER LLC FOR EXPANSION OF THE DATA CENTER PROJECT IN FORT WORTH

COMMISSIONERS COURT ACTION REQUESTED:

It is requested that the Commissioners Court consider a request for tax abatement and approve a Resolution and two (2) Tax Abatement Agreements 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 location of a new data center facilities in the Alliance Gateway Park, 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 Agreements, and authorize the County Judge or his designee to execute the Agreements.

BACKGROUND:

On May 26, 2015, through Court Order #120124, the Commissioners Court approved participation with the City of Fort Worth in tax abatement for Winner LLC, d/b/a Facebook, for the development and operation of a multi-building Data Center off Alliance Gateway at Park Vista Boulevard in north Fort Worth. As approved, the project is comprised of up to three 250,000 square feet facilities with a total investment of \$250,000,000 for each facility. Three (3) separate tax abatement agreements were approved for the Initial Facility, Subsequent Facility A, and Subsequent Facility B. Construction has already commenced on the first two facilities.

Following the initial project approval, Winner LLC purchased approximately 40 acres of additional land adjacent to the original 110 acre site, and now proposes the construction of two (2) additional facilities - Subsequent Facility C and Subsequent Facility D. As with the prior three (3) facilities, total investment at build-out for each of the new facilities is estimated at \$250,000,000, with \$150,000,000 in real property improvements and \$100,000,000 in business personal property improvements, with facility completion no later than December 31, 2030. The company plans to employ a minimum of thirty (30) full-time employees by the end of 2018, and that number could be replicated for each facility added. These positions will be well compensated and health and other benefits will be provided.

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



COMMISSIONERS COURT COMMUNICATION

REFERENCE NUMBER: _____ DATE: 10/25/2016 PAGE 2 OF 238

The City of Fort Worth has approved a one (1) year tax abatement and a Economic Program Agreement for the 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. The County is requested to participate in tax abatement for the two (2) additional facilities at the same terms as the previous agreements approved in 2015, with 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 ten (10) years, subject to minimum investment levels and performance-based criteria.

FISCAL IMPACT:

Total investment for each facility is projected at minimum of \$250,000,000. The actual value that the Tarrant Appraisal District will place on the completed facility and personal property is unknown at this time, but is expected to be well below the actual investment costs due to a short depreciation schedule on the type of business personal property to be installed. The County and Hospital District will abate up to a maximum of sixty percent (60%) and forty percent (40%), respectively, of the added value for a period of ten (10) years, retaining revenue on the unabated portion of new value during the same period. The full value of the facility will be taxable after the abatement period has ended.

Please note: Due to the volume, copies are not being reproduce for distribution. A complete copy may be viewed online in the Court's agenda at the Tarrant County Website or in the Court's County Clerk's Office.



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 additional facilities for a Data Center on real property under its ownership, more particularly described in the Abatement Agreements 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. 90 and Reinvestment Zone No. 90A 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 of a two 250,000 square foot Data Center facilities and installation of certain improvements at an estimated cost of over \$250,000,000 each, to be completed and equipped by December 31, 2030; 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

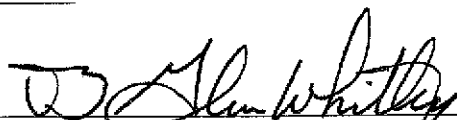
WHEREAS, the Commissioners Court has been requested by the Owner to take the steps required pursuant to the Code to permit tax abatement with respect to that portion of the Real Property and the improvements thereon which are subject to the taxing jurisdiction of the County, and has further requested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

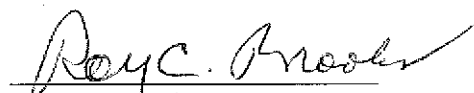
WHEREAS, the County has approved the Tarrant County Tax Abatement Policy Statement Guidelines and Criteria for granting tax abatement in reinvestment zones in Tarrant County;

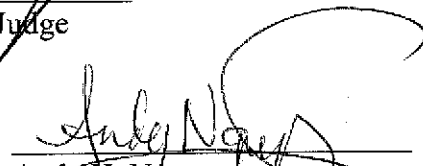
NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Commissioners Court of Tarrant County, Texas:

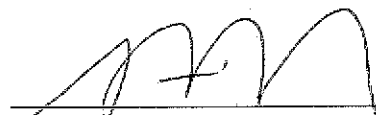
1. That all recitals set forth in the preamble are hereby found to be true and correct;
2. That the Commissioners Court shall have prudently reviewed each tax abatement agreement approved by a municipality having taxing jurisdiction with respect to property located in the County and within a reinvestment 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).

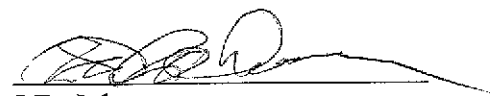
PASSED AND APPROVED, IN OPEN COURT, this 25th day of October, 2016, through Court Order No. 123805.


B. Glen Whitley, County Judge


Roy C. Brooks
Commissioner, Precinct 1


Andy H. Nguyen
Commissioner, Precinct 2


Gary Fickes
Commissioner, Precinct 3


J.D. Johnson
Commissioner, Precinct 4

THE STATE OF TEXAS §

Tax Abatement Agreement
Subsequent Facility D

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. 90 in the City of Fort Worth, Texas, established by Ordinance No. 21757-05-2015 adopted on May 19, 2015 and Reinvestment Zone No. 90A in the City of Fort Worth, Texas, established by Ordinance No. _____ - 2016 adopted on October 18, 2016, being a commercial-industrial reinvestment zone for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code, as amended (Reinvestment Zone No. 90 and Reinvestment Zone No. 90A are sometimes referred to collectively herein as the "Zone"); 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 owns approximately 150 acres of land at the northeast corner of Alliance Gateway and Park Vista Boulevard, 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 and operate an approximately 250,000 square foot Data Center facility on the Land, with potential additional facilities to be constructed, resulting in an aggregate investment of more than \$250,000,000 in real and business personal property investments; and

WHEREAS, following completion of the Initial Facility, Owner contemplates the construction of up to four additional minimum 250,000 square foot facilities on the Land, Subsequent Facility A, Subsequent Facility B, Subsequent Facility C

and Subsequent Facility D, providing an additional investment of more than \$250,000,000 in real and business personal property investments for each facility; 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 2016 taxable value of real and personal property located on the Land in Reinvestment Zone No. 90 and Reinvestment Zone No. 90A on January 1, 2016, 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 Subsequent Facility D.
- G. "Completion Deadline" means June 1, 2030, 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 Subsequent Facility D as generally described in Exhibit "C", constructed, delivered to, installed or placed on the Land after January 1, 2016 and throughout the Abatement Term, as set forth in this Agreement.
- M. "Initial Facility" means the first building to be constructed and completed on the Land consisting of at least 250,000 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, plus any additional land within the Zone acquired by Owner subsequent to the Effective Date for incorporation into the Eligible Property and otherwise allowable under Chapter 312 of the Texas Tax Code.
- 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 Subsequent Facility D 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 Subsequent Facility D 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. 90" is defined as the real property located in the City and described by City of Fort Worth Ordinance No. 21757-05-2015 (substantially in the form included within **Exhibit "B"**).
- U. "Reinvestment Zone No. 90A" is defined as the real property located in the City and described by City of Fort Worth Ordinance No. _____-____-2016 (substantially in the form included within **Exhibit "B"**).
- V. "Subsequent Facility A" means the second facility to be constructed and completed on the Land consisting of at least 250,000 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"**.
- W. "Subsequent Facility B" means the third facility to be constructed and completed on the Land consisting of at least 250,000 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"**.

- X. "Subsequent Facility C" means the fourth facility to be constructed and completed on the Land consisting of at least 250,000 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"**.
- Y. "Subsequent Facility D" means the fifth facility to be constructed and completed on the Land consisting of at least 250,000 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"**.
- Z. "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.
- AA. "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.
- BB. "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 One Hundred Million Dollars (\$100,000,000) ("Personal Property Commitment").
- C. Owner shall expend or cause the expenditure by the Completion Deadline of at least One Hundred Fifty Million (\$150,000,000) 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 thirty (30) Jobs on the Land throughout the Abatement Term. These Jobs are cumulative and include Jobs created for the Initial Facility.
- 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 thirty (30) Jobs, the abatement percentage will be reduced by two percent (2%) for each one (1) Job deficiency, for that year.

(Example: A total of 28 Jobs would be a deficiency of 2 Jobs, which would provide for a 4% 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").

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 Owner's 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 the Zone. 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").

B. 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.

C. 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
c/o Tommy Mann
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, TX 75201

County: Tarrant County

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

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.

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

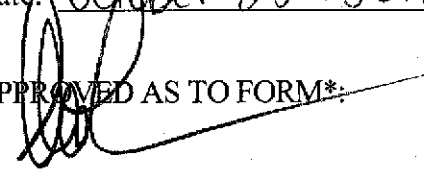
By: 
B. Glen Whitley
County Judge

Date: October 25th, 2016

ATTEST:


Deputy County Clerk

APPROVED AS TO FORM*:


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 _____ §

WINNER LLC
Acknowledgment

County OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of _____, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **WINNER LLC**, and as the _____ 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 _____, 2016.

Notary Public in and for
The State of _____

My Commission Expires

Notary's Printed Name

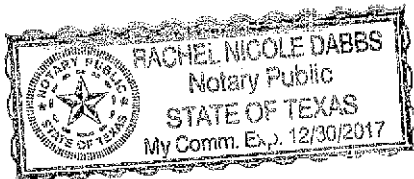
THE STATE OF TEXAS §

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 25th day of October, 2016.



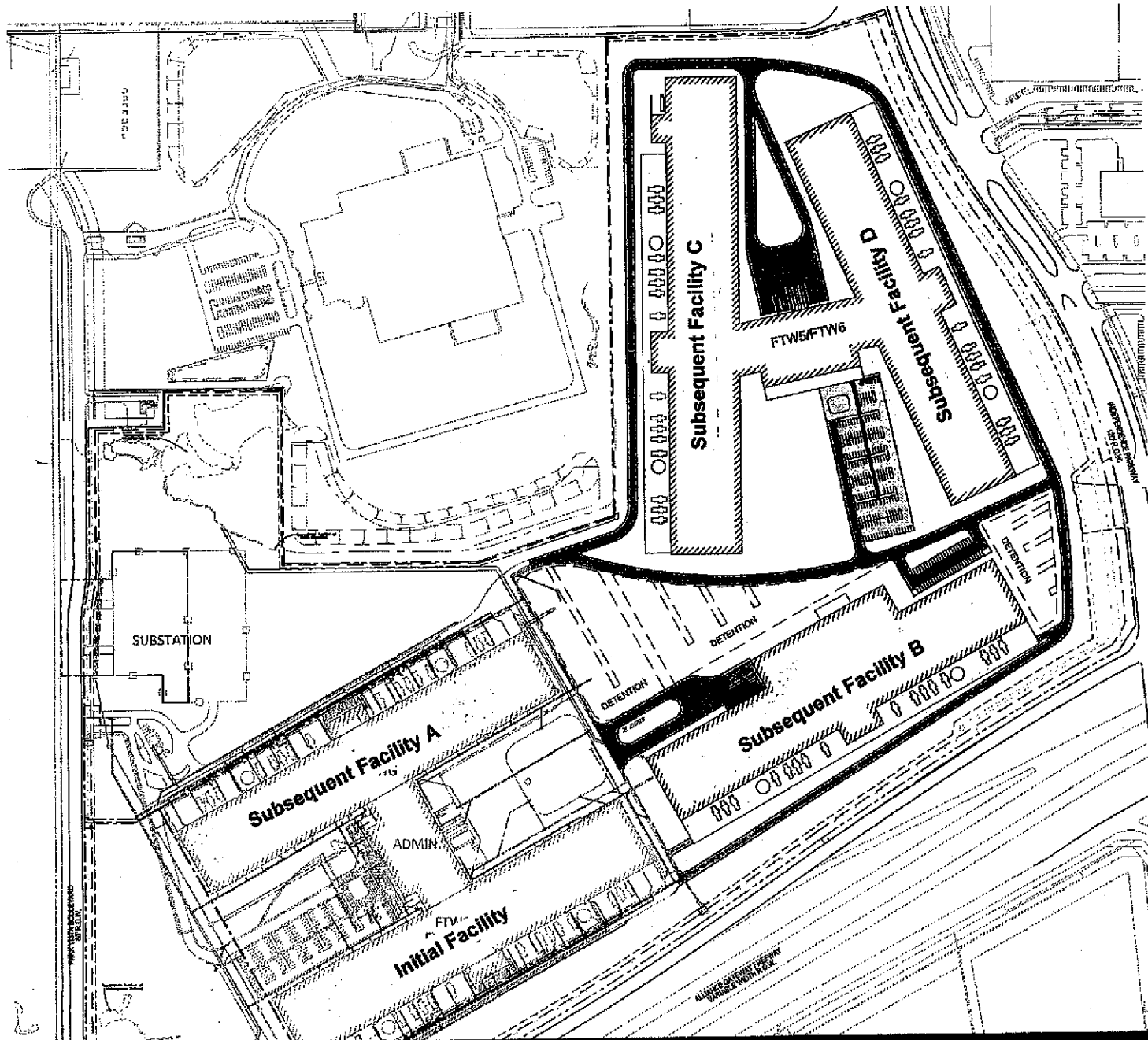
Rachel Nicole Dabbs

Notary Public in and for
The State of Texas




Rachel Nicole Dabbs

My Commission Expires

Notary's Printed Name



LEGEND

-  LIGHT DUTY PAVEMENT
-  HEAVY DUTY PAVEMENT
-  PROPERTY LINE

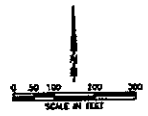


EXHIBIT "A"
DESCRIPTION OF LAND

DESCRIPTION OF 110.71 ACRES

BEING a tract of land situated in the F. Cuella Survey, Abstract Number 267, Tarrant County, Texas and being a portion of two tracts of land describe by deed to AIL Investment, L.P., recorded in Volume 13588, Page 195 (Tracts 12 and 13), County Records, Tarrant County, Texas, being more particularly described by metes and bounds as follows:

BEGINNING at the northeast corner of Lot 10, Block 3, Alliance Gateway North, an addition to the City of Fort Worth recorded in Instrument Number D208290670, in the south line of Lot 4R, Block 3 Alliance Gateway North, and addition to the City of Fort Worth recorded in Instrument Number D209069793, both of said County Records;

THENCE S 89°56'01"E, 368.25 feet;

THENCE S 00°04'42"W, 540.00

feet; **THENCE** S 89°55'36"E,

602.74 feet; **THENCE** N 71°51'00"E,

445.20 feet; **THENCE** N 62°28'25"E,

296.66 feet;

THENCE N 90°00'00"E, 1055.55 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 68.39 feet, through a central angle of 41°14'47", having a radius of 95.00 feet, the long chord which bears S 69°22'37"E, 66.92 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 94.33 feet, through a central angle of 38°19'47", having a radius of 141.00 feet, the long chord which bears S 67°55'07"E, 92.58 feet;

THENCE S 87°05'00"E, 103.97 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 200.88 feet, through a central angle of 05°55'58", having a radius of 1940.00 feet, the long chord which bears S 08°09'47"E, 200.79 feet;

THENCE S 05°15'42"E, 237.77 feet;

THENCE S 33°52'08"W, 95.68 feet to the beginning of a curve to the left;
THENCE with said curve to the left, an arc distance of 143.68 feet, through a central angle of 02°29'57", having a radius of 3294.04 feet, the long chord which bears S 61°40'59"W, 143.67 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 955.90 feet, through a central angle of 04°46'16", having a radius of 11479.16 feet, the long chord which bears S 58°08'59"W, 955.62 feet;

THENCE S 55°45'15"W, 459.78 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 1237.97 feet, through a central angle of 09°18'33", having a radius of 7619.44 feet, the long chord which bears S 60°24'08"W, 1236.61 feet;

THENCE S 65°04'38"W, 195.64 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 392.71 feet, through a central angle of 05°51'36", having a radius of 3839.72 feet, the long chord which bears S 62°07'36"W, 392.54 feet;

THENCE S 59°11'47"W, 152.11

feet; **THENCE** S 89°11'47"W, 80.00

feet; **THENCE** N 36°10'14"W,

86.37 feet;

THENCE N 00°04'17"W, 20.00 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 167.72 feet, through a central angle of 12°38'40", having a radius of 760.00 feet, the long chord which bears N 06°10'12"W, 167.38 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 162.11 feet, through a central angle of 12°33'05", having a radius of 740.00 feet, the long chord which bears N 06°12'59"W, 161.78 feet;

THENCE N 00°03'31"E, 1482.86 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 89.82 feet, through a central angle of $11^{\circ}58'07''$, having a radius of 430.00 feet, the long chord which bears $N 06^{\circ}02'35''E$, 89.66 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 102.36 feet, through a central angle of $11^{\circ}58'07''$, having a radius of 490.00 feet, the long chord which bears $N 06^{\circ}02'35''E$, 102.17 feet;

THENCE $N 00^{\circ}01'34''E$, 425.60 feet;

THENCE $S 89^{\circ}56'45''E$, 232.00 feet;

THENCE $N 00^{\circ}01'18''E$, 115.00 feet to the **Point of Beginning** and containing 4,822,528 square feet or 110.71 acres of land more or less.

DESCRIPTION OF ADDITIONAL 39.407 ACRES

BEING A TRACT OF LAND SITUATED IN THE F. CUELLA SURVEY, ABSTRACT NUMBER 267, TARRANT COUNTY, TEXAS AND BEING ALL OF LOT 5R AND 6, BLOCK 3, ALLIANCE GATEWAY NORTH, AN ADDITION TO THE CITY OF FORT WORTH AS RECORDED IN INSTRUMENT NUMBER D215150766, COUNTY RECORDS. TARRANT COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF SAID LOT 5R, BLOCK 3, THE SOUTHEAST CORNER OF LOT 1, BLOCK 3, ALLIANCE GATEWAY NORTH ADDITION, AN ADDITION TO THE CITY OF FORT WORTH RECORDED IN CABINET X, SLIDE 753, IN THE WEST LINE OF THAT TRACT OF LAND DESCRIBED IN A DEDICATION DEED (KNOWN AS INDEPENDENCE PARKWAY) TO THE CITY OF FORT WORTH, RECORDED IN VOLUME 13944, PAGE 528 OF COUNTY RECORDS, TARRANT COUNTY, TEXAS AND BEING THE BEGINNING OF A CURVE TO THE LEFT;

THENCE WITH SAID CURVE TO THE LEFT AND THE WEST RIGHT-OF-WAY LINE OF SAID INDEPENDENCE PARKWAY, AN ARC DISTANCE OF 673.39 FEET, THROUGH A CENTRAL ANGLE OF 119°46'46", HAVING A RADIUS OF 2060.00 FEET, THE LONG CHORD WHICH BEARS S 25°49'55"E, 670.40 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE S 35°11'48"E, 166.77 FEET, WITH SAID RIGHT-OF-WAY LINE, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE CONTINUING WITH SAID WEST RIGHT-OF-WAY LINE AND SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 814.90 FEET, THROUGH A CENTRAL ANGLE OF 24°04'02", HAVING A RADIUS OF 1940.00 FEET, THE LONG CHORD WHICH BEARS S 23°09'47"E, 808.92 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE N 87°05'00"W, 103.97 FEET DEPARTING SAID RIGHT-OF-WAY LINE TO A 5/8" INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND THE AT NORTHEAST CORNER OF LOT 7, BLOCK 3 OF AFOREMENTIONED ALLIANCE GATEWAY NORTH AT THE BEGINNING OF A CURVE TO THE RIGHT BEING;

THENCE CONTINUING WITH SAID NORTH LINE AND SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 68.39 FEET, THROUGH A CENTRAL ANGLE OF 41°14'47", HAVING A RADIUS OF 95.00 FEET, THE LONG CHORD WHICH BEARS N 69°22'37"W, 66.92 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE N 90°00'00"W, 155.55 FEET WITH SAID NORTH LINE TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE S 62°28'25"W, 296.66 FEET WITH SAID NORTH LINE TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND AT THE SOUTHEAST CORNER OF LOT 4R. BLOCK 3, ALLIANCE GATEWAY NORTH, AN ADDITION TO THE CITY OF FORT WORTH AS RECORDED IN INSTRUMENT NUMBER 0209069793, SAID COUNTY RECORDS;

THENCE N 00°19'15"W, 1483.52 FEET WITH THE EAST LINE OF SAID LOT 4R TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND IN THE SOUTH LINE OF THE AFOREMENTIONED LOT 1, BLOCK 3, ALLIANCE GATEWAY NORTH ADDITION;

THENCE N 89°38'27"E, 637.87 FEET WITH THE SOUTH LINE OF SAID LOT 1 TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON " FOUND;

THENCE N 73°33'03"E, 244.92 FEET CONTINUING WITH SAID LOT 1 TO THE POINT OF BEGINNING AND CONTAINING 1,716,584 SQUARE FEET OR 39.407 ACRES OF LAND MORE OR LESS.

EXHIBIT "B"

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

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING A CERTAIN AREA IN THE CITY OF FORT WORTH AS "TAX ABATEMENT REINVESTMENT ZONE NUMBER NINETY, CITY OF FORT WORTH, TEXAS"; PROVIDING THE EFFECTIVE AND EXPIRATION DATES FOR THE ZONE AND A MECHANISM FOR RENEWAL OF THE ZONE; AND CONTAINING OTHER MATTERS RELATED TO THE ZONE.

WHEREAS, pursuant to the City Council's adoption on May 20, 2014 of Resolution No. 4322-05-2014 (the "Tax Abatement Policy"), the City of Fort Worth, Texas (the "City") has elected to be eligible to participate in tax abatement and has established guidelines and criteria governing tax abatement agreements entered into between the City and various third parties, as authorized by and in accordance with the Property Redevelopment and Tax Abatement Act, codified in Chapter 312 of the Texas Tax Code (the "Code"); and

WHEREAS, the City Council desires to promote the development of the area in the City more specifically described in Exhibit "A" of this Ordinance (the "Zone") through the creation of a reinvestment zone for purposes of granting a business expansion tax abatement, as authorized by and in accordance with Chapter 312 of the Code; and

WHEREAS, Winner, LLC ("Company") wishes to expend or cause to be expended at least \$125 million in real property improvements for the construction of a new data center located in the Zone, and Company intends to install new taxable tangible business personal property having a value of approximately \$125 million in such facility (collectively, the "Improvements"); and

WHEREAS, Company expects that this project will create at least 40 new jobs once the Improvements are completed; and

WHEREAS, Company has applied for real and business personal property tax abatements from the City in return for the installation of the Improvements in the Zone and compliance with certain other employment and spending commitments that will foster economic development in the Zone and the City in general; and

WHEREAS, on May 12, 2015 the City Council held a public hearing regarding the creation of the Zone, received information concerning the Improvements proposed for the Zone and afforded a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone (“Public Hearing”), as required by Section 312.201(d) of the Code; and

WHEREAS, notice of the Public Hearing was published in a newspaper of general circulation in the City on May 4, 2015, which satisfies the requirement of Section 312.201(d)(1) of the Code that publication of the notice occur not later than the seventh day before the date of the public hearing; and

WHEREAS, in accordance with Sections 312.201(d)(2) and (e), of the Code notice of the Public Hearing was delivered in writing not later than the seventh day before the date of the public hearing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed Zone;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF FORT WORTH, TEXAS:**

Section 1.

FINDINGS.

That after reviewing all information before it regarding the establishment of the Zone and after conducting the Public Hearing and affording a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone, the City Council hereby makes the following findings of fact:

- 1.1. The statements and facts set forth in the recitals of this Ordinance are true and correct. Therefore, the City has met the notice and procedural requirements established by the Code for creation of a reinvestment zone under Chapter 312 of the Code.
- 1.2. The Improvements proposed for the Zone, as more specifically outlined in the Public Hearing, are feasible and practical and, once completed will benefit the land included in the Zone as well as the City for a period in excess of ten (10) years, which is the statutory maximum term of any tax abatement agreement entered into under the Chapter 312 of the Code.
- 1.3. As a result of designation as a reinvestment zone, the area within the Zone is reasonably likely to contribute to the expansion of primary employment and to attract major investment in the Zone that will be a benefit to property in the Zone and will contribute to the economic development of the City.

Section 2.

DESIGNATION OF ZONE.

That the City Council hereby designates the Zone described in the boundary description attached hereto as **Exhibit "A"** and made a part of this Ordinance for all purposes as a reinvestment zone for purposes of granting business expansion tax abatement, as authorized by and in accordance with Chapter 312 of the Code. This Zone shall be known as "Tax Abatement Reinvestment Zone Number Ninety, City of Fort Worth, Texas." This project is eligible for commercial/industrial tax abatement pursuant to Section 4.3 of the Tax Abatement Policy.

Section 3.

TERM OF ZONE.

That the Zone shall take effect upon the effective date of this Ordinance and expire five (5) years thereafter. The Zone may be renewed by the City Council for one or more subsequent terms of five (5) years or less.

Section 4.

SEVERABILITY.

That if any portion, section or part of a section of this Ordinance is subsequently declared invalid, inoperative or void for any reason by a court of competent jurisdiction, the remaining portions, sections or parts of sections of this Ordinance shall be and remain in full force and effect and shall not in any way be impaired or affected by such decision, opinion or judgment.

Section 5.

IMMEDIATE EFFECT.

That this Ordinance shall take effect upon its adoption.

ADOPTED AND EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____

Peter Vaky
Deputy City Attorney

M&C: _____

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING A CERTAIN AREA IN THE CITY OF FORT WORTH AS "TAX ABATEMENT REINVESTMENT ZONE NUMBER 90A, CITY OF FORT WORTH, TEXAS"; PROVIDING THE EFFECTIVE AND EXPIRATION DATES FOR THE ZONE AND A MECHANISM FOR RENEWAL OF THE ZONE; AND CONTAINING OTHER MATTERS RELATED TO THE ZONE.

WHEREAS, pursuant to the City Council's adoption on June 28, 2016 of Resolution No. 4647-06-2016 (the "**Tax Abatement Policy**"), the City of Fort Worth, Texas (the "**City**") has elected to be eligible to participate in tax abatement and has established guidelines and criteria governing tax abatement agreements entered into between the City and various third parties, as authorized by and in accordance with the Property Redevelopment and Tax Abatement Act, codified in Chapter 312 of the Texas Tax Code (the "**Code**"); and

WHEREAS, the City Council desires to promote the development of the real property located at 14101 and 14217 Independence Parkway in the City, as more specifically depicted in Exhibit "A" of this Ordinance (the "**Zone**"), through the creation of a reinvestment zone for purposes of granting a tax abatement, as authorized by and in accordance with Chapter 312 of the Code; and

WHEREAS, Winner, LLC ("**Company**") wishes to construct a new Facebook data center or centers on property in the Zone, with a minimum expenditure of at least \$250 million in real and business property improvements (collectively, the "**Improvements**"); and

WHEREAS, the Zone is adjacent to that real property designated as Tax Abatement Reinvestment Zone No. 90, City of Fort Worth, Texas (the **“Initial Zone”**); and

WHEREAS, the City previously granted Company a tax abatement on property and improvements located in the Initial Zone in return for Company’s construction of a data center on such property, with a minimum expenditure of at least \$250 million in real and business property improvements, as set forth in that certain Tax Abatement Agreement on file in the City Secretary’s Office as City Secretary Contract No. 46727; and

WHEREAS, Company expects that the overall project in the Zone and the Initial Zone will create at least 40 new jobs; and

WHEREAS, the Improvements planned for the Zone will complement that portion of the project constructed in the Initial Zone; and

WHEREAS, on October 18, 2016 the City Council held a public hearing regarding the creation of the Zone, received information concerning the Improvements proposed for the Zone and afforded a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone (**“Public Hearing”**), as required by Section 312.201(d) of the Code; and

WHEREAS, notice of the Public Hearing was published in a newspaper of general circulation in the City on October 9, 2016, which satisfies the requirement of Section 312.201(d)(1) of the Code that publication of the notice occur not later than the seventh day before the date of the public hearing; and

WHEREAS, in accordance with Sections 312.201(d)(2) and (e), of the Code notice of the Public Hearing was delivered in writing not later than the seventh day before the date of the public hearing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed Zone;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

Section 1.

FINDINGS.

That after reviewing all information before it regarding the establishment of the Zone and after conducting the Public Hearing and affording a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone, the City Council hereby makes the following findings of fact:

- 1.1. The statements and facts set forth in the recitals of this Ordinance are true and correct. Therefore, the City has met the notice and procedural requirements established by the Code for creation of a reinvestment zone under Chapter 312 of the Code.
- 1.2. The Improvements proposed for the Zone, as more specifically outlined in the Public Hearing, are feasible and practical and, once completed will benefit the land included in the Zone as well as the City for a period in excess of ten (10)

years, which is the statutory maximum term of any tax abatement agreement entered into under the Chapter 312 of the Code.

- 1.3. As a result of designation as a reinvestment zone, the area within the Zone is reasonably likely to contribute to the expansion of primary employment and to attract major investment in the Zone that will be a benefit to property in the Zone and will contribute to the economic development of the City.

Section 2.

DESIGNATION OF ZONE.

That the City Council hereby designates the Zone described herein and depicted in the map attached hereto as **Exhibit "A"** and made a part of this Ordinance for all purposes as a reinvestment zone for purposes of granting a commercial-industrial tax abatement, as authorized by and in accordance with Chapter 312 of the Code. This Zone shall be known as "Tax Abatement Reinvestment Zone Number 90A, City of Fort Worth, Texas." This project is eligible for commercial/industrial tax abatement pursuant to Section 4.1 of the Tax Abatement Policy.

Section 3.

TERM OF ZONE.

That the Zone shall take effect upon the effective date of this Ordinance and expire five (5) years thereafter. The Zone may be renewed by the City Council for one or more subsequent terms of five (5) years or less.

Section 4.

SEVERABILITY.

That if any portion, section or part of a section of this Ordinance is subsequently declared invalid, inoperative or void for any reason by a court of competent jurisdiction, the remaining portions, sections or parts of sections of this Ordinance shall be and remain in full force and effect and shall not in any way be impaired or affected by such decision, opinion or judgment.

Section 5.

IMMEDIATE EFFECT.

That this Ordinance shall take effect upon its adoption.

ADOPTED AND EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____

Peter Vaky
Deputy City Attorney

M&C: _____

EXHIBIT "A"

MAP DEPICTING ZONE

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 May 20, 2014, the City Council adopted Resolution No. 4322-05-2014, 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 May 19, 2015 the City Council adopted Ordinance No. 21757-05-2015 (the "**Ordinance**") establishing Tax Abatement Reinvestment Zone No. 90, City of Fort Worth, Texas (the "**Zone**").

D. Company owns approximately 110 acres of Land in the City located at the northeast corner of Alliance Gateway and Park Vista Boulevard. The Land is located entirely within the Zone. Contingent upon receipt of the tax abatement herein, Company intends to construct and operate an approximately 250,000 square foot data center on the Land, with potential expansions and build-outs that could involve an aggregate investment of more than \$250,000,000.00 in real and business personal property investments.

E. On _____ 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 4.3 of the Policy.

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. _____ (the "EDPA") to be executed substantially simultaneously with this Agreement.

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 ten percent (10%) 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 2018 tax year over their values for the 2015 tax year (which is the year in which the parties entered into this Agreement); and (ii) the abatement of ten percent (10%) 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.

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.

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, 2017, subject to extension on account of force majeure, as provided in Section 22.

Comprehensive Plan means the City's 2015 Comprehensive Plan, adopted pursuant to Ordinance No. 21693-03-2015, adopted by the City Council on March 17, 2015.

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 4.3.

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 the Land 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, plus any additional land within a half-mile radius of the real property boundaries referenced on Exhibit "A" that is acquired by Company subsequent to the Effective Date for incorporation into the Project Improvements and otherwise allowable under Chapter 312 of the Texas Tax Code.

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 4.2.

Personal Property Report has the meaning ascribed to it in Section 4.4.2.

Policy has the meaning ascribed to it in Recital A.

Project Completion Report has the meaning ascribed to it in Section 4.4.1.

Project Improvements means improvements constructed or caused to be constructed on the Land by Company after the Effective Date of this Agreement.

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

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, 2018 (the “Term”).

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 One Hundred Twenty-five Million Dollars (\$125,000,000.00) in Construction Costs for the Project Improvements; provided, however, that if the Personal Property Commitment outlined in Section 4.2 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 One Hundred Twenty-five Million Dollar (\$125,000,000.00) 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. Dollars counted as Construction Cost expenditures for purposes of measuring attainment of the Real Property Improvement Commitment under the EDPA will also be counted for purposes of measuring attainment of the Real Property Improvement Commitment under this Agreement.

4.2. 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 Twenty-five Million Dollars (\$125,000,000.00); 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 Twenty-five Million Dollar (\$125,000,000.00) 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**"). Dollars counted as expenditures for purposes of measuring attainment of the Personal Property Improvement Commitment under the EDPA will also be counted for purposes of measuring attainment of the Personal Property Commitment under this Agreement.

4.3. Employment Goal.

During 2018, Company will use commercially reasonable efforts to provide or cause to be provided at least forty (40) Full-time Jobs on the Land (the "**Employment Goal**"). Full-time Jobs counted for purposes of measuring attainment of the Employment Goal under the EDPA will also be counted for purposes of measuring attainment of the Employment Goal under this Agreement.

4.4. Reports and Filings.

4.4.1. 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 attached hereto as Exhibit "C", 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 Fort Worth Companies and Fort Worth Certified M/WBE Companies (as those terms are defined in the EDPA), together with supporting invoices and other documents reasonably necessary to demonstrate that such amounts were actually paid (the "**Project Completion Report**"). Provision of the Project Completion Report under the EDPA will also constitute provision of the Project Completion Report under this Agreement.

4.4.2. 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 attached hereto as **Exhibit "D"**, 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**"). Provision of the Personal Property Report under the EDPA will also constitute provision of the Personal Property Report under this Agreement.

4.4.3. 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 attached hereto as **Exhibit "E"**, that sets forth the total number of individuals who held Full-time Jobs on the Land as of December 1 (or such other date requested by Company and reasonably acceptable to the City) of the previous year, 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 7.7 below, a failure to meet the Employment Goal does not constitute a default under this Agreement. Notwithstanding anything to the contrary herein, provision of the employment report under the EDPA will also constitute provision of the employment report provided hereunder.

4.5. 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 and New Taxable Tangible Personal Property 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 Project Improvements and the purchase of New Taxable Tangible Personal Property. If documentation of any Construction Cost expenditures or costs of New Taxable Tangible Personal Property is contained in

financial and business records of Company that also contain unrelated matters, and the City cannot verify such expenditures or costs in any other documents of Company, such expenditures and costs 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 or costs of New Taxable Tangible Personal Property. If Company seeks to have Construction Cost expenditures made by another party or costs of New Taxable Tangible Personal Property 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. Company must make all such records described in this Section 4.5 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.

4.6. 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 its ongoing business operations on the Land.

4.7. Use of Land.

The Land must be used at all times during 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 4.4.1 and 4.4.2, 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 One Hundred Twenty-five Million Dollars (\$125,000,000.00) in Construction Costs 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 Twenty-five Million Dollars (\$125,000,000.00) (or such lower amount if authorized by the Director in writing in accordance with Section 4.2) 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 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 4.2, 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 2018 tax year. Section 11.5 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 4.2, 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 the Land or improvements located on the Land; (ii) the involuntary conveyance to a third party of the Land or improvements located on the Land; (iii) execution by Company or an Affiliate of any assignment of the Land or improvements located on the Land or deed in lieu of foreclosure to the Land or improvements located on the Land; or (iv) the appointment of a trustee or receiver for the Land or improvements located on the Land.

7.5. Failure to Submit Reports.

If Company fails to submit any report required by and in accordance with Section 4.4, 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 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.

7.8. 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), 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.

7.9. 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.

7.10. Termination of EDPA.

In the event that the EDPA is lawfully terminated in accordance with its terms and conditions prior to expiration of this Agreement, this Agreement will automatically terminate on the same date as the effective date of termination under the EDPA.

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.

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.

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
1000 Throckmorton
Fort Worth, TX 76102

Company:

Winner, LLC
Attn: _____

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.

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 "F", 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 11.4, 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.

EXECUTED as of the last date indicated below:

[SIGNATURES IMMEDIATELY FOLLOW ON NEXT TWO (2) PAGES]

CITY OF FORT WORTH:

By: _____
David Cooke
City Manager

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Peter Vaky
Deputy City Attorney

M&C: _____

STATE OF TEXAS §

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared **David Cooke**, 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 he was duly authorized to perform the same by appropriate resolution of the City Council of the City of Fort Worth and that he 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 _____ day of _____, 2015.

Notary Public in and for
the State of Texas

Notary's Printed Name

_____,
a _____:

By: _____
Name:
Title:

Date: _____

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 _____, 2015.

Notary Public in and for
the State of _____

Notary's Printed Name

EXHIBITS

“A” – Description and Map Depicting the Land

“B” – Company’s Tax Abatement Application

“C” – Form of Notice of Completion and Final Construction Report

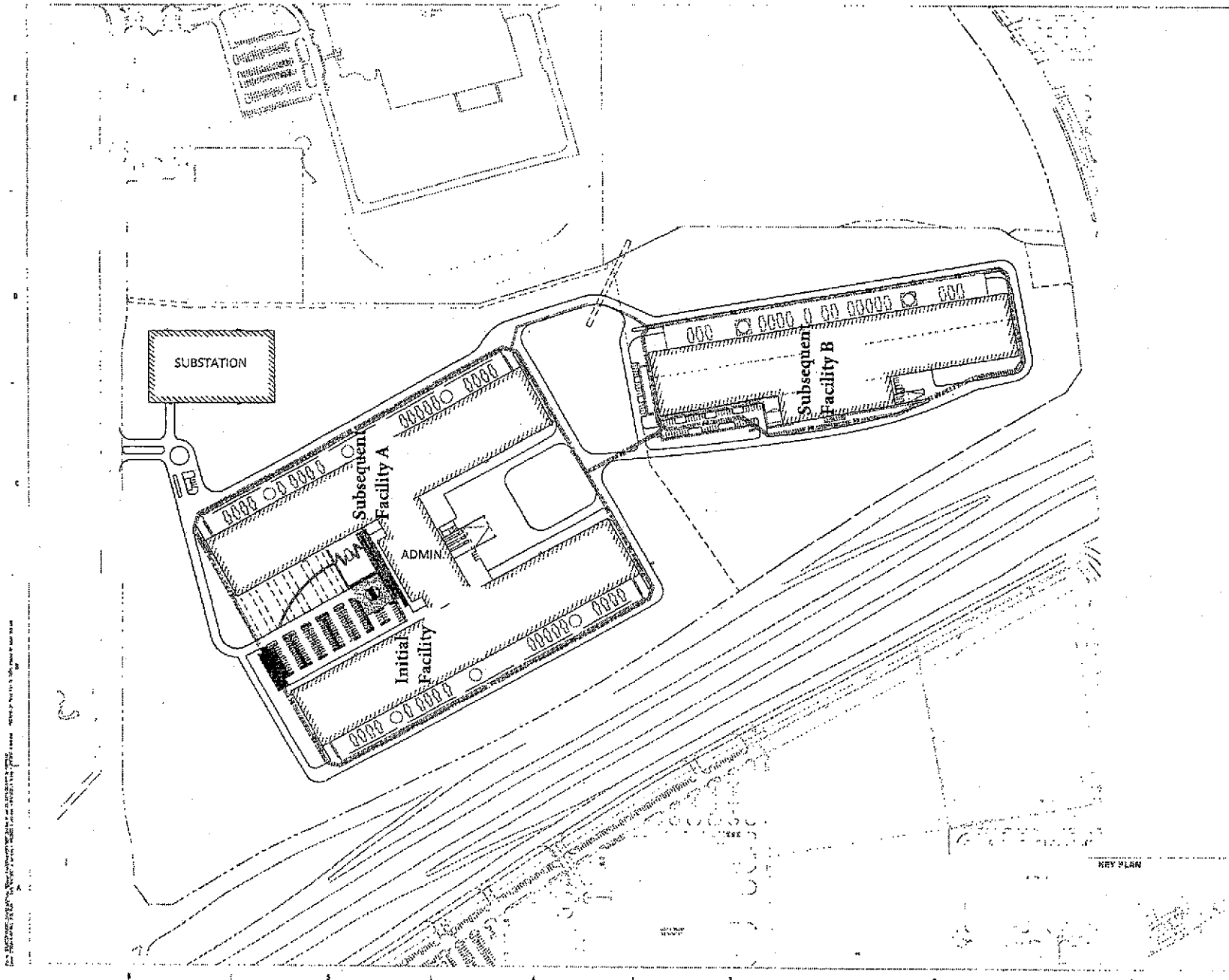
“D” – Form of Personal Property Report

“E” – Form of Employment Report

“F” – Form of Consent to Collateral Assignment

EXHIBIT "C"

**DESCRIPTION AND DEPICTION OF
ELIGIBLE PROPERTY IMPROVEMENTS**



OWNER

BY OWNER

ALFA
ALFA S.p.A. - Via S. Maria Maddalena, 10 - 00187 Roma (RM) - Italy

ARCHITECT

STANDARD POWER

PEOPLES ASSOCIATES
PROFESSIONAL ENGINEERS

DESIGNER/INSTALLER

TECCO
TECCO S.p.A. - Via S. Maria Maddalena, 10 - 00187 Roma (RM) - Italy

ON-DRAWING

PELTON
LABS SOLUTIONS

PROJECT

Project Name	
Project Location	
Project Description	
Project Start Date	
Project End Date	
Project Status	
Project Manager	
Project Engineer	
Project Designer	
Project Installer	
Project On-Drawing	

REV PLAN

Rev	Description
1	
2	
3	
4	
5	
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9	
10	

Description and Depiction of Eligible Property Improvements

- Construction of a new data center.
 - The proposed data center 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 data center 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 to video surveillance, and electronic systems to monitor the site.
 - The proposed data center would be approximately 250,000 square feet in area.
- 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.

EXHIBIT "D"

APPLICATION FOR TAX ABATEMENT



Tarrant County Application for Tax Abatement/Reinvestment Zone

I. APPLICANT INFORMATION

Applicant/Property Owner: Winner LLC DBA Ernst LLC

Company/Project Name: Winner LLC DBA Ernst LLC

Mailing Address: To be supplemented at a later date.

Telephone: To be supplemented at a later date.

Fax: To be supplemented at a later date.

Applicant's Representative for contact regarding abatement request:

Name and Title: Paul Wageman – Shareholder, Winstead PC

Mailing Address: 500 Winstead Building, 2728 N. Harwood Street, Dallas, TX 75201

Telephone: 214.745.5173 **Fax:** 214.745.5390

E-mail: pwageman@winstead.com

II. PROPERTY AND PROJECT DESCRIPTION

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

Approximately 110 acres of vacant land located at the northeast corner of Alliance Gateway Freeway and Park Vista Blvd. See attached legal description.

Project Description: The proposed project would involve the purchase of approximately 110 acres of vacant land and the construction of a new data center. The data center 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 used primarily to provide data center services to Winner LLC's parent and parent's affiliates.

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

Current Assessed Value: Real Property: \$ 15,784 Personal Property: \$ 0

Estimated start date of construction/site improvements: 6/1/15

Projected date of occupancy/commencement of operations at project site: 12/31/16

Please indicate dates for phases if applicable: N/A

Location of existing company facilities: N/A

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. See Attached

III. PROJECTED VALUE OF IMPROVEMENTS

Estimated Value of Real Property Improvements: Building construction costs are estimated to be \$125 million, we don't have an estimate as to what the assessed value of these improvements will be.

Estimated Value of Personal Property Improvements \$ 93,750,000

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

Yes No

If yes, describe requested infrastructure improvements: All offsite city water and sewer infrastructure and public roads are already in place. Minor sewer line and transmission line extensions will be completed onsite.

Detail any direct benefits to Tarrant County as a result of this project (i.e., inventory tax, etc.): See attached.

IV. EMPLOYMENT IMPACT AT PROJECT LOCATION

A. NEW EMPLOYMENT

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

Full-time 25 Part-Time TBD

Provide types of jobs created and average salary levels: The proposed project estimates creating approximately 25 full-time jobs onsite. These jobs may be a mix of company employees and third party contractors working at the data center. Each new job will have at least 1,820 annual hours of employment and would be paid at least 120 percent of the county average weekly wage.

Start date and annual payroll of new permanent positions (if positions to be phased in, provide figures for each phase year): Jobs will be created over a 5-year period. Once fully staffed, payroll is estimated to reach \$1.6 million annually.

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

Number of employees transferring from other company locations: TBD

B. CONSTRUCTION RELATED EMPLOYMENTS

Projected number of construction related jobs: We estimated having between 200 and 300 construction workers onsite daily during our 18 months of construction.

Estimated total construction payroll: TBD, 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 utilize as many local 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 utilize as many DBE 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 N/A Part-time N/A

Average annual payroll: \$ N/A

Detail on workforce diversity – percentage breakdown of current employees by gender and ethnicity: N/A

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: \$ Depending on the size of the employee's family and choice of PPO, EPO or HMO insurance would cost anywhere from \$110 to \$290 per month.

Other employee benefits provided or offered: Dental insurance, vision insurance, 401(k), pre-tax flex spending accounts, life insurance and accidental death and dismemberment.

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

Estimated amount of annual supply and services expenses: \$ \$1,000,000

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: TBD

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.): N/A

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

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 would be a new business 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 project;
- If ultimately approved for Tarrant County, Winner reasonably expects to create and sustain a minimum of 25 new full-time jobs that would not have the effect of transferring employment from one part of Tarrant County to another.

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, Winner will use its best efforts to hire Tarrant County residents and will make it a priority when evaluating candidates for full-time employment.
- 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, which will offset 120 MW of additional brown power production. This will have an extremely positive environmental impact.

- Lastly, the proposed data center expects meet or exceed all requirements for erosion control, storm water management and landscaping.
- If ultimately approved for Tarrant County, Winner proposes 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 me at Ernst@projectnobel.com.

Respectfully submitted,

Project Ernst

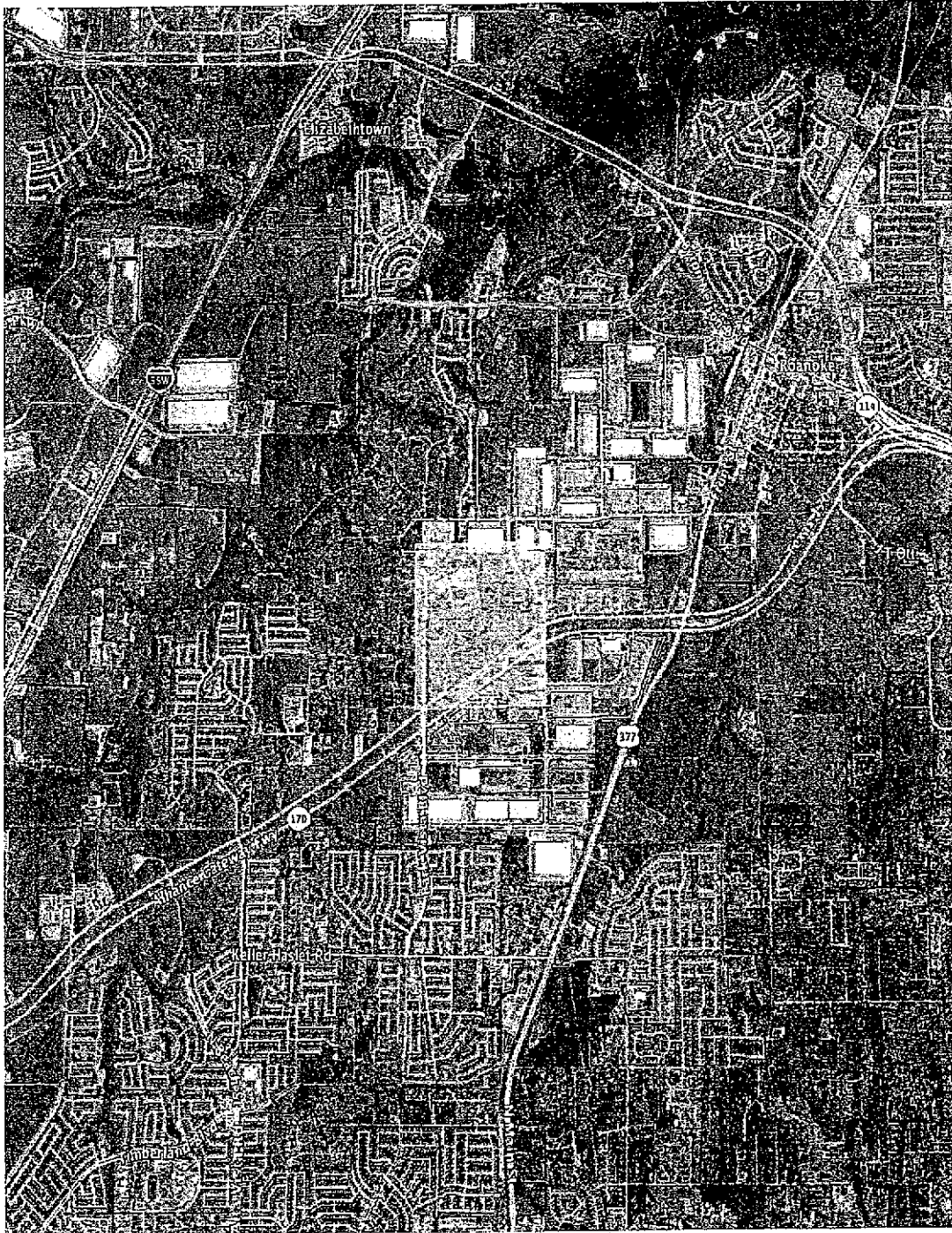
Descriptive list and value of real and personal property improvements

In total, data center construction and equipping would involve a capital investment of at least \$250 million over a five-year period. The proposed qualified investment would include:

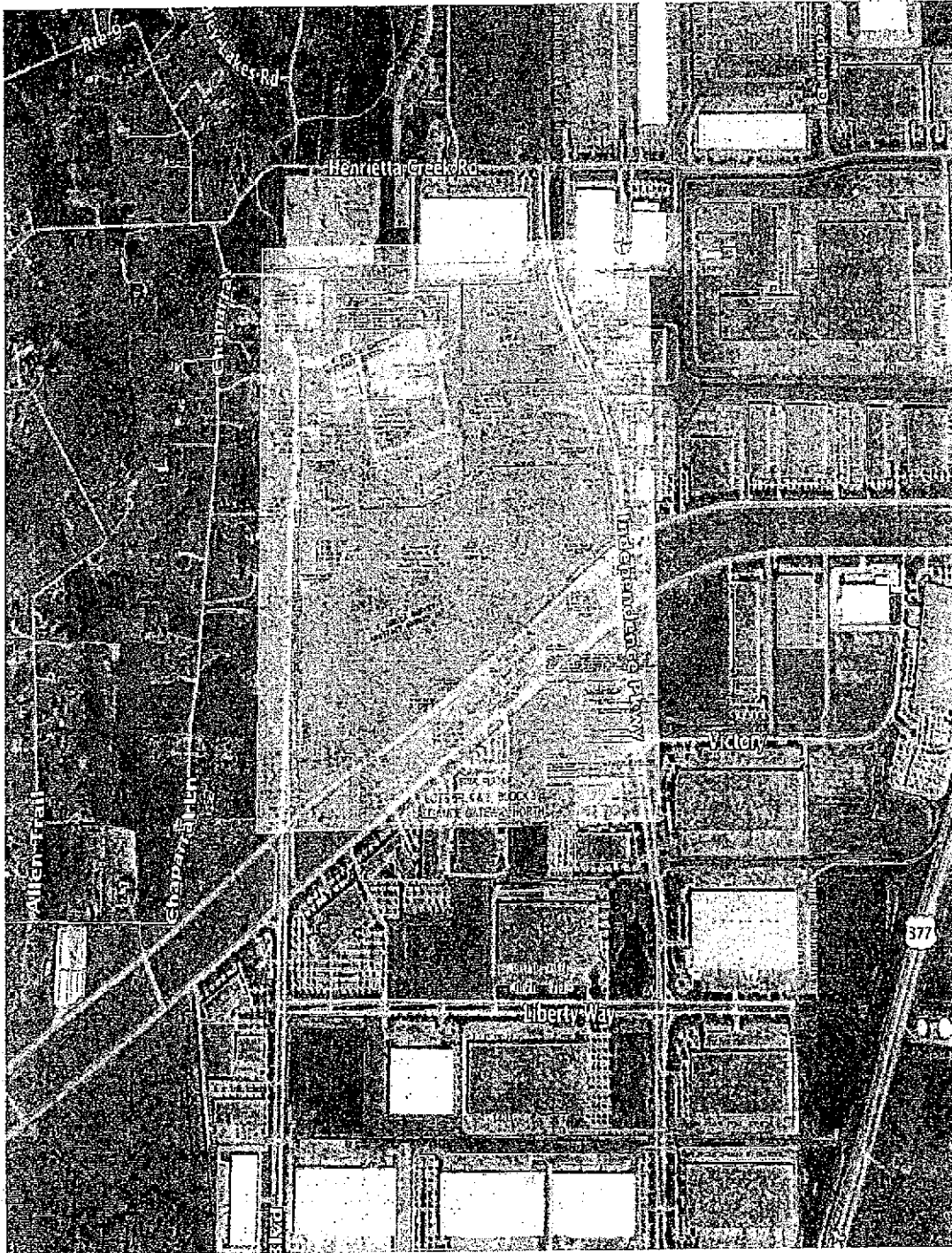
- The purchase of approximately 110 acres of vacant land.
- Construction of a new data center.
 - The data center would be specifically designed to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power 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 data center 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 to video surveillance, and electronic systems to monitor the site.
 - The proposed data center would be comprised of up to three large rectangular structures, each greater than 100,000 square feet. The first two rectangular structures would be connected via a shared administrative area and upon completion would resemble an "H" in its layout.
- 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 of project location

****Proposed Project Area in red.**



****Proposed Project Area in red.**



Legal description

DESCRIPTION OF 110.71 ACRES

BEING a tract of land situated in the F. Cuella Survey, Abstract Number 267, Tarrant County, Texas and being a portion of two tracts of land describe by deed to AIL Investment, L.P., recorded in Volume 13588, Page 195 (Tracts 12 and 13), County Records, Tarrant County, Texas, being more particularly described by metes and bounds as follows:

BEGINNING at the northeast corner of Lot 10, Block 3, Alliance Gateway North, an addition to the City of Fort Worth recorded in Instrument Number D208290670, in the south line of Lot 4R, Block 3 Alliance Gateway North, and addition to the City of Fort Worth recorded in Instrument Number D209069793, both of said County Records;

THENCE S 89°56'01"E, 368.25 feet;

THENCE S 00°04'42"W, 540.00

feet; **THENCE** S 89°55'36"E,

602.74 feet; **THENCE** N 71°51'00"E,

445.20 feet; **THENCE** N 62°28'25"E,

296.66 feet;

THENCE N 90°00'00"E, 1055.55 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 68.39 feet, through a central angle of 41°14'47", having a radius of 95.00 feet, the long chord which bears S 69°22'37"E, 66.92 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 94.33 feet, through a central angle of 38°19'47", having a radius of 141.00 feet, the long chord which bears S 67°55'07"E, 92.58 feet;

THENCE S 87°05'00"E, 103.97 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 200.88 feet, through a central angle of 05°55'58", having a radius of 1940.00 feet, the long chord which bears S 08°09'47"E, 200.79 feet;

THENCE S 05°15'42"E, 237.77 feet;

THENCE S 33°52'08"W, 95.68 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 143.68 feet, through a central angle of 02°29'57", having a radius of 3294.04 feet, the long chord which bears S 61°40'59"W, 143.67 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 955.90 feet, through a central angle of 04°46'16", having a radius of 11479.16 feet, the long chord which bears S 58°08'59"W, 955.62 feet;

THENCE S 55°45'15"W, 459.78 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 1237.97 feet, through a central angle of 09°18'33", having a radius of 7619.44 feet, the long chord which bears S 60°24'08"W, 1236.61 feet;

THENCE S 65°04'38"W, 195.64 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 392.71 feet, through a central angle of 05°51'36", having a radius of 3839.72 feet, the long chord which bears S 62°07'36"W, 392.54 feet;

THENCE S 59°11'47"W, 152.11

feet; THENCE S 89°11'47"W, 80.00

feet; THENCE N 36°10'14"W,

86.37 feet;

THENCE N 00°04'17"W, 20.00 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 167.72 feet, through a central angle of 12°38'40", having a radius of 760.00 feet, the long chord which bears N 06°10'12"W, 167.38 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 162.11 feet, through a central angle of 12°33'05", having a radius of 740.00 feet, the long chord which bears N 06°12'59"W, 161.78 feet;

THENCE N 00°03'31"E, 1482.86 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 89.82 feet, through a central angle of 11°58'07", having a radius of 430.00 feet, the long chord which bears N 06°02'35"E, 89.66 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 102.36 feet, through a central angle of 11°58'07", having a radius of 490.00 feet, the long chord which bears N 06°02'35"E, 102.17 feet;

THENCE N 00°01'34"E, 425.60 feet;

THENCE S 89°56'45"E, 232.00 feet;

THENCE N 00°01'18"E, 115.00 feet to the **Point of Beginning** and containing 4,822,528 square feet or 110.71 acres of land more or less.

Project Time Schedule

- Proposed Ground Breaking: June 2015
- Complete Construction of 1st Building: June 2016
- Go live for 1st building (live traffic): December 2016

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, which will offset 120 MW of additional brown power production. 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

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41456696
Georeference: A 267-1A04B
Property Location: 4901 ALLIANCE GATEWAY FWY, FORT WORTH, 76177

Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1a04b

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$34,530	\$0	\$34,530
Appraised Value †	\$202	\$0	\$202
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt.			82,111
Land Acres			1.885

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$204	\$0	\$204	\$34,530	\$0	\$34,530
2012	\$204	\$0	\$204	\$34,530	\$0	\$34,530
2011	\$194	\$0	\$194	\$34,530	\$0	\$34,530
2010	\$194	\$0	\$194	\$34,530	\$0	\$34,530
2009	\$196	\$0	\$196	\$34,530	\$0	\$34,530

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1-23.51

Property Data:

Appraisal Site: 80270395

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 80270395

State Code: D1 Qualified Open Space Land

Class: Vacant Land-Ag
of Parcels: 3

TAD Map: 2D72-48D
MAPSCO: TAR-009S
Agent: RYAN LLC

Primary Building:
Building Name:
Building Type:
Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41045165
Georeference: A 267-1A01
Property Location: 14149 INDEPENDENCE PKWY, FORT WORTH, 76177



Owner Information: AIL INVESTMENTS LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-5398

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1a01

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$67,017	\$0	\$67,017
Appraised Value †	\$332	\$0	\$332
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			134,034
Land Acres			3.077

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$332	\$0	\$332	\$67,017	\$0	\$67,017
2012	\$332	\$0	\$332	\$67,017	\$0	\$67,017
2011	\$317	\$0	\$317	\$134,034	\$0	\$134,034
2010	\$317	\$0	\$317	\$134,034	\$0	\$134,034
2009	\$320	\$0	\$320	\$134,034	\$0	\$134,034

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1 23.51

Property Data:

Appraisal Site: 80868268

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 4901 HWY 170

State Code: D1 Qualified Open Space Land

Class: Vacant Land -Commercial
of Parcels: 1

TAD Map: 2072-480
MAPSCO: TAR-009J
Agent: RYAN LLC

Primary Building:
Building Name:
Building Type:
Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 40778096
Georeference: A267-1A
Property Location: 14301 INDEPENDENCE PKWY, FORT WORTH, 76177

☒

Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1a

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$202,728	\$0	\$202,728
Appraised Value †	\$996	\$0	\$996
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			405,456
Land Acres			9.308

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$1,005	\$0	\$1,005	\$202,728	\$0	\$202,728
2012	\$1,005	\$0	\$1,005	\$202,728	\$0	\$202,728
2011	\$959	\$0	\$959	\$304,092	\$0	\$304,092
2010	\$959	\$0	\$959	\$304,092	\$0	\$304,092
2009	\$968	\$0	\$968	\$405,456	\$0	\$405,456

2015 Notice Sent:

Protest Deadline:

Exemptions:

Property Data:

Appraisal Site: 80865672

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 4901 HWY 170

State Code: D1 Qualified Open Space Land

Class: Vacant Land -Commercial
of Parcels: 1

TAD Map: 2072-480

Primary Building:

MAPSCO: TAR-009J

Building Name:

Agent:

Building Type:

Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41410386
Georeference: 414K-3-5
Property Location: 14217 INDEPENDENCE PKWY, FORT WORTH, 76177



Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: ALLIANCE GATEWAY NORTH ADDN
 Block: 3 Lot: 5

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE-

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total f†
Market Value	\$254,652	\$0	\$254,652
Appraised Value †	\$1,251	\$0	\$1,251
Gross Building Area f††			0
Net Leasable Area f††			0
Land SqFt			509,304
Land Acres			11.692

† Appraised value may be less than market value due to state-mandated limitations on value increases.
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year.
 ††† Rounded.

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$1,263	\$0	\$1,263	\$254,652	\$0	\$254,652
2012	\$1,263	\$0	\$1,263	\$254,652	\$0	\$254,652
2011	\$1,204	\$0	\$1,204	\$509,304	\$0	\$509,304
2010	\$1,204	\$0	\$1,204	\$509,304	\$0	\$509,304
2009	\$1,216	\$0	\$1,216	\$509,304	\$0	\$509,304

2015 Notice Sent:

Protest Deadline:

Exemptions:

Property Data:

Appraisal Site: 80873414

Deed Date: 01/01/2008
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 14217 INDEPENDENCE PKWY

Class: Vacant Land -Commercial

of Parcels: 1

State Code: D1 Qualified Open Space Land

Primary Building:

TAD Map: 2072-480

Building Name:

MAPSCO: TAR-009j

Building Type:

Agent: RYAN LLC

Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 03805794
Georeference: A 267-1C
Property Location: 4901 ALLIANCE GATEWAY FWY, FORT WORTH, 76177

Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

6 Prior Owners

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1c.
 1D & 1F

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$2,468,700	\$0	\$2,468,700
Appraised Value †	\$13,208	\$0	\$13,208
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			5,376,829
Land Acres			123.435

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$13,331	\$0	\$13,331	\$2,468,700	\$0	\$2,468,700
2012	\$13,331	\$0	\$13,331	\$2,468,700	\$0	\$2,468,700
2011	\$12,714	\$0	\$12,714	\$2,468,700	\$0	\$2,468,700
2010	\$12,714	\$0	\$12,714	\$4,032,621	\$0	\$4,032,621
2009	\$14,088	\$0	\$14,088	\$4,425,609	\$0	\$4,425,609

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1 23.51

Property Data:

Appraisal Site: 80270395

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000
State Code: D1 Qualified Open Space Land

Site Name: 80270395
Class: Vacant Land-Ag
of Parcels: 3

TAD Map: 2072-476
MAPSCO: TAR-009
Agent: RYAN LLC

Primary Building:
Building Name:
Building Type:
Year Built:

Why tax abatement is necessary for the success of this project

The company is conducting a nationwide data center site selection effort. Our effort includes alternative locations in multiple jurisdictions outside of Texas. In completing our evaluation, many factors are considered, but we have an obligation to lower project related costs (both capital and operational). State and local taxes comprise a large piece of our ongoing operational expenses; therefore we need to be prudent in leveraging tax incentive programs when available. Competing states have the ability to offset state and local tax liability for twenty or more years.

Below are examples of states that have been successful in attracting large data center projects primarily based on their state and local tax incentives:

Oregon

- No sales and use tax in the state.
- Long-term Rural Enterprise Zones have the ability to abate up to 100% of new real and personal property tax value for 15-years. This includes all taxing districts.¹

Iowa

- The state offers a data center sales and use tax incentives that runs for the life of the data center (no sunset date).²
- No business personal property tax in the state.
- The High Quality Jobs Program grants local municipalities the ability to abate up to 100% of new real property tax value for up to 20-years. This includes all taxing districts.³

North Carolina

- The state offers a data center sales and use tax incentive that runs for the life of the data center (no sunset date).⁴
- Local governments have the ability to refund real and personal property taxes via annual incentive grants for up to 100% of the value added to the property. There are no statutory limitations on the term of these annual incentive grants.⁵

Based on the above, incentives are an important determining factor in locating this data center project in Tarrant County.

¹ ORS 285C.400-285C.420, OAR 123-690-5200

² Iowa Code §423.3(95)a

³ Iowa Code §15.329

⁴ N.C. Gen. Stat. §105-164.13 (55), N.C. Gen. Stat. §105-164.3

⁵ N.C. Gen. Stat. §158-7.1

Direct benefits to Tarrant County as a result of this project

Data centers generate multiplier spending effects that benefit workers and business owners in other sections of the local and regional economy. The construction alone can generate hundreds of millions of dollars in economic impact beyond the amount directly spent by the company.

The most significant direct economic impact of a large data center project locating in Fort Worth is generated by capital investment. Large data centers can create a significant amount of construction employment for the period of construction, which is approximately two years. Upon completion, data centers tend to create 30-50 full-time jobs, with relatively high salaries, to support their ongoing operations.

CBRE has studied the potential economic impact of a new data center development on a typical Texas community.⁶ For an average small data center of 150,000 gross square feet and about \$390 million of total capital investment, the total economic impact is estimated at nearly \$500 million over 10 years. An average large data center of 460,000 gross square feet and \$1.3 billion of total capital investment would have a total economic impact of about \$1.7 billion over the same period. The table below provides their detailed conclusions:

Figure 1: CBRE Estimates of the Impact of Data Centers

	Direct Impact	Total Impact ¹
Small Data Center		
Construction Jobs	794	1,430
Direct Jobs	16	46
Total Payroll	\$53,800,000	\$95,592,000
Potential Retail Sales	\$74,427,200	\$89,364,000
Economic Activity	\$374,164,000	\$499,032,000
Large Data Center		
Construction Jobs	2,941	5,366
Direct Jobs	64	184
Total Payroll	\$203,100,000	\$361,476,000
Potential Retail Sales	\$276,808,800	\$333,356,000
Economic Activity	\$1,244,656,000	\$1,716,928,000

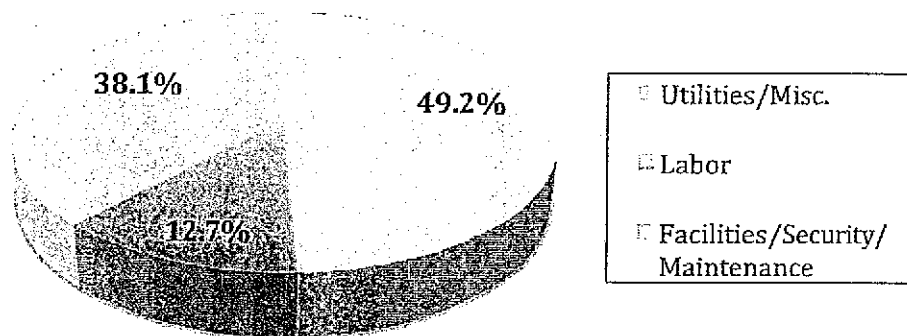
¹ Includes direct impacts as well as indirect and induced. Indirect includes suppliers supporting the operation. Induced includes jobs created from the spending of wages of the direct and indirect employees on goods and services.

The construction costs associated with the proposed project are estimated to be \$250 million, which are estimated to be spent over a two-year period. Initial equipping of the Project is projected to cost an additional \$250 million, coming in two tranches of \$125 million in the second and fifth year of the project (and presumably at three year increments going forward). However, at this point, the vendors of this equipment are not located in Texas, and so this investment is not

⁶ CBRE has the world's only fully integrated data center real estate team, offering strategy, acquisition and disposition representation, project management and facilities management from a single provider. See <http://www.cbre.us/services/office/data-center-solutions-group/Pages/home.aspx> for more information.

included in the economic impact calculations. Once the Project moves to the operations phase, annual spending will total just over \$43 million in year four, (including the cost of electricity & other utilities, labor, and contract security and maintenance). The share of each is presented in Figure 2, with the underlying figures used as inputs into the impact model.

Figure 2: Project Operational Spending by Major Category (2013)



Economic Impact Methodology

Input-output analysis includes three types of expenditure effects: direct, indirect, and induced. Direct effects are production changes associated with the immediate effects or final demand changes. The purchase of contract security by a data center is an example of a direct effect.

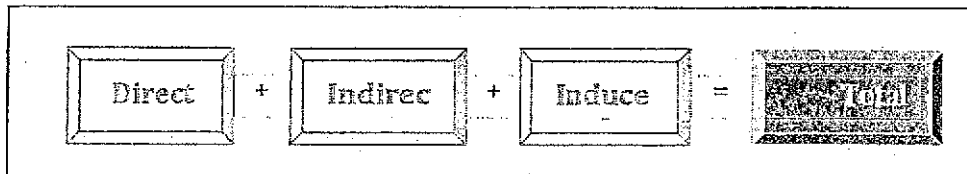
Indirect effects are production changes in backward-linked industries caused by the changing input needs of directly affected industries – typically, additional purchases to produce additional output. In order to provide security services, a contracted firm will need to hire workers, as well as provide them with whatever technology and/or equipment is necessary to do their jobs. These downstream purchases affect other local merchants and workers.

Induced effects are the changes in regional household spending patterns caused by changes in household income generated from the direct and indirect effects. The workers at the data center and security firm see increased compensation from their efforts, for example, as do the establishments that provide the necessary materials or other services to the designer and/or the producers. Induced effects capture the way in which this increased income is in turn spent in the local economy.

Once the ripple effects have been calculated, the results can be expressed in a number of ways. Three of the most common are "Output," equivalent to sales or receipts; "Earnings," which represents the compensation to employees and proprietors; and

“Employment,” which refers to permanent, full-time jobs that have been created in the local economy. The interdependence between different sectors of the economy is reflected in the concept of a “multiplier.” An output multiplier, for example, divides the total (direct, indirect and induced) effects by the direct effect.

Figure 3: The Flow of Economic Impacts



Results of the Modeling Effort

A large data center project is estimated to cost approximately \$250 million to build, with annual operations spending that will total just over \$43 million (including the cost of electricity, labor, other utilities, and contract security and maintenance). Per the discussion above, this data is used as inputs into local models of the regional economy; when the multiplier effects are included, the translation is a total injection of \$610.7 million in economic activity, total compensation of \$199.6 million, and 4,643 total jobs associated with the construction phase of the project. On the operations side, \$43.1 million in annual spending translates into of \$75.2 million in economic activity each year, total compensation of \$15.4 million, and 250 permanent total jobs. Summary results are in Table 1; Tables 2 and 3 provide a detailed breakdown of the impact by industry for Construction and Operations.

Table 1: Total Economic Impact of the Project by Phase (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employee
Total Construction-Related	\$610,700,000	\$199,625,000	4,643
Annual Operations-Related	\$75,156,766	\$15,371,613	250

Source: TXP

Table 2: Total Construction Economic Impact of the Project by Industry (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employee
Agriculture, etc.	\$575,000	\$100,000	5
Mining	\$2,550,000	\$550,000	9
Utilities	\$5,400,000	\$1,050,000	10
Construction	\$252,575,000	\$95,625,000	1,977
Manufacturing	\$68,950,000	\$13,875,000	270
Wholesale Trade	\$21,000,000	\$6,725,000	94
Retail Trade	\$33,825,000	\$11,700,000	427

Transportation/Warehouse	\$15,900,000	\$5,425,000	121
Information	\$18,775,000	\$4,250,000	68
Finance & Insurance	\$35,850,000	\$10,550,000	256
Real Estate	\$46,950,000	\$4,175,000	227
Prof./Technical Services	\$32,875,000	\$15,575,000	241
Management of Companies	\$7,750,000	\$3,125,000	44
Admin./Waste Services	\$12,450,000	\$5,450,000	211
Educational Services	\$2,825,000	\$1,125,000	41
Healthcare & Social	\$22,875,000	\$10,825,000	248
Arts, Entertainment, etc.	\$2,625,000	\$1,025,000	50
Accommodation	\$3,275,000	\$1,000,000	37
Food Services, etc.	\$9,400,000	\$3,000,000	167
Other Services	\$14,275,000	\$4,225,000	107
Households	N.A.	\$250,000	34
Total Annual	\$610,700,000	\$199,625,000	563

Source: TXP

Table 3: Annual Operations Economic Impact of the Project by Industry (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employee
Agriculture, etc.	\$23,425	\$3,909	0
Mining	\$756,491	\$153,846	2
Utilities	\$5,462,017	\$1,071,700	10
Construction	\$305,879	\$115,219	2
Manufacturing	\$1,805,901	\$328,083	7
Wholesale Trade	\$890,191	\$284,751	4
Retail Trade	\$1,627,293	\$563,502	21
Transportation/Warehouse	\$979,258	\$317,267	6
Information	\$44,312,165	\$5,747,102	45
Finance & Insurance	\$2,544,595	\$745,028	18
Real estate	\$3,383,629	\$287,578	16
Prof./Technical Services	\$7,721,474	\$3,604,991	50
Management of Companies	\$447,673	\$180,560	3
Admin./Waste services	\$789,315	\$360,329	15
Educational Services	\$214,355	\$86,230	3
Healthcare & Social	\$1,732,455	\$818,506	18
Arts, Entertainment, etc.	\$207,915	\$79,987	4
Accommodation	\$286,984	\$88,384	3
Food services, etc.	\$786,058	\$251,863	14
Other services	\$879,693	\$262,610	7
Households	N.A.	\$20,168	3
Total Annual	\$75,156,766	\$15,371,613	250

Source: TXP

The Impact of A Cluster Beyond an Individual Facility

Beyond the impact of an individual facility or facilities, it is generally accepted that there are economic benefits associated with agglomeration, or clustering within an industry that render the sum greater than the parts. In particular, there are three broad benefit categories associated with clustering. First, a cluster allows for a more efficient sharing of local infrastructure and facilities, a variety of intermediate input suppliers, or a pool of workers with similar skills. Second, a cluster also allows for a better matching between employers and employees, buyers and suppliers, or business partners. Finally, a well-developed cluster can also facilitate learning, for instance by promoting the development and widespread adoption of new technologies and business practices. In the case of data centers, the infrastructure created (especially related to power and telecommunications) can also become a competitive advantage to the attraction and/or development of new products, services, and industries. This is especially true given the focus on green energy, in this case wind, as the aggregate demand from a data center cluster would greatly enhance wind's scale, creating a range of associated consumer benefits.

EXHIBIT "E"

TARRANT COUNTY TAX ABATEMENT POLICY AND GUIDELINES

TARRANT COUNTY TAX ABATEMENT POLICY

TARRANT COUNTY POLICY & PROCEDURES SUMMARY

TARRANT COUNTY POLICY:

Minimum investment - New business: \$5,000,000 Expansion: \$3,000,000.

1. Applicable to new construction and expansions/modernization.
2. Abatement on eligible real and fixed personal property.
 - a) Minimum job requirements include 25 jobs for new business and sustained employment level for existing business expansions.
 - b) Abatement for companies moving within the County; considered if agreeable to both cities.
3. Additional evaluation criteria:
 - a) Environmental impacts of project (company must show intent to participate in regional air quality program educating employees on the Ozone Action Program);
 - b) Diversity of employment base and commitment to a diversified workforce;
 - c) Minimum of 25% of new jobs created filled by Tarrant County residents (includes transferring employees who move to and reside in Tarrant County);
 - d) Use of minimum 15% DBE and 25% Tarrant County contractors in total annual construction/suppliers/services contract costs;
 - e) Provision of health care benefits at rate reasonable to allow access by majority of employees.
4. County approval of a tax abatement applies to both County and Hospital District ad valorem taxes.
5. Value of existing personal property currently on tax rolls will remain taxable and be included in base value, even if it is moved to a new abated location or replaced due to modernization or expansion.

6. Project is ineligible for abatement if the application for County abatement was filed after the commencement of construction, alteration or installation of new improvements.

GENERAL PROCEDURES:

1. Company begins negotiations with City; City makes County aware of request and invites County comments during negotiations. County makes City aware of concerns/changes prior to final action by City.
2. Company makes application to County for participation in abatement. County negotiates additional performance criteria with Company required for County participation.
3. Once an abatement agreement is approved by City, County action to participate at terms specified by City agreement take place with 90 days of the execution date of the municipal abatement agreement.

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) Download a copy of the Tax Abatement Application
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.

- (h) 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**

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 _____, 2015 (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
B. Glen Whitley
County Judge

Date: OCTOBER 25th, 2016

ATTEST:

Nora Campos
Deputy County Clerk

APPROVED AS TO FORM:

[Signature]
Asst. 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.*

EXHIBIT "G"

TAX ABATEMENT EVALUATION REPORT



Tarrant County Annual Tax Abatement Evaluation Report

Reporting Period: January 1, "[Response]" to December 31, "[Response]"

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* 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 Since Abatement Agreement: 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 / SUPPLIER / SERVICES CONTRACTS

CONSTRUCTION:

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

Percent Construction Dollars Spent With Tarrant County Contractors: "[Response]" %

Number of Construction Related Jobs This Period: "[Response]"

Total Construction Payroll This Period: \$"[Response]"

AWARDS TO DISADVANTAGED BUSINESS ENTERPRISES (DBE):

Total Dollars of Construction Contracts to DBE: \$"[Response]"

Percent of Total Construction Contracts to DBE: "[Response]" %

ANNUAL SUPPLIER / SERVICES EXPENSES:

Total Number Supplier/Services Contracts This Period: "[Response]"

Total Dollars Spent on Supplier/Services Contracts This Period: \$"[Response]"

Percent of Contracts Awarded to Tarrant County Businesses: "[Response]" %

Percent of Contract Dollars Spent with Tarrant County Businesses: "[Response]" %

Percent of Contracts Awarded to DBE: "[Response]" %

Percent of Contract Dollars Spent with DBE: "[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 (i.e., life insurance, pension plan, childcare, etc.): "[Response]"

Does Your Company Participate in The North Texas Clean Air Coalition Ozone Action Program?

Yes No If Yes, Please Attach Information on Company Program Initiatives.

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]"

Number of Fleet Vehicles Purchased This Period: "[Response]"

Describe Use of Vehicles: "[Response]"

Describe Type of Fuels Used in Fleet Vehicles (ie. Gas, Diesel, LPG, Electric; etc):

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 Rectification

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 Tarrant County Hospital District property taxes, you must return the completed report by April 30th to:

Ms. 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

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

THE STATE OF TEXAS §

Tax Abatement Agreement
Subsequent Facility C

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. 90 in the City of Fort Worth, Texas, established by Ordinance No. 21757-05-2015 adopted on May 19, 2015 and Reinvestment Zone No. 90A in the City of Fort Worth, Texas, established by Ordinance No. _____ -2016 adopted on October 18, 2016, being a commercial-industrial reinvestment zone for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code, as amended (Reinvestment Zone No. 90 and Reinvestment Zone No. 90A are sometimes referred to collectively herein as the "Zone"); 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 owns approximately 150 acres of land at the northeast corner of Alliance Gateway and Park Vista Boulevard, 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 and operate an approximately 250,000 square foot Data Center facility on the Land, with potential additional facilities to be constructed, resulting in an aggregate investment of more than \$250,000,000 in real and business personal property investments; and
- WHEREAS, following completion of the Initial Facility, Owner contemplates the construction of up to three additional minimum 250,000 square foot facilities on the Land, Subsequent Facility A, Subsequent Facility B and Subsequent Facility

C, providing an additional investment of more than \$250,000,000 in real and business personal property investments for each facility; 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 2016 taxable value of real and personal property located on the Land in Reinvestment Zone 90 and Reinvestment Zone No. 90A on January 1, 2016, 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 Subsequent Facility C.
- G. "Completion Deadline" means June 1, 2030, 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 Subsequent Facility C as generally described in **Exhibit "C"**, constructed, delivered to, installed or placed on the Land after January 1, 2016 and throughout the Abatement Term, as set forth in this Agreement.
- M. "Initial Facility" means the first building to be constructed and completed on the Land consisting of at least 250,000 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, plus any additional land within the Zone acquired by Owner subsequent to the Effective Date for incorporation into the Eligible Property and otherwise allowable under Chapter 312 of the Texas Tax Code.
- 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 Subsequent Facility C 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 Subsequent Facility C 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. 90" is defined as the real property located in the City and described by City of Fort Worth Ordinance No. 21757-05-2015 (substantially in the form included within **Exhibit "B"**).
- U. "Reinvestment Zone No. 90A" is defined as the real property located in the City and described by City of Fort Worth Ordinance No. _____-____-2016 (substantially in the form included within **Exhibit "B"**).
- V. "Subsequent Facility A" means the second facility to be constructed and completed on the Land consisting of at least 250,000 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"**.
- W. "Subsequent Facility B" means the third facility to be constructed and completed on the Land consisting of at least 250,000 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"**.
- X. "Subsequent Facility C" means the fourth facility to be constructed and completed on the Land consisting of at least 250,000 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"**.

- Y. "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.
- Z. "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.
- AA. "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 One Hundred Million Dollars (\$100,000,000) ("Personal Property Commitment").
- C. Owner shall expend or cause the expenditure by the Completion Deadline of at least One Hundred Fifty Million (\$150,000,000) 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 thirty (30) Jobs on the Land throughout the Abatement Term. These Jobs are cumulative and include Jobs created for the Initial Facility.

- 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 thirty (30) Jobs, the abatement percentage will be reduced by two percent (2%) for each one (1) Job deficiency, for that year.

(Example: A total of 28 Jobs would be a deficiency of 2 Jobs, which would provide for a 4% 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").

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 Owner's 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 the Zone. 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").

B. 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.

C. 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
c/o Tommy Mann
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, TX 75201

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

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 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

B. Glen Whitley
County Judge

Date: October 25th, 2012

ATTEST:

Cheryl Lampes
Deputy County Clerk

APPROVED AS TO FORM*:

[Signature]
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 _____ §

WINNER LLC
Acknowledgment

County OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of _____, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **WINNER LLC**, and as the _____ 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 _____, 2016.

Notary Public in and for
The State of _____

My Commission Expires

Notary's Printed Name

THE STATE OF TEXAS §

Tarrant County, Texas
Acknowledgment

County OF TARRANT §

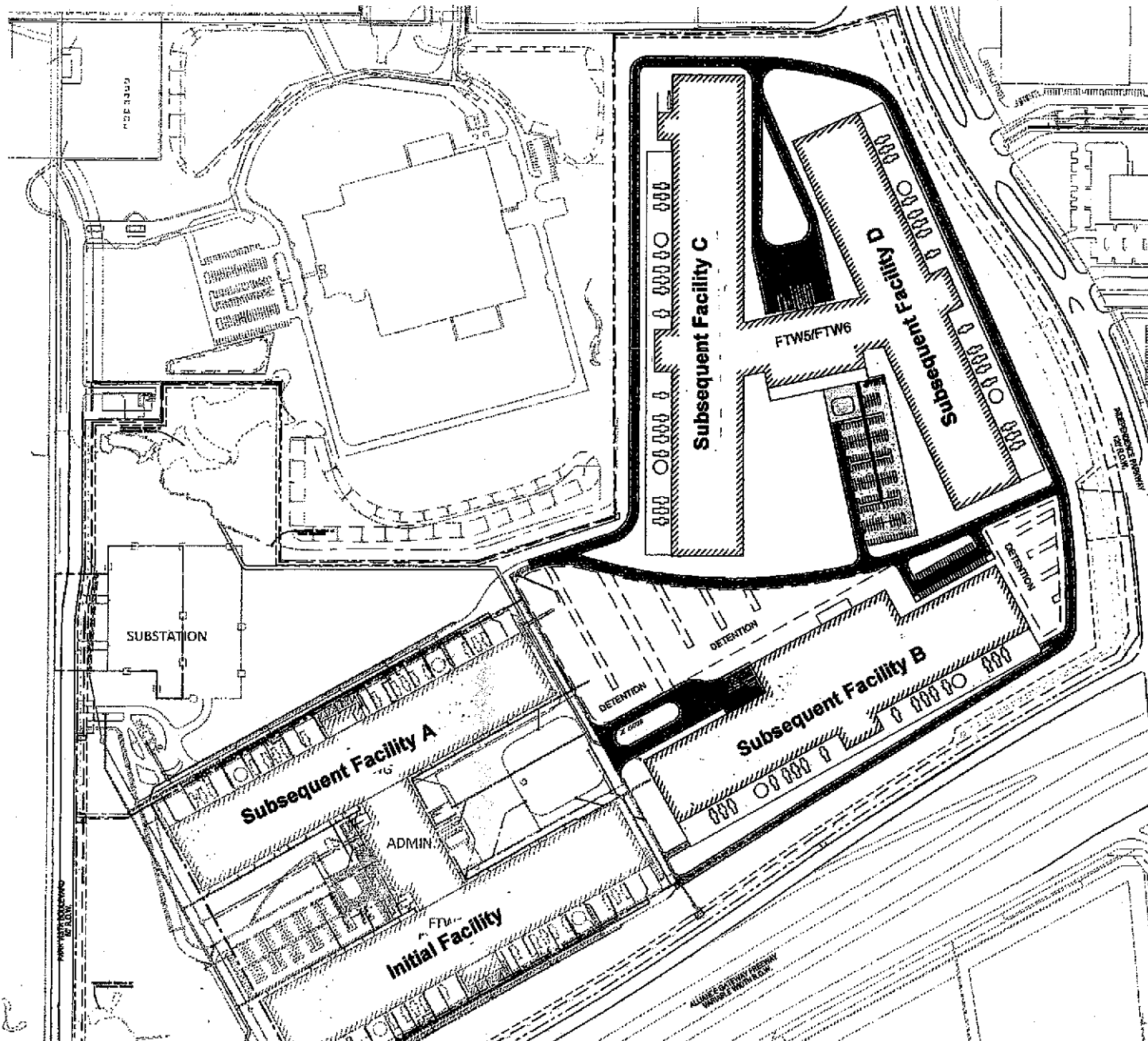
BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **B. GLEN WHITLEY**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **TARRANT 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 25th day of October, 2016.



My Commission Expires

Rachel Nicole Dabbs
Notary Public in and for
The State of Texas
Rachel Nicole Dabbs
Notary's Printed Name



LEGEND

-  LIGHT DUTY PAVEMENT
-  HEAVY DUTY PAVEMENT
-  PROPERTY LINE

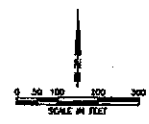


EXHIBIT "A"
DESCRIPTION OF LAND

DESCRIPTION OF 110.71 ACRES

BEING a tract of land situated in the F. Cuella Survey, Abstract Number 267, Tarrant County, Texas and being a portion of two tracts of land describe by deed to AIL Investment, L.P., recorded in Volume 13588, Page 195 (Tracts 12 and 13), County Records, Tarrant County, Texas, being more particularly described by metes and bounds as follows:

BEGINNING at the northeast corner of Lot 10, Block 3, Alliance Gateway North, an addition to the City of Fort Worth recorded in Instrument Number D208290670, in the south line of Lot 4R, Block 3 Alliance Gateway North, and addition to the City of Fort Worth recorded in Instrument Number D209069793, both of said County Records;

THENCE S 89°56'01"E, 368.25 feet;

THENCE S 00°04'42"W, 540.00

feet; **THENCE** S 89°55'36"E,

602.74 feet; **THENCE** N 71°51'00"E,

445.20 feet; **THENCE** N 62°28'25"E,

296.66 feet;

THENCE N 90°00'00"E, 1055.55 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 68.39 feet, through a central angle of 41°14'47", having a radius of 95.00 feet, the long chord which bears S 69°22'37"E, 66.92 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 94.33 feet, through a central angle of 38°19'47", having a radius of 141.00 feet, the long chord which bears S 67°55'07"E, 92.58 feet;

THENCE S 87°05'00"E, 103.97 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 200.88 feet, through a central angle of 05°55'58", having a radius of 1940.00 feet, the long chord which bears S 08°09'47"E, 200.79 feet;

THENCE S 05°15'42"E, 237.77 feet;

THENCE S 33°52'08"W, 95.68 feet to the beginning of a curve to the left;
THENCE with said curve to the left, an arc distance of 143.68 feet, through a central angle of 02°29'57", having a radius of 3294.04 feet, the long chord which bears S 61°40'59"W, 143.67 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 955.90 feet, through a central angle of 04°46'16", having a radius of 11479.16 feet, the long chord which bears S 58°08'59"W, 955.62 feet;

THENCE S 55°45'15"W, 459.78 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 1237.97 feet, through a central angle of 09°18'33", having a radius of 7619.44 feet, the long chord which bears S 60°24'08"W, 1236.61 feet;

THENCE S 65°04'38"W, 195.64 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 392.71 feet, through a central angle of 05°51'36", having a radius of 3839.72 feet, the long chord which bears S 62°07'36"W, 392.54 feet;

THENCE S 59°11'47"W, 152.11

feet; **THENCE** S 89°11'47"W, 80.00

feet; **THENCE** N 36°10'14"W,

86.37 feet;

THENCE N 00°04'17"W, 20.00 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 167.72 feet, through a central angle of 12°38'40", having a radius of 760.00 feet, the long chord which bears N 06°10'12"W, 167.38 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 162.11 feet, through a central angle of 12°33'05", having a radius of 740.00 feet, the long chord which bears N 06°12'59"W, 161.78 feet;

THENCE N 00°03'31"E, 1482.86 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 89.82 feet, through a central angle of $11^{\circ}58'07''$, having a radius of 430.00 feet, the long chord which bears $N 06^{\circ}02'35''E$, 89.66 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 102.36 feet, through a central angle of $11^{\circ}58'07''$, having a radius of 490.00 feet, the long chord which bears $N 06^{\circ}02'35''E$, 102.17 feet;

THENCE $N 00^{\circ}01'34''E$, 425.60 feet;

THENCE $S 89^{\circ}56'45''E$, 232.00 feet;

THENCE $N 00^{\circ}01'18''E$, 115.00 feet to the **Point of Beginning** and containing 4,822,528 square feet or 110.71 acres of land more or less.

DESCRIPTION OF ADDITIONAL 39.407 ACRES

BEING A TRACT OF LAND SITUATED IN THE F. CUELLA SURVEY, ABSTRACT NUMBER 267, TARRANT COUNTY, TEXAS AND BEING ALL OF LOT 5R AND 6, BLOCK 3, ALLIANCE GATEWAY NORTH, AN ADDITION TO THE CITY OF FORT WORTH AS RECORDED IN INSTRUMENT NUMBER D215150766, COUNTY RECORDS. TARRANT COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF SAID LOT 5R, BLOCK 3, THE SOUTHEAST CORNER OF LOT 1, BLOCK 3, ALLIANCE GATEWAY NORTH ADDITION, AN ADDITION TO THE CITY OF FORT WORTH RECORDED IN CABINET X, SLIDE 753, IN THE WEST LINE OF THAT TRACT OF LAND DESCRIBED IN A DEDICATION DEED (KNOWN AS INDEPENDENCE PARKWAY) TO THE CITY OF FORT WORTH, RECORDED IN VOLUME 13944, PAGE 528 OF COUNTY RECORDS, TARRANT COUNTY, TEXAS AND BEING THE BEGINNING OF A CURVE TO THE LEFT;

THENCE WITH SAID CURVE TO THE LEFT AND THE WEST RIGHT-OF-WAY LINE OF SAID INDEPENDENCE PARKWAY, AN ARC DISTANCE OF 673.39 FEET, THROUGH A CENTRAL ANGLE OF 119°46'46", HAVING A RADIUS OF 2060.00 FEET, THE LONG CHORD WHICH BEARS S 25°49'55"E, 670.40 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE S 35°11'48"E, 166.77 FEET, WITH SAID RIGHT-OF-WAY LINE, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE CONTINUING WITH SAID WEST RIGHT-OF-WAY LINE AND SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 814.90 FEET, THROUGH A CENTRAL ANGLE OF 24°04'02", HAVING A RADIUS OF 1940.00 FEET, THE LONG CHORD WHICH BEARS S 23°09'47"E, 808.92 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE N 87°05'00"W, 103.97 FEET DEPARTING SAID RIGHT-OF-WAY LINE TO A 5/8" INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND THE AT NORTHEAST CORNER OF LOT 7, BLOCK 3 OF AFOREMENTIONED ALLIANCE GATEWAY NORTH AT THE BEGINNING OF A CURVE TO THE RIGHT BEING;

THENCE CONTINUING WITH SAID NORTH LINE AND SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 68.39 FEET, THROUGH A CENTRAL ANGLE OF 41°14'47", HAVING A RADIUS OF 95.00 FEET, THE LONG CHORD WHICH BEARS N 69°22'37"W, 66.92 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE N 90°00'00"W, 155.55 FEET WITH SAID NORTH LINE TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE S 62°28'25"W, 296.66 FEET WITH SAID NORTH LINE TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND AT THE SOUTHEAST CORNER OF LOT 4R, BLOCK 3, ALLIANCE GATEWAY NORTH, AN ADDITION TO THE CITY OF FORT WORTH AS RECORDED IN INSTRUMENT NUMBER 0209069793, SAID COUNTY RECORDS;

THENCE N 00°19'15"W, 1483.52 FEET WITH THE EAST LINE OF SAID LOT 4R TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND IN THE SOUTH LINE OF THE AFOREMENTIONED LOT 1, BLOCK 3, ALLIANCE GATEWAY NORTH ADDITION;

THENCE N 89°38'27"E, 637.87 FEET WITH THE SOUTH LINE OF SAID LOT 1 TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON " FOUND;

THENCE N 73°33'03"E, 244.92 FEET CONTINUING WITH SAID LOT 1 TO THE POINT OF BEGINNING AND CONTAINING 1,716,584 SQUARE FEET OR 39.407 ACRES OF LAND MORE OR LESS.

EXHIBIT "B"

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

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING A CERTAIN AREA IN THE CITY OF FORT WORTH AS "TAX ABATEMENT REINVESTMENT ZONE NUMBER NINETY, CITY OF FORT WORTH, TEXAS"; PROVIDING THE EFFECTIVE AND EXPIRATION DATES FOR THE ZONE AND A MECHANISM FOR RENEWAL OF THE ZONE; AND CONTAINING OTHER MATTERS RELATED TO THE ZONE.

WHEREAS, pursuant to the City Council's adoption on May 20, 2014 of Resolution No. 4322-05-2014 (the "Tax Abatement Policy"), the City of Fort Worth, Texas (the "City") has elected to be eligible to participate in tax abatement and has established guidelines and criteria governing tax abatement agreements entered into between the City and various third parties, as authorized by and in accordance with the Property Redevelopment and Tax Abatement Act, codified in Chapter 312 of the Texas Tax Code (the "Code"); and

WHEREAS, the City Council desires to promote the development of the area in the City more specifically described in Exhibit "A" of this Ordinance (the "Zone") through the creation of a reinvestment zone for purposes of granting a business expansion tax abatement, as authorized by and in accordance with Chapter 312 of the Code; and

WHEREAS, Winner, LLC ("Company") wishes to expend or cause to be expended at least \$125 million in real property improvements for the construction of a new data center located in the Zone, and Company intends to install new taxable tangible business personal property having a value of approximately \$125 million in such facility (collectively, the "Improvements"); and

WHEREAS, Company expects that this project will create at least 40 new jobs once the Improvements are completed; and

WHEREAS, Company has applied for real and business personal property tax abatements from the City in return for the installation of the Improvements in the Zone and compliance with certain other employment and spending commitments that will foster economic development in the Zone and the City in general; and

WHEREAS, on May 12, 2015 the City Council held a public hearing regarding the creation of the Zone, received information concerning the Improvements proposed for the Zone and afforded a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone ("**Public Hearing**"), as required by Section 312.201(d) of the Code; and

WHEREAS, notice of the Public Hearing was published in a newspaper of general circulation in the City on May 4, 2015, which satisfies the requirement of Section 312.201(d)(1) of the Code that publication of the notice occur not later than the seventh day before the date of the public hearing; and

WHEREAS, in accordance with Sections 312.201(d)(2) and (e), of the Code notice of the Public Hearing was delivered in writing not later than the seventh day before the date of the public hearing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed Zone;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF FORT WORTH, TEXAS:**

Section 1.

FINDINGS.

That after reviewing all information before it regarding the establishment of the Zone and after conducting the Public Hearing and affording a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone, the City Council hereby makes the following findings of fact:

- 1.1. The statements and facts set forth in the recitals of this Ordinance are true and correct. Therefore, the City has met the notice and procedural requirements established by the Code for creation of a reinvestment zone under Chapter 312 of the Code.
- 1.2. The Improvements proposed for the Zone, as more specifically outlined in the Public Hearing, are feasible and practical and, once completed will benefit the land included in the Zone as well as the City for a period in excess of ten (10) years, which is the statutory maximum term of any tax abatement agreement entered into under the Chapter 312 of the Code.
- 1.3. As a result of designation as a reinvestment zone, the area within the Zone is reasonably likely to contribute to the expansion of primary employment and to attract major investment in the Zone that will be a benefit to property in the Zone and will contribute to the economic development of the City.

Section 2.

DESIGNATION OF ZONE.

That the City Council hereby designates the Zone described in the boundary description attached hereto as **Exhibit "A"** and made a part of this Ordinance for all purposes as a reinvestment zone for purposes of granting business expansion tax abatement, as authorized by and in accordance with Chapter 312 of the Code. This Zone shall be known as "Tax Abatement Reinvestment Zone Number Ninety, City of Fort Worth, Texas." This project is eligible for commercial/industrial tax abatement pursuant to Section 4.3 of the Tax Abatement Policy.

Section 3.

TERM OF ZONE.

That the Zone shall take effect upon the effective date of this Ordinance and expire five (5) years thereafter. The Zone may be renewed by the City Council for one or more subsequent terms of five (5) years or less.

Section 4.

SEVERABILITY.

That if any portion, section or part of a section of this Ordinance is subsequently declared invalid, inoperative or void for any reason by a court of competent jurisdiction, the remaining portions, sections or parts of sections of this Ordinance shall be and remain in full force and effect and shall not in any way be impaired or affected by such decision, opinion or judgment.

Section 5.

IMMEDIATE EFFECT.

That this Ordinance shall take effect upon its adoption.

ADOPTED AND EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Peter Vaky
Deputy City Attorney

M&C: _____

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING A CERTAIN AREA IN THE CITY OF FORT WORTH AS "TAX ABATEMENT REINVESTMENT ZONE NUMBER 90A, CITY OF FORT WORTH, TEXAS"; PROVIDING THE EFFECTIVE AND EXPIRATION DATES FOR THE ZONE AND A MECHANISM FOR RENEWAL OF THE ZONE; AND CONTAINING OTHER MATTERS RELATED TO THE ZONE.

WHEREAS, pursuant to the City Council's adoption on June 28, 2016 of Resolution No. 4647-06-2016 (the "**Tax Abatement Policy**"), the City of Fort Worth, Texas (the "**City**") has elected to be eligible to participate in tax abatement and has established guidelines and criteria governing tax abatement agreements entered into between the City and various third parties, as authorized by and in accordance with the Property Redevelopment and Tax Abatement Act, codified in Chapter 312 of the Texas Tax Code (the "**Code**"); and

WHEREAS, the City Council desires to promote the development of the real property located at 14101 and 14217 Independence Parkway in the City, as more specifically depicted in Exhibit "A" of this Ordinance (the "**Zone**"), through the creation of a reinvestment zone for purposes of granting a tax abatement, as authorized by and in accordance with Chapter 312 of the Code; and

WHEREAS, Winner, LLC ("**Company**") wishes to construct a new Facebook data center or centers on property in the Zone, with a minimum expenditure of at least \$250 million in real and business property improvements (collectively, the "**Improvements**"); and

WHEREAS, the Zone is adjacent to that real property designated as Tax Abatement Reinvestment Zone No. 90, City of Fort Worth, Texas (the “**Initial Zone**”); and

WHEREAS, the City previously granted Company a tax abatement on property and improvements located in the Initial Zone in return for Company’s construction of a data center on such property, with a minimum expenditure of at least \$250 million in real and business property improvements, as set forth in that certain Tax Abatement Agreement on file in the City Secretary’s Office as City Secretary Contract No. 46727; and

WHEREAS, Company expects that the overall project in the Zone and the Initial Zone will create at least 40 new jobs; and

WHEREAS, the Improvements planned for the Zone will complement that portion of the project constructed in the Initial Zone; and

WHEREAS, on October 18, 2016 the City Council held a public hearing regarding the creation of the Zone, received information concerning the Improvements proposed for the Zone and afforded a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone (“**Public Hearing**”), as required by Section 312.201(d) of the Code; and

WHEREAS, notice of the Public Hearing was published in a newspaper of general circulation in the City on October 9, 2016, which satisfies the requirement of Section 312.201(d)(1) of the Code that publication of the notice occur not later than the seventh day before the date of the public hearing; and

WHEREAS, in accordance with Sections 312.201(d)(2) and (e), of the Code notice of the Public Hearing was delivered in writing not later than the seventh day before the date of the public hearing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed Zone;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

Section 1.

FINDINGS.

That after reviewing all information before it regarding the establishment of the Zone and after conducting the Public Hearing and affording a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone, the City Council hereby makes the following findings of fact:

- 1.1. The statements and facts set forth in the recitals of this Ordinance are true and correct. Therefore, the City has met the notice and procedural requirements established by the Code for creation of a reinvestment zone under Chapter 312 of the Code.
- 1.2. The Improvements proposed for the Zone, as more specifically outlined in the Public Hearing, are feasible and practical and, once completed will benefit the land included in the Zone as well as the City for a period in excess of ten (10)

years, which is the statutory maximum term of any tax abatement agreement entered into under the Chapter 312 of the Code.

- 1.3. As a result of designation as a reinvestment zone, the area within the Zone is reasonably likely to contribute to the expansion of primary employment and to attract major investment in the Zone that will be a benefit to property in the Zone and will contribute to the economic development of the City.

Section 2.

DESIGNATION OF ZONE.

That the City Council hereby designates the Zone described herein and depicted in the map attached hereto as **Exhibit "A"** and made a part of this Ordinance for all purposes as a reinvestment zone for purposes of granting a commercial-industrial tax abatement, as authorized by and in accordance with Chapter 312 of the Code. This Zone shall be known as "Tax Abatement Reinvestment Zone Number 90A, City of Fort Worth, Texas." This project is eligible for commercial/industrial tax abatement pursuant to Section 4.1 of the Tax Abatement Policy.

Section 3.

TERM OF ZONE.

That the Zone shall take effect upon the effective date of this Ordinance and expire five (5) years thereafter. The Zone may be renewed by the City Council for one or more subsequent terms of five (5) years or less.

Section 4.

SEVERABILITY.

That if any portion, section or part of a section of this Ordinance is subsequently declared invalid, inoperative or void for any reason by a court of competent jurisdiction, the remaining portions, sections or parts of sections of this Ordinance shall be and remain in full force and effect and shall not in any way be impaired or affected by such decision, opinion or judgment.

Section 5.

IMMEDIATE EFFECT.

That this Ordinance shall take effect upon its adoption.

ADOPTED AND EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Peter Vaky
Deputy City Attorney

M&C: _____

EXHIBIT "A"

MAP DEPICTING ZONE

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 May 20, 2014, the City Council adopted Resolution No. 4322-05-2014, 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 May 19, 2015 the City Council adopted Ordinance No. 21757-05-2015 (the "**Ordinance**") establishing Tax Abatement Reinvestment Zone No. 90, City of Fort Worth, Texas (the "**Zone**").

D. Company owns approximately 110 acres of Land in the City located at the northeast corner of Alliance Gateway and Park Vista Boulevard. The Land is located entirely within the Zone. Contingent upon receipt of the tax abatement herein, Company intends to construct and operate an approximately 250,000 square foot data center on the Land, with potential expansions and build-outs that could involve an aggregate investment of more than \$250,000,000.00 in real and business personal property investments.

E. On _____ 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 4.3 of the Policy.

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. _____ (the "EDPA") to be executed substantially simultaneously with this Agreement.

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 ten percent (10%) 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 2018 tax year over their values for the 2015 tax year (which is the year in which the parties entered into this Agreement); and (ii) the abatement of ten percent (10%) 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.

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.

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, 2017, subject to extension on account of force majeure, as provided in Section 22.

Comprehensive Plan means the City's 2015 Comprehensive Plan, adopted pursuant to Ordinance No. 21693-03-2015, adopted by the City Council on March 17, 2015.

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 4.3.

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 the Land 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, plus any additional land within a half-mile radius of the real property boundaries referenced on Exhibit "A" that is acquired by Company subsequent to the Effective Date for incorporation into the Project Improvements and otherwise allowable under Chapter 312 of the Texas Tax Code.

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 4.2.

Personal Property Report has the meaning ascribed to it in Section 4.4.2.

Policy has the meaning ascribed to it in Recital A.

Project Completion Report has the meaning ascribed to it in Section 4.4.1.

Project Improvements means improvements constructed or caused to be constructed on the Land by Company after the Effective Date of this Agreement.

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

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, 2018 (the "Term").

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 One Hundred Twenty-five Million Dollars (\$125,000,000.00) in Construction Costs for the Project Improvements; provided, however, that if the Personal Property Commitment outlined in Section 4.2 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 One Hundred Twenty-five Million Dollar (\$125,000,000.00) 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. Dollars counted as Construction Cost expenditures for purposes of measuring attainment of the Real Property Improvement Commitment under the EDPA will also be counted for purposes of measuring attainment of the Real Property Improvement Commitment under this Agreement.

4.2. 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 Twenty-five Million Dollars (\$125,000,000.00); 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 Twenty-five Million Dollar (\$125,000,000.00) 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**"). Dollars counted as expenditures for purposes of measuring attainment of the Personal Property Improvement Commitment under the EDPA will also be counted for purposes of measuring attainment of the Personal Property Commitment under this Agreement.

4.3. Employment Goal.

During 2018, Company will use commercially reasonable efforts to provide or cause to be provided at least forty (40) Full-time Jobs on the Land (the "**Employment Goal**"). Full-time Jobs counted for purposes of measuring attainment of the Employment Goal under the EDPA will also be counted for purposes of measuring attainment of the Employment Goal under this Agreement.

4.4. Reports and Filings.

4.4.1. 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 attached hereto as Exhibit "C", 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 Fort Worth Companies and Fort Worth Certified M/WBE Companies (as those terms are defined in the EDPA), together with supporting invoices and other documents reasonably necessary to demonstrate that such amounts were actually paid (the "**Project Completion Report**"). Provision of the Project Completion Report under the EDPA will also constitute provision of the Project Completion Report under this Agreement.

4.4.2. 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 attached hereto as Exhibit "D", 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"). Provision of the Personal Property Report under the EDPA will also constitute provision of the Personal Property Report under this Agreement.

4.4.3. 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 attached hereto as Exhibit "E", that sets forth the total number of individuals who held Full-time Jobs on the Land as of December 1 (or such other date requested by Company and reasonably acceptable to the City) of the previous year, 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 7.7 below, a failure to meet the Employment Goal does not constitute a default under this Agreement. Notwithstanding anything to the contrary herein, provision of the employment report under the EDPA will also constitute provision of the employment report provided hereunder.

4.5. 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 and New Taxable Tangible Personal Property 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 Project Improvements and the purchase of New Taxable Tangible Personal Property. If documentation of any Construction Cost expenditures or costs of New Taxable Tangible Personal Property is contained in

financial and business records of Company that also contain unrelated matters, and the City cannot verify such expenditures or costs in any other documents of Company, such expenditures and costs 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 or costs of New Taxable Tangible Personal Property. If Company seeks to have Construction Cost expenditures made by another party or costs of New Taxable Tangible Personal Property 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. Company must make all such records described in this Section 4.5 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.

4.6. 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 its ongoing business operations on the Land.

4.7. Use of Land.

The Land must be used at all times during 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 4.4.1 and 4.4.2, 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 One Hundred Twenty-five Million Dollars (\$125,000,000.00) in Construction Costs 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 Twenty-five Million Dollars (\$125,000,000.00) (or such lower amount if authorized by the Director in writing in accordance with Section 4.2) 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 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 4.2, 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 2018 tax year. Section 11.5 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 4.2, 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 the Land or improvements located on the Land; (ii) the involuntary conveyance to a third party of the Land or improvements located on the Land; (iii) execution by Company or an Affiliate of any assignment of the Land or improvements located on the Land or deed in lieu of foreclosure to the Land or improvements located on the Land; or (iv) the appointment of a trustee or receiver for the Land or improvements located on the Land.

7.5. Failure to Submit Reports.

If Company fails to submit any report required by and in accordance with Section 4.4, 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 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.

7.8. 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), 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.

7.9. 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.

7.10. Termination of EDPA.

In the event that the EDPA is lawfully terminated in accordance with its terms and conditions prior to expiration of this Agreement, this Agreement will automatically terminate on the same date as the effective date of termination under the EDPA.

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.

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.

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
1000 Throckmorton
Fort Worth, TX 76102

Company:

Winner, LLC

Attn: _____

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.

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 "F", 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 11.4, 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.

EXECUTED as of the last date indicated below:

[SIGNATURES IMMEDIATELY FOLLOW ON NEXT TWO (2) PAGES]

CITY OF FORT WORTH:

By: _____
David Cooke
City Manager

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Peter Vaky
Deputy City Attorney

M&C: _____

STATE OF TEXAS §

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared **David Cooke**, 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 he was duly authorized to perform the same by appropriate resolution of the City Council of the City of Fort Worth and that he 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 _____ day of _____, 2015.

Notary Public in and for
the State of Texas

Notary's Printed Name

_____,
a _____:

By: _____
Name:
Title:

Date: _____

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 _____, 2015.

Notary Public in and for
the State of _____

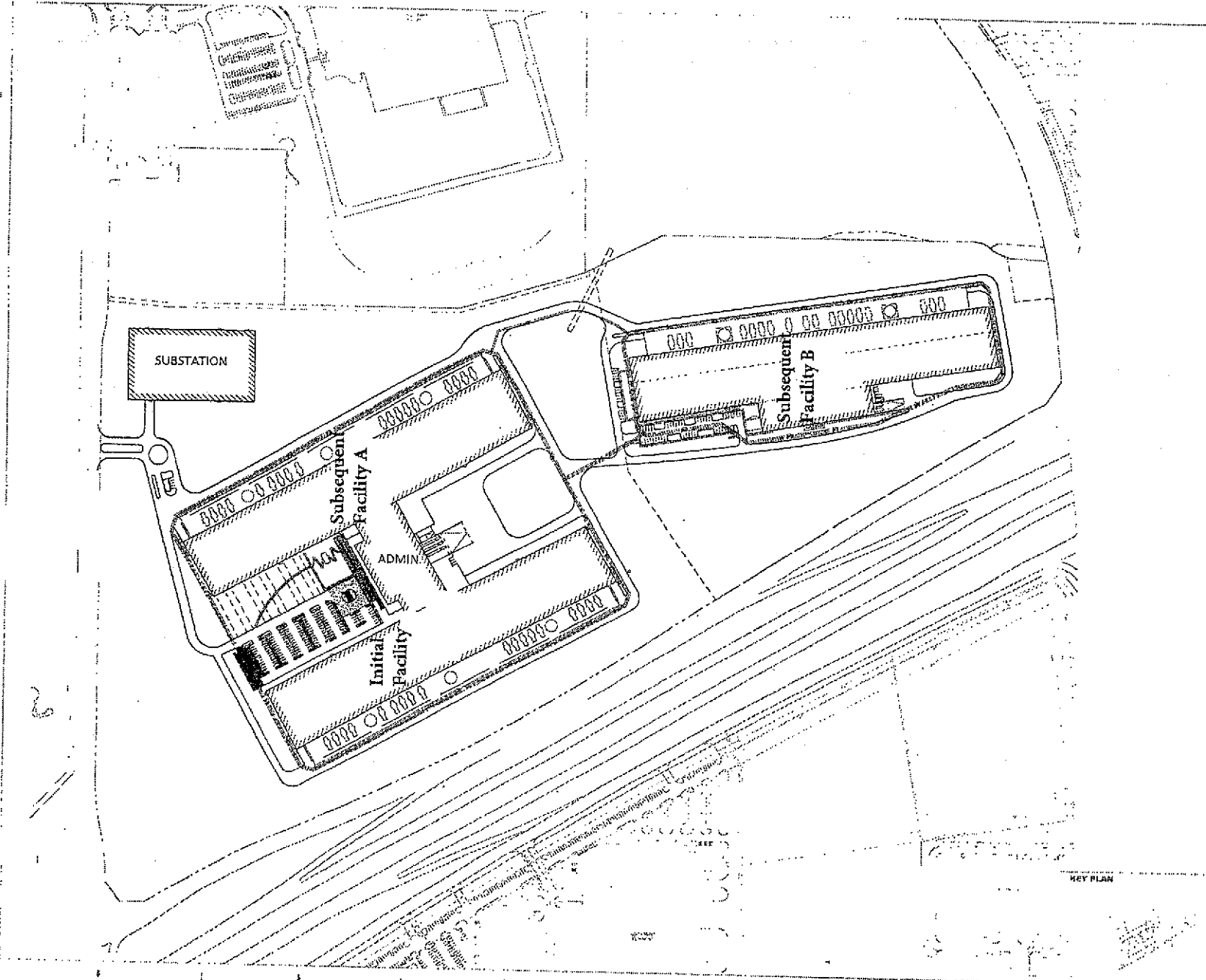
Notary's Printed Name

EXHIBITS

- “A” – Description and Map Depicting the Land**
- “B” – Company’s Tax Abatement Application**
- “C” – Form of Notice of Completion and Final Construction Report**
- “D” – Form of Personal Property Report**
- “E” – Form of Employment Report**
- “F” – Form of Consent to Collateral Assignment**

EXHIBIT "C"

**DESCRIPTION AND DEPICTION OF
ELIGIBLE PROPERTY IMPROVEMENTS**



DRAWN BY
 CHECKED BY
 APPROVED BY
 DATE

PROJECT
 [Logo]

PROFESSIONAL ENGINEER
PEOPLES ASSOCIATES
 REGISTERED PROFESSIONAL ENGINEERS
 1000 N. 10th Street, Suite 100
 Oklahoma City, Oklahoma 73102
 (405) 241-1111

REGISTERED LANDSCAPE ARCHITECT
TEEDOH
 1000 N. 10th Street, Suite 100
 Oklahoma City, Oklahoma 73102
 (405) 241-1111

CIVIL ENGINEER
PELTON
 LAND SOLUTIONS
 1000 N. 10th Street, Suite 100
 Oklahoma City, Oklahoma 73102
 (405) 241-1111

PROJECT
 [Blank space for project name]

SHEET NO. [Blank space]
 TOTAL SHEETS [Blank space]

DATE: [Blank space]
 BY: [Blank space]

[Logo]

Description and Depiction of Eligible Property Improvements

- Construction of a new data center.
 - The proposed data center 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 data center 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 to video surveillance, and electronic systems to monitor the site.
 - The proposed data center would be approximately 250,000 square feet in area.
- 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.

EXHIBIT "D"
APPLICATION FOR TAX ABATEMENT



Tarrant County Application for Tax Abatement/Reinvestment Zone

I. APPLICANT INFORMATION

Applicant/Property Owner: Winner LLC DBA Ernst LLC

Company/Project Name: Winner LLC DBA Ernst LLC

Mailing Address: To be supplemented at a later date.

Telephone: To be supplemented at a later date.

Fax: To be supplemented at a later date.

Applicant's Representative for contact regarding abatement request:

Name and Title: Paul Wageman – Shareholder, Winstead PC

Mailing Address: 500 Winstead Building, 2728 N. Harwood Street, Dallas, TX 75201

Telephone: 214.745.5173 **Fax:** 214.745.5390

E-mail: pwageman@winstead.com

II. PROPERTY AND PROJECT DESCRIPTION

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

Approximately 110 acres of vacant land located at the northeast corner of Alliance Gateway Freeway and Park Vista Blvd. See attached legal description.

Project Description: The proposed project would involve the purchase of approximately 110 acres of vacant land and the construction of a new data center. The data center 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 used primarily to provide data center services to Winner LLC's parent and parent's affiliates.

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

Current Assessed Value: Real Property: \$ 15,784 Personal Property: \$ 0

Estimated start date of construction/site improvements: 6/1/15

Projected date of occupancy/commencement of operations at project site: 12/31/16

Please indicate dates for phases if applicable: N/A

Location of existing company facilities: N/A

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. See Attached

III. PROJECTED VALUE OF IMPROVEMENTS

Estimated Value of Real Property Improvements: Building construction costs are estimated to be \$125 million, we don't have an estimate as to what the assessed value of these improvements will be.

Estimated Value of Personal Property Improvements \$ 93,750,000

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

Yes No

If yes, describe requested infrastructure improvements: All offsite city water and sewer infrastructure and public roads are already in place. Minor sewer line and transmission line extensions will be completed onsite.

Detail any direct benefits to Tarrant County as a result of this project (i.e., inventory tax, etc.): See attached.

IV. EMPLOYMENT IMPACT AT PROJECT LOCATION

A. NEW EMPLOYMENT

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

Full-time 25 Part-Time TBD

Provide types of jobs created and average salary levels: The proposed project estimates creating approximately 25 full-time jobs onsite. These jobs may be a mix of company employees and third party contractors working at the data center. Each new job will have at least 1,820 annual hours of employment and would be paid at least 120 percent of the county average weekly wage.

Start date and annual payroll of new permanent positions (if positions to be phased in, provide figures for each phase year): Jobs will be created over a 5-year period. Once fully staffed, payroll is estimated to reach \$1.6 million annually.

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

Number of employees transferring from other company locations: TBD

B. CONSTRUCTION RELATED EMPLOYMENTS

Projected number of construction related jobs: We estimated having between 200 and 300 construction workers onsite daily during our 18 months of construction.

Estimated total construction payroll: TBD, 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 utilize as many local 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 utilize as many DBE 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 N/A Part-time N/A

Average annual payroll: \$ N/A

Detail on workforce diversity – percentage breakdown of current employees by gender and ethnicity: N/A

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: \$ Depending on the size of the employee's family and choice of PPO, EPO or HMO insurance would cost anywhere from \$110 to \$290 per month.

Other employee benefits provided or offered: Dental insurance, vision insurance, 401(k), pre-tax flex spending accounts, life insurance and accidental death and dismemberment.

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

Estimated amount of annual supply and services expenses: \$ \$1,000,000

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: TBD

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.): N/A

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:

lncmillan@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 would be a new business 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 project;
- If ultimately approved for Tarrant County, Winner reasonably expects to create and sustain a minimum of 25 new full-time jobs that would not have the effect of transferring employment from one part of Tarrant County to another.

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, Winner will use its best efforts to hire Tarrant County residents and will make it a priority when evaluating candidates for full-time employment.
- 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, which will offset 120 MW of additional brown power production. This will have an extremely positive environmental impact.

- o Lastly, the proposed data center expects meet or exceed all requirements for erosion control, storm water management and landscaping.
- If ultimately approved for Tarrant County, Winner proposes 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 me at Ernst@projectnobel.com.

Respectfully submitted,

Project Ernst

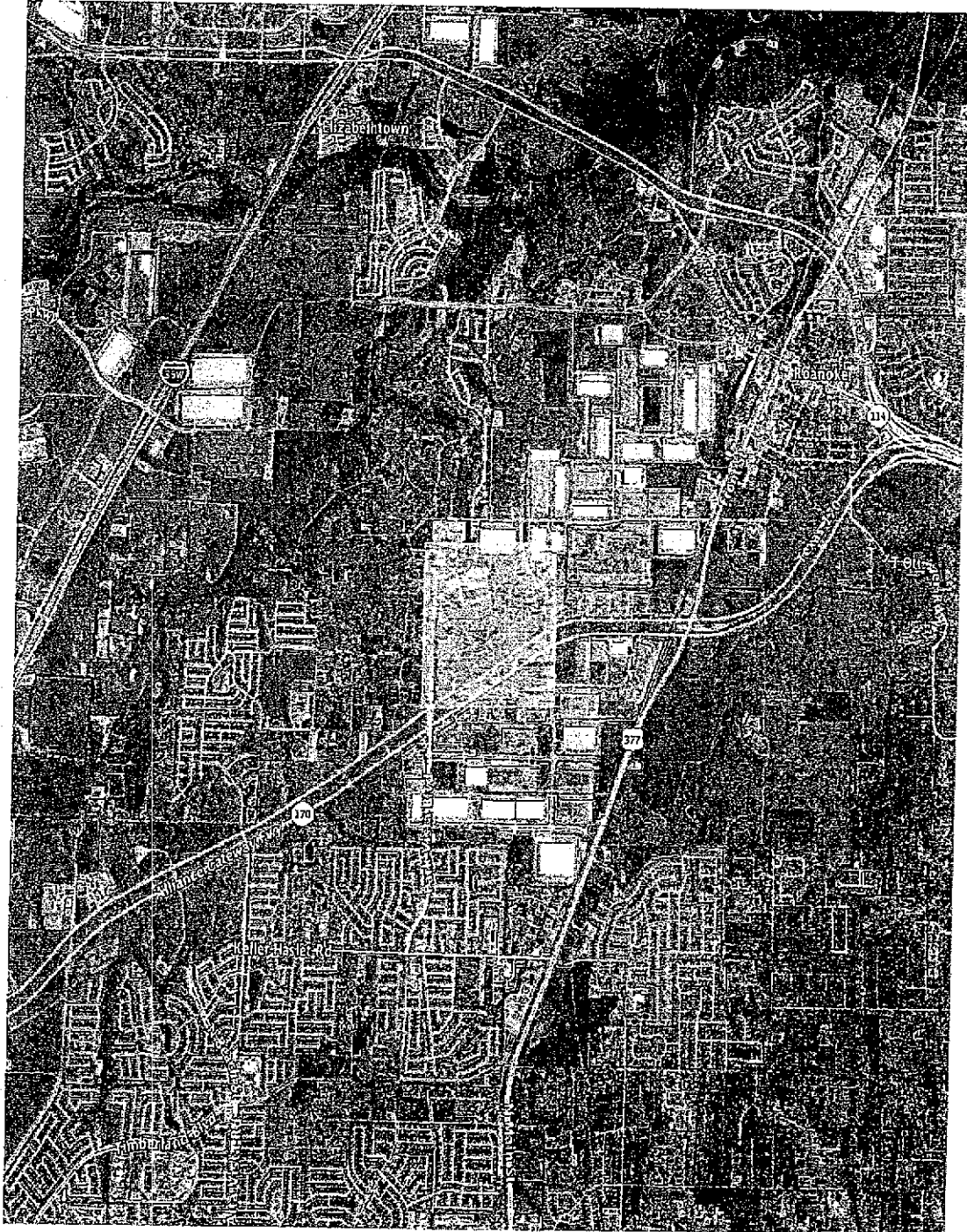
Descriptive list and value of real and personal property improvements

In total, data center construction and equipping would involve a capital investment of at least \$250 million over a five-year period. The proposed qualified investment would include:

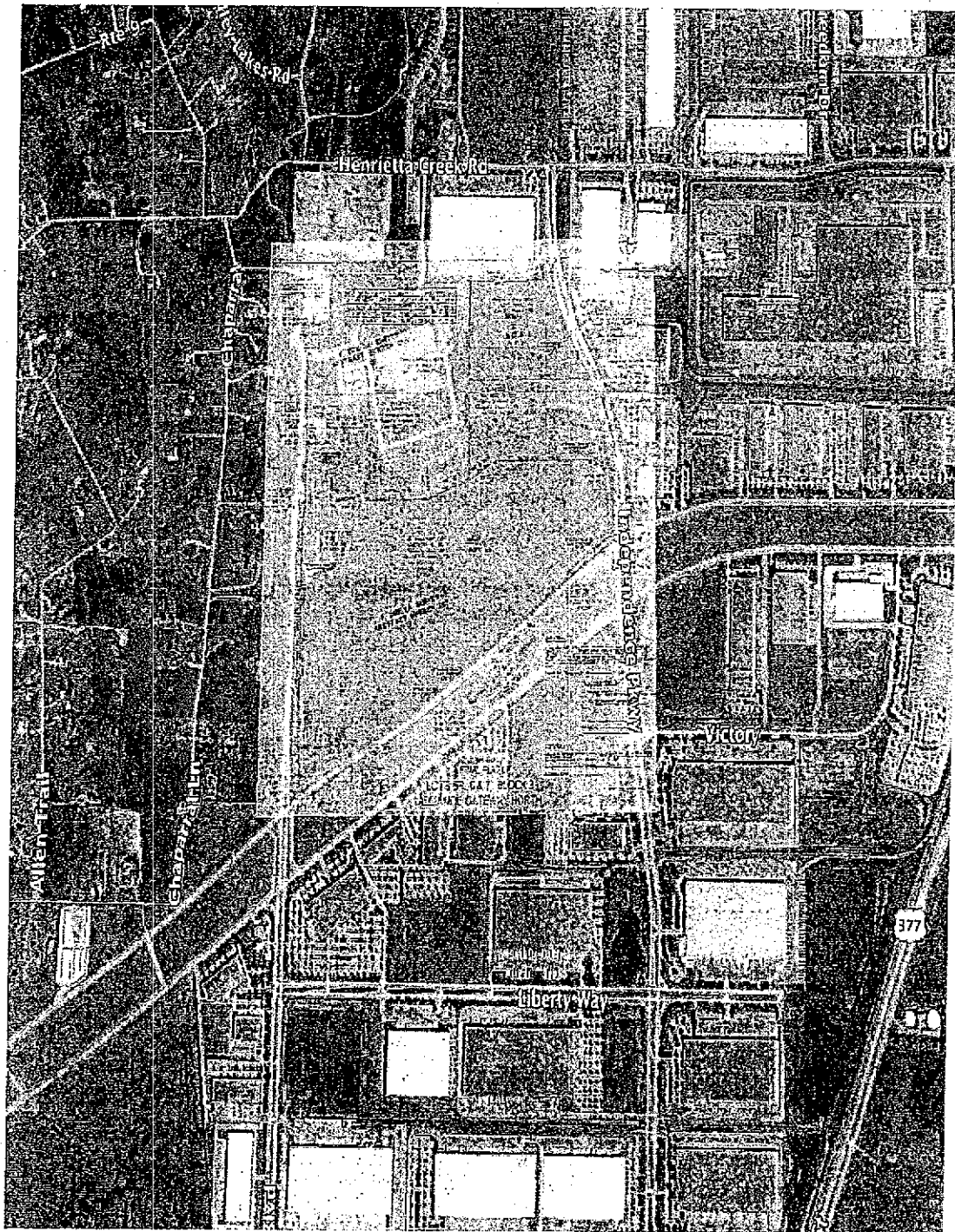
- The purchase of approximately 110 acres of vacant land.
- Construction of a new data center.
 - The data center would be specifically designed to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power 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 data center 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 to video surveillance, and electronic systems to monitor the site.
 - The proposed data center would be comprised of up to three large rectangular structures, each greater than 100,000 square feet. The first two rectangular structures would be connected via a shared administrative area and upon completion would resemble an "H" in its layout.
- 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 of project location

****Proposed Project Area in red.**



****Proposed Project Area in red.**



Legal description

DESCRIPTION OF 110.71 ACRES

BEING a tract of land situated in the F. Cuella Survey, Abstract Number 267, Tarrant County, Texas and being a portion of two tracts of land describe by deed to ALL Investment, L.P., recorded in Volume 13588, Page 195 (Tracts 12 and 13), County Records, Tarrant County, Texas, being more particularly described by metes and bounds as follows:

BEGINNING at the northeast corner of Lot 10, Block 3, Alliance Gateway North, an addition to the City of Fort Worth recorded in Instrument Number D208290670, in the south line of Lot 4R, Block 3 Alliance Gateway North, and addition to the City of Fort Worth recorded in Instrument Number D209069793, both of said County Records;

THENCE S 89°56'01"E, 368.25 feet;

THENCE S 00°04'42"W, 540.00

feet; **THENCE** S 89°55'36"E,

602.74 feet; **THENCE** N 71°51'00"E,

445.20 feet; **THENCE** N 62°28'25"E,

296.66 feet;

THENCE N 90°00'00"E, 1055.55 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 68.39 feet, through a central angle of 41°14'47", having a radius of 95.00 feet, the long chord which bears S 69°22'37"E, 66.92 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 94.33 feet, through a central angle of 38°19'47", having a radius of 141.00 feet, the long chord which bears S 67°55'07"E, 92.58 feet;

THENCE S 87°05'00"E, 103.97 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 200.88 feet, through a central angle of 05°55'58", having a radius of 1940.00 feet, the long chord which bears S 08°09'47"E, 200.79 feet;

THENCE S 05°15'42"E, 237.77 feet;

THENCE S 33°52'08"W, 95.68 feet to the beginning of a curve to the left;
THENCE with said curve to the left, an arc distance of 143.68 feet, through a central angle of 02°29'57", having a radius of 3294.04 feet, the long chord which bears S 61°40'59"W, 143.67 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 955.90 feet, through a central angle of 04°46'16", having a radius of 11479.16 feet, the long chord which bears S 58°08'59"W, 955.62 feet;

THENCE S 55°45'15"W, 459.78 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 1237.97 feet, through a central angle of 09°18'33", having a radius of 7619.44 feet, the long chord which bears S 60°24'08"W, 1236.61 feet;

THENCE S 65°04'38"W, 195.64 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 392.71 feet, through a central angle of 05°51'36", having a radius of 3839.72 feet, the long chord which bears S 62°07'36"W, 392.54 feet;

THENCE S 59°11'47"W, 152.11

feet; THENCE S 89°11'47"W, 80.00

feet; THENCE N 36°10'14"W,

86.37 feet;

THENCE N 00°04'17"W, 20.00 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 167.72 feet, through a central angle of 12°38'40", having a radius of 760.00 feet, the long chord which bears N 06°10'12"W, 167.38 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 162.11 feet, through a central angle of 12°33'05", having a radius of 740.00 feet, the long chord which bears N 06°12'59"W, 161.78 feet;

THENCE N 00°03'31"E, 1482.86 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 89.82 feet, through a central angle of 11°58'07", having a radius of 430.00 feet, the long chord which bears N 06°02'35"E, 89.66 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 102.36 feet, through a central angle of 11°58'07", having a radius of 490.00 feet, the long chord which bears N 06°02'35"E, 102.17 feet;

THENCE N 00°01'34"E, 425.60 feet;

THENCE S 89°56'45"E, 232.00 feet;

THENCE N 00°01'18"E, 115.00 feet to the **Point of Beginning** and containing 4,822,528 square feet or 110.71 acres of land more or less.

Project Time Schedule

- Proposed Ground Breaking: June 2015
- Complete Construction of 1st Building: June 2016
- Go live for 1st building (live traffic): December 2016

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, which will offset 120 MW of additional brown power production. 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

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41456696
Georeference: A 267-1A04B
Property Location: 4901 ALLIANCE GATEWAY FWY, FORT WORTH, 76177

Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1a04b

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$34,530	\$0	\$34,530
Appraised Value †	\$204	\$0	\$204
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			82,111
Land Acres			1.885

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$204	\$0	\$204	\$34,530	\$0	\$34,530
2012	\$204	\$0	\$204	\$34,530	\$0	\$34,530
2011	\$194	\$0	\$194	\$34,530	\$0	\$34,530
2010	\$194	\$0	\$194	\$34,530	\$0	\$34,530
2009	\$196	\$0	\$196	\$34,530	\$0	\$34,530

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1, 23.51

Property Data:

Appraisal Site: 80270395

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000
State Code: D1 Qualified Open Space Land
TAD Map: 2072-480
MAPSCO: TAR-009S
Agent: RYAN LLC

Site Name: 80270395
Class: Vacant Land-Ag
of Parcels: 3
Primary Building:
Building Name:
Building Type:
Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41045165
Georeference: A 267-1A01
Property Location: 14149 INDEPENDENCE PKWY, FORT WORTH, 76177

Owner Information: AIL INVESTMENTS LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-5398

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1a01

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$67,017	\$0	\$67,017
Appraised Value †	\$329	\$0	\$329
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			134,034
Land Acres			3.077

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$332	\$0	\$332	\$67,017	\$0	\$67,017
2012	\$332	\$0	\$332	\$67,017	\$0	\$67,017
2011	\$317	\$0	\$317	\$134,034	\$0	\$134,034
2010	\$317	\$0	\$317	\$134,034	\$0	\$134,034
2009	\$320	\$0	\$320	\$134,034	\$0	\$134,034

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1 23.51

Property Data:

Appraisal Site: 80868268

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

State Code: D1 Qualified Open Space Land

TAD Map: 2072-480
MAPSCO: TAR-009J
Agent: RYAN LLC

Site Name: 4901 HWY 170

Class: Vacant Land -Commercial
of Parcels: 1

Primary Building:
Building Name:
Building Type:
Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 40778096
Georeference: A267-1A
Property Location: 14301 INDEPENDENCE PKWY, FORT WORTH, 76177



Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1a

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$202,728	\$0	\$202,728
Appraised Value †	\$996	\$0	\$996
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			405,456
Land Acres			9.308

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$1,005	\$0	\$1,005	\$202,728	\$0	\$202,728
2012	\$1,005	\$0	\$1,005	\$202,728	\$0	\$202,728
2011	\$959	\$0	\$959	\$304,092	\$0	\$304,092
2010	\$959	\$0	\$959	\$304,092	\$0	\$304,092
2009	\$968	\$0	\$968	\$405,456	\$0	\$405,456

2015 Notice Sent:

Protest Deadline:

Exemptions:

Property Data:

Appraisal Site: 80865672

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 4901 HWY 170

State Code: D1 Qualified Open Space Land

Class: Vacant Land -Commercial

of Parcels: 1

TAD Map: 2072-480

Primary Building:

MAPSCO: TAR-009J

Building Name:

Agent:

Building Type:

Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41410386
Georeference: 414K-3-5
Property Location: 14217 INDEPENDENCE PKWY, FORT WORTH, 76177

☐

Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: ALLIANCE GATEWAY NORTH ADDN
 Block: 3 Lot: 5

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$254,652	\$0	\$254,652
Appraised Value †	\$1,251	\$0	\$1,251
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			509,304
Land Acres			11.692

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$1,263	\$0	\$1,263	\$254,652	\$0	\$254,652
2012	\$1,263	\$0	\$1,263	\$254,652	\$0	\$254,652
2011	\$1,204	\$0	\$1,204	\$509,304	\$0	\$509,304
2010	\$1,204	\$0	\$1,204	\$509,304	\$0	\$509,304
2009	\$1,216	\$0	\$1,216	\$509,304	\$0	\$509,304

2015 Notice Sent:

Protest Deadline:

Exemptions:

Property Data:

Appraisal Site: 80873414

Deed Date: 01/01/2008
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000
State Code: D1 Qualified Open Space Land
TAD Map: 2072-480
MAPSCO: TAR-009J
Agent: RYAN LLC

Site Name: 14217 INDEPENDENCE PKWY
Class: Vacant Land -Commercial
of Parcels: 1
Primary Building:
Building Name:
Building Type:
Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 03805794
Georeference: A 267-1C
Property Location: 4901 ALLIANCE GATEWAY FWY, FORT WORTH, 76177

Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

6 Prior Owners

Legal Description: CUELLA, FRANCISCO SURVEY

Lot:
 Abstract: 267 Tract: 1c
 1D & 1F

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$2,468,700	\$0	\$2,468,700
Appraised Value †	\$13,208	\$0	\$13,208
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			5,376,829
Land Acres			123.435

† Appraised value may be less than market value due to state-mandated limitations on value increases.
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year.
 ††† Rounded.

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$13,331	\$0	\$13,331	\$2,468,700	\$0	\$2,468,700
2012	\$13,331	\$0	\$13,331	\$2,468,700	\$0	\$2,468,700
2011	\$12,714	\$0	\$12,714	\$2,468,700	\$0	\$2,468,700
2010	\$12,714	\$0	\$12,714	\$4,032,621	\$0	\$4,032,621
2009	\$14,088	\$0	\$14,088	\$4,425,609	\$0	\$4,425,609

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1 23.51

Property Data:

Appraisal Site: 80270395

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 0000000000000
State Code: 01 Qualified Open Space Land

Site Name: 80270395

Class: Vacant Land-Ag

of Parcels: 3

TAD Map: 2072-476
MAPSCO: TAR-009
Agent: RYAN LLC

Primary Building:
Building Name:
Building Type:
Year Built:

Why tax abatement is necessary for the success of this project

The company is conducting a nationwide data center site selection effort. Our effort includes alternative locations in multiple jurisdictions outside of Texas. In completing our evaluation, many factors are considered, but we have an obligation to lower project related costs (both capital and operational). State and local taxes comprise a large piece of our ongoing operational expenses; therefore we need to be prudent in leveraging tax incentive programs when available. Competing states have the ability to offset state and local tax liability for twenty or more years.

Below are examples of states that have been successful in attracting large data center projects primarily based on their state and local tax incentives:

Oregon

- No sales and use tax in the state.
- Long-term Rural Enterprise Zones have the ability to abate up to 100% of new real and personal property tax value for 15-years. This includes all taxing districts.¹

Iowa

- The state offers a data center sales and use tax incentives that runs for the life of the data center (no sunset date).²
- No business personal property tax in the state.
- The High Quality Jobs Program grants local municipalities the ability to abate up to 100% of new real property tax value for up to 20-years. This includes all taxing districts.³

North Carolina

- The state offers a data center sales and use tax incentive that runs for the life of the data center (no sunset date).⁴
- Local governments have the ability to refund real and personal property taxes via annual incentive grants for up to 100% of the value added to the property. There are no statutory limitations on the term of these annual incentive grants.⁵

Based on the above, incentives are an important determining factor in locating this data center project in Tarrant County.

¹ ORS 285C.400-285C.420, OAR 123-690-5200

² Iowa Code §423.3(95)a

³ Iowa Code §15.329

⁴ N.C. Gen. Stat. §105-164.13 (55), N.C. Gen. Stat. §105-164.3

⁵ N.C. Gen. Stat. §158-7.1

Direct benefits to Tarrant County as a result of this project

Data centers generate multiplier spending effects that benefit workers and business owners in other sections of the local and regional economy. The construction alone can generate hundreds of millions of dollars in economic impact beyond the amount directly spent by the company.

The most significant direct economic impact of a large data center project locating in Fort Worth is generated by capital investment. Large data centers can create a significant amount of construction employment for the period of construction, which is approximately two years. Upon completion, data centers tend to create 30-50 full-time jobs, with relatively high salaries, to support their ongoing operations.

CBRE has studied the potential economic impact of a new data center development on a typical Texas community.⁶ For an average small data center of 150,000 gross square feet and about \$390 million of total capital investment, the total economic impact is estimated at nearly \$500 million over 10 years. An average large data center of 460,000 gross square feet and \$1.3 billion of total capital investment would have a total economic impact of about \$1.7 billion over the same period. The table below provides their detailed conclusions:

Figure 1: CBRE Estimates of the Impact of Data Centers

	Direct Impact	Total Impact ¹
Small Data Center		
Construction Jobs	794	1,430
Direct Jobs	16	46
Total Payroll	\$53,800,000	\$95,592,000
Potential Retail Sales	\$74,427,200	\$89,364,000
Economic Activity	\$374,164,000	\$499,032,000
Large Data Center		
Construction Jobs	2,941	5,366
Direct Jobs	64	184
Total Payroll	\$203,100,000	\$361,476,000
Potential Retail Sales	\$276,808,800	\$333,356,000
Economic Activity	\$1,244,656,000	\$1,716,928,000

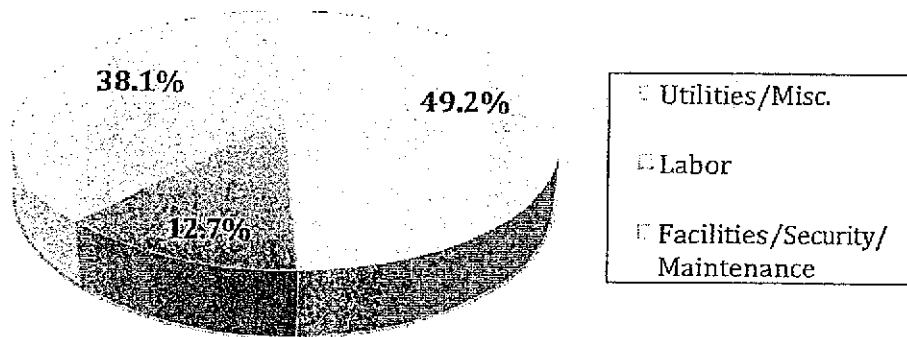
¹ Includes direct impacts as well as indirect and induced. Indirect includes suppliers supporting the operation. Induced includes jobs created from the spending of wages of the direct and indirect employees on goods and services.

The construction costs associated with the proposed project are estimated to be \$250 million, which are estimated to be spent over a two-year period. Initial equipping of the Project is projected to cost an additional \$250 million, coming in two tranches of \$125 million in the second and fifth year of the project (and presumably at three year increments going forward). However, at this point, the vendors of this equipment are not located in Texas, and so this investment is not

⁶ CBRE has the world's only fully integrated data center real estate team, offering strategy, acquisition and disposition representation, project management and facilities management from a single provider. See <http://www.cbre.us/services/office/data-center-solutions-group/Pages/home.aspx> for more information.

included in the economic impact calculations. Once the Project moves to the operations phase, annual spending will total just over \$43 million in year four, (including the cost of electricity & other utilities, labor, and contract security and maintenance). The share of each is presented in Figure 2, with the underlying figures used as inputs into the impact model.

Figure 2: Project Operational Spending by Major Category (2013)



Economic Impact Methodology

Input-output analysis includes three types of expenditure effects: direct, indirect, and induced. Direct effects are production changes associated with the immediate effects or final demand changes. The purchase of contract security by a data center is an example of a direct effect.

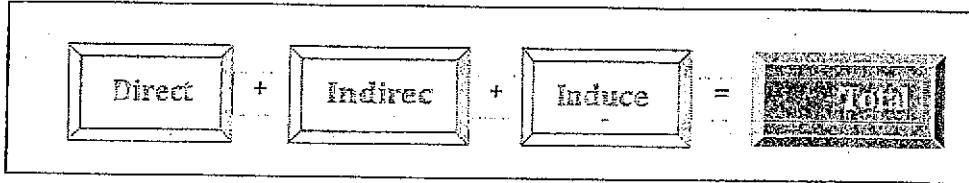
Indirect effects are production changes in backward-linked industries caused by the changing input needs of directly affected industries – typically, additional purchases to produce additional output. In order to provide security services, a contracted firm will need to hire workers, as well as provide them with whatever technology and/or equipment is necessary to do their jobs. These downstream purchases affect other local merchants and workers.

Induced effects are the changes in regional household spending patterns caused by changes in household income generated from the direct and indirect effects. The workers at the data center and security firm see increased compensation from their efforts, for example, as do the establishments that provide the necessary materials or other services to the designer and/or the producers. Induced effects capture the way in which this increased income is in turn spent in the local economy.

Once the ripple effects have been calculated, the results can be expressed in a number of ways. Three of the most common are “Output,” equivalent to sales or receipts; “Earnings,” which represents the compensation to employees and proprietors; and

“Employment,” which refers to permanent, full-time jobs that have been created in the local economy. The interdependence between different sectors of the economy is reflected in the concept of a “multiplier.” An output multiplier, for example, divides the total (direct, indirect and induced) effects by the direct effect.

Figure 3: The Flow of Economic Impacts



Results of the Modeling Effort

A large data center project is estimated to cost approximately \$250 million to build, with annual operations spending that will total just over \$43 million (including the cost of electricity, labor, other utilities, and contract security and maintenance). Per the discussion above, this data is used as inputs into local models of the regional economy; when the multiplier effects are included, the translation is a total injection of \$610.7 million in economic activity, total compensation of \$199.6 million, and 4,643 total jobs associated with the construction phase of the project. On the operations side, \$43.1 million in annual spending translates into of \$75.2 million in economic activity each year, total compensation of \$15.4 million, and 250 permanent total jobs. Summary results are in Table 1; Tables 2 and 3 provide a detailed breakdown of the impact by industry for Construction and Operations.

Table 1: Total Economic Impact of the Project by Phase (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employee
Total Construction-Related	\$610,700,000	\$199,625,000	4,643
Annual Operations-Related	\$75,156,766	\$15,371,613	250

Source: TXP

Table 2: Total Construction Economic Impact of the Project by Industry (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employee
Agriculture, etc.	\$575,000	\$100,000	5
Mining	\$2,550,000	\$550,000	9
Utilities	\$5,400,000	\$1,050,000	10
Construction	\$252,575,000	\$95,625,000	1,977
Manufacturing	\$68,950,000	\$13,875,000	270
Wholesale Trade	\$21,000,000	\$6,725,000	94
Retail Trade	\$33,825,000	\$11,700,000	427

Transportation/Warehouse	\$15,900,000	\$5,425,000	121
Information	\$18,775,000	\$4,250,000	68
Finance & Insurance	\$35,850,000	\$10,550,000	256
Real Estate	\$46,950,000	\$4,175,000	227
Prof./Technical Services	\$32,875,000	\$15,575,000	241
Management of Companies	\$7,750,000	\$3,125,000	44
Admin./Waste Services	\$12,450,000	\$5,450,000	211
Educational Services	\$2,825,000	\$1,125,000	41
Healthcare & Social	\$22,875,000	\$10,825,000	248
Arts, Entertainment, etc.	\$2,625,000	\$1,025,000	50
Accommodation	\$3,275,000	\$1,000,000	37
Food Services, etc.	\$9,400,000	\$3,000,000	167
Other Services	\$14,275,000	\$4,225,000	107
Households	N.A.	\$250,000	34
Total Annual	\$610,700,000	\$199,625,000	1668

Source: TXP

Table 3: Annual Operations Economic Impact of the Project by Industry (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employee
Agriculture, etc.	\$23,425	\$3,909	0
Mining	\$756,491	\$153,846	2
Utilities	\$5,462,017	\$1,071,700	10
Construction	\$305,879	\$115,219	2
Manufacturing	\$1,805,901	\$328,083	7
Wholesale Trade	\$890,191	\$284,751	4
Retail Trade	\$1,627,293	\$563,502	21
Transportation/Warehouse	\$979,258	\$317,267	6
Information	\$44,312,165	\$5,747,102	45
Finance & Insurance	\$2,544,595	\$745,028	18
Real estate	\$3,383,629	\$287,578	16
Prof./Technical Services	\$7,721,474	\$3,604,991	50
Management of Companies	\$447,673	\$180,560	3
Admin./Waste services	\$789,315	\$360,329	15
Educational Services	\$214,355	\$86,230	3
Healthcare & Social	\$1,732,455	\$818,506	18
Arts, Entertainment, etc.	\$207,915	\$79,987	4
Accommodation	\$286,984	\$88,384	3
Food services, etc.	\$786,058	\$251,863	14
Other services	\$879,693	\$262,610	7
Households	N.A.	\$20,168	3
Total Annual	\$75,156,766	\$15,371,613	250

Source: TXP

The Impact of A Cluster Beyond an Individual Facility

Beyond the impact of an individual facility or facilities, it is generally accepted that there are economic benefits associated with agglomeration, or clustering within an industry that render the sum greater than the parts. In particular, there are three broad benefit categories associated with clustering. First, a cluster allows for a more efficient sharing of local infrastructure and facilities, a variety of intermediate input suppliers, or a pool of workers with similar skills. Second, a cluster also allows for a better matching between employers and employees, buyers and suppliers, or business partners. Finally, a well-developed cluster can also facilitate learning, for instance by promoting the development and widespread adoption of new technologies and business practices. In the case of data centers, the infrastructure created (especially related to power and telecommunications) can also become a competitive advantage to the attraction and/or development of new products, services, and industries. This is especially true given the focus on green energy, in this case wind, as the aggregate demand from a data center cluster would greatly enhance wind's scale, creating a range of associated consumer benefits.

EXHIBIT "E"

TARRANT COUNTY TAX ABATEMENT POLICY AND GUIDELINES

TARRANT COUNTY TAX ABATEMENT POLICY

TARRANT COUNTY POLICY & PROCEDURES SUMMARY

TARRANT COUNTY POLICY:

Minimum investment - New business: \$5,000,000 Expansion: \$3,000,000.

1. Applicable to new construction and expansions/modernization.
2. Abatement on eligible real and fixed personal property.
 - a) Minimum job requirements include 25 jobs for new business and sustained employment level for existing business expansions.
 - b) Abatement for companies moving within the County; considered if agreeable to both cities.
3. Additional evaluation criteria:
 - a) Environmental impacts of project (company must show intent to participate in regional air quality program educating employees on the Ozone Action Program);
 - b) Diversity of employment base and commitment to a diversified workforce;
 - c) Minimum of 25% of new jobs created filled by Tarrant County residents (includes transferring employees who move to and reside in Tarrant County);
 - d) Use of minimum 15% DBE and 25% Tarrant County contractors in total annual construction/suppliers/services contract costs;
 - e) Provision of health care benefits at rate reasonable to allow access by majority of employees.
4. County approval of a tax abatement applies to both County and Hospital District ad valorem taxes.
5. Value of existing personal property currently on tax rolls will remain taxable and be included in base value, even if it is moved to a new abated location or replaced due to modernization or expansion.

6. Project is ineligible for abatement if the application for County abatement was filed after the commencement of construction, alteration or installation of new improvements.

GENERAL PROCEDURES:

1. Company begins negotiations with City; City makes County aware of request and invites County comments during negotiations. County makes City aware of concerns/changes prior to final action by City.
2. Company makes application to County for participation in abatement. County negotiates additional performance criteria with Company required for County participation.
3. Once an abatement agreement is approved by City, County action to participate at terms specified by City agreement take place with 90 days of the execution date of the municipal abatement agreement.

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) Download a copy of the Tax Abatement Application
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.

- (h) 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**

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 _____, 2015 (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
B. Glen Whitley
County Judge

Date: October 25th 2014

ATTEST:

Cheryl Lampes
Deputy County Clerk

APPROVED AS TO FORM*:

[Signature]
Asst. 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.*

EXHIBIT "G"

TAX ABATEMENT EVALUATION REPORT



Tarrant County Annual Tax Abatement Evaluation Report

Reporting Period: January 1, "[Response]" to December 31, "[Response]"

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* 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 Since Abatement Agreement: 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 / SUPPLIER / SERVICES CONTRACTS

CONSTRUCTION:

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

Percent Construction Dollars Spent With Tarrant County Contractors: "[Response]" %

Number of Construction Related Jobs This Period: "[Response]"

Total Construction Payroll This Period: \$"[Response]"

AWARDS TO DISADVANTAGED BUSINESS ENTERPRISES (DBE):

Total Dollars of Construction Contracts to DBE: \$"[Response]"

Percent of Total Construction Contracts to DBE: "[Response]" %

ANNUAL SUPPLIER / SERVICES EXPENSES:

Total Number Supplier/Services Contracts This Period: "[Response]"

Total Dollars Spent on Supplier/Services Contracts This Period: \$"[Response]"

Percent of Contracts Awarded to Tarrant County Businesses: "[Response]" %

Percent of Contract Dollars Spent with Tarrant County Businesses: "[Response]" %

Percent of Contracts Awarded to DBE: "[Response]" %

Percent of Contract Dollars Spent with DBE: "[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 (i.e., life insurance, pension plan, childcare, etc.): "[Response]"

Does Your Company Participate in The North Texas Clean Air Coalition Ozone Action Program?

Yes No If Yes, Please Attach Information on Company Program Initiatives.

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]"

Number of Fleet Vehicles Purchased This Period: "[Response]"

Describe Use of Vehicles: "[Response]"

Describe Type of Fuels Used in Fleet Vehicles (ie. Gas, Diesel, LPG, Electric; etc):

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 Rectification

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 Tarrant County Hospital District property taxes, you must return the completed report by April 30th to:

Ms. 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

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#123805

REFERENCE NUMBER

COMMISSIONERS COURT
COMMUNICATION

PAGE 1 OF

238

DATE: 10/25/2016

SUBJECT: CONSIDERATION OF A REQUEST FOR TAX ABATEMENT AND APPROVAL OF TAX ABATEMENT AGREEMENTS BETWEEN TARRANT COUNTY AND WINNER LLC FOR EXPANSION OF THE DATA CENTER PROJECT IN FORT WORTH

COMMISSIONERS COURT ACTION REQUESTED:

It is requested that the Commissioners Court consider a request for tax abatement and approve a Resolution and two (2) Tax Abatement Agreements 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 location of a new data center facilities in the Alliance Gateway Park, 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 Agreements, and authorize the County Judge or his designee to execute the Agreements.

BACKGROUND:

On May 26, 2015, through Court Order #120124, the Commissioners Court approved participation with the City of Fort Worth in tax abatement for Winner LLC, d/b/a Facebook, for the development and operation of a multi-building Data Center off Alliance Gateway at Park Vista Boulevard in north Fort Worth. As approved, the project is comprised of up to three 250,000 square feet facilities with a total investment of \$250,000,000 for each facility. Three (3) separate tax abatement agreements were approved for the Initial Facility, Subsequent Facility A, and Subsequent Facility B. Construction has already commenced on the first two facilities.

Following the initial project approval, Winner LLC purchased approximately 40 acres of additional land adjacent to the original 110 acre site, and now proposes the construction of two (2) additional facilities - Subsequent Facility C and Subsequent Facility D. As with the prior three (3) facilities, total investment at build-out for each of the new facilities is estimated at \$250,000,000, with \$150,000,000 in real property improvements and \$100,000,000 in business personal property improvements, with facility completion no later than December 31, 2030. The company plans to employ a minimum of thirty (30) full-time employees by the end of 2018, and that number could be replicated for each facility added. These positions will be well compensated and health and other benefits will be provided.

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



COMMISSIONERS COURT COMMUNICATION

REFERENCE NUMBER: _____ DATE: 10/25/2016 PAGE 2 OF 238

The City of Fort Worth has approved a one (1) year tax abatement and a Economic Program Agreement for the 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. The County is requested to participate in tax abatement for the two (2) additional facilities at the same terms as the previous agreements approved in 2015, with 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 ten (10) years, subject to minimum investment levels and performance-based criteria.

FISCAL IMPACT:

Total investment for each facility is projected at minimum of \$250,000,000. The actual value that the Tarrant Appraisal District will place on the completed facility and personal property is unknown at this time, but is expected to be well below the actual investment costs due to a short depreciation schedule on the type of business personal property to be installed. The County and Hospital District will abate up to a maximum of sixty percent (60%) and forty percent (40%), respectively, of the added value for a period of ten (10) years, retaining revenue on the unabated portion of new value during the same period. The full value of the facility will be taxable after the abatement period has ended.

Please note: Due to the volume, copies are not being reproduce for distribution. A complete copy may be viewed online in the Court's agenda at the Tarrant County Website or in the Court's County Clerk's Office.



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 additional facilities for a Data Center on real property under its ownership, more particularly described in the Abatement Agreements 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. 90 and Reinvestment Zone No. 90A 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 of a two 250,000 square foot Data Center facilities and installation of certain improvements at an estimated cost of over \$250,000,000 each, to be completed and equipped by December 31, 2030; 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

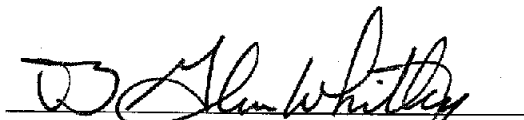
WHEREAS, the Commissioners Court has been requested by the Owner to take the steps required pursuant to the Code to permit tax abatement with respect to that portion of the Real Property and the improvements thereon which are subject to the taxing jurisdiction of the County, and has further requested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

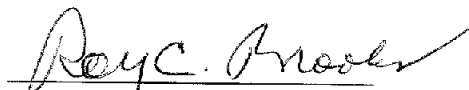
WHEREAS, the County has approved the Tarrant County Tax Abatement Policy Statement Guidelines and Criteria for granting tax abatement in reinvestment zones in Tarrant County;


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).

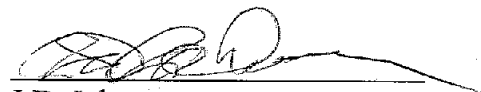
PASSED AND APPROVED, IN OPEN COURT, this 25th day of October, 2016, through Court Order No. 123805.


B. Glen Whitley, County Judge


Roy C. Brooks
Commissioner, Precinct 1


Andy H. Nguyen
Commissioner, Precinct 2


Gary Fickes
Commissioner, Precinct 3


J.D. Johnson
Commissioner, Precinct 4

THE STATE OF TEXAS §

Tax Abatement Agreement
Subsequent Facility D

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. 90 in the City of Fort Worth, Texas, established by Ordinance No. 21757-05-2015 adopted on May 19, 2015 and Reinvestment Zone No. 90A in the City of Fort Worth, Texas, established by Ordinance No. ~~22473~~ ~~40~~-2016 adopted on October 18, 2016, being a commercial-industrial reinvestment zone for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code, as amended (Reinvestment Zone No. 90 and Reinvestment Zone No. 90A are sometimes referred to collectively herein as the "Zone"); 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 owns approximately 150 acres of land at the northeast corner of Alliance Gateway and Park Vista Boulevard, 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 and operate an approximately 250,000 square foot Data Center facility on the Land, with potential additional facilities to be constructed, resulting in an aggregate investment of more than \$250,000,000 in real and business personal property investments; and

WHEREAS, following completion of the Initial Facility, Owner contemplates the construction of up to four additional minimum 250,000 square foot facilities on the Land, Subsequent Facility A, Subsequent Facility B, Subsequent Facility C

and Subsequent Facility D, providing an additional investment of more than \$250,000,000 in real and business personal property investments for each facility; 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 2016 taxable value of real and personal property located on the Land in Reinvestment Zone No. 90 and Reinvestment Zone No. 90A on January 1, 2016, 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 Subsequent Facility D.
- G. "Completion Deadline" means June 1, 2030, 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 Subsequent Facility D as generally described in Exhibit "C", constructed, delivered to, installed or placed on the Land after January 1, 2016 and throughout the Abatement Term, as set forth in this Agreement.
- M. "Initial Facility" means the first building to be constructed and completed on the Land consisting of at least 250,000 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, plus any additional land within the Zone acquired by Owner subsequent to the Effective Date for incorporation into the Eligible Property and otherwise allowable under Chapter 312 of the Texas Tax Code.
- 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 Subsequent Facility D 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 Subsequent Facility D 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. 90" is defined as the real property located in the City and described by City of Fort Worth Ordinance No. 21757-05-2015 (substantially in the form included within **Exhibit "B"**).
- U. "Reinvestment Zone No. 90A" is defined as the real property located in the City and described by City of Fort Worth Ordinance No. ~~22473-10~~ -2016 (substantially in the form included within **Exhibit "B"**).
- V. "Subsequent Facility A" means the second facility to be constructed and completed on the Land consisting of at least 250,000 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"**.
- W. "Subsequent Facility B" means the third facility to be constructed and completed on the Land consisting of at least 250,000 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"**.

- X. "Subsequent Facility C" means the fourth facility to be constructed and completed on the Land consisting of at least 250,000 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"**.
- Y. "Subsequent Facility D" means the fifth facility to be constructed and completed on the Land consisting of at least 250,000 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"**.
- Z. "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.
- AA. "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.
- BB. "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 One Hundred Million Dollars (\$100,000,000) ("Personal Property Commitment").
- C. Owner shall expend or cause the expenditure by the Completion Deadline of at least One Hundred Fifty Million (\$150,000,000) 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 thirty (30) Jobs on the Land throughout the Abatement Term. These Jobs are cumulative and include Jobs created for the Initial Facility.
- 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 thirty (30) Jobs, the abatement percentage will be reduced by two percent (2%) for each one (1) Job deficiency, for that year.

(Example: A total of 28 Jobs would be a deficiency of 2 Jobs, which would provide for a 4% 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").

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 Owner's 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 the Zone. 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").

B. 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.

C. 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
c/o Tommy Mann
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, TX 75201

County: Tarrant County

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

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 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

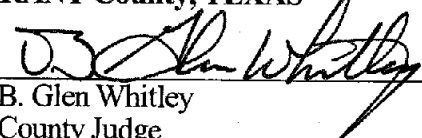
This Agreement shall terminate, in accordance with the terms of this Agreement, unless extended by written agreement of the parties or a written instrument signed by all parties evidencing a delay by force majeure; provided however, that the period of abatement may not extend beyond ten (10) years.

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

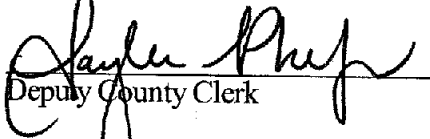
WINNER LLC,
a Delaware limited liability company:

By: 
Name: Rachel Peterson
Title: Authorized Representative
Date: Nov. 10, 2016

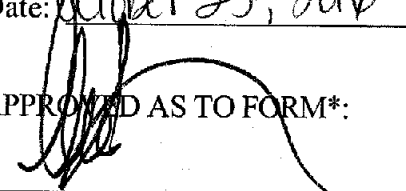
TARRANT County, TEXAS

By: 
B. Glen Whitley
County Judge
Date: October 25th, 2016

ATTEST:


Deputy County Clerk

APPROVED AS TO FORM*:


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.*

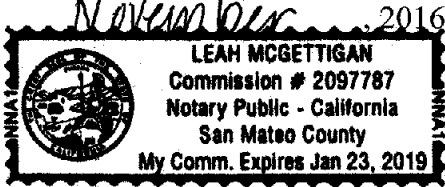
THE STATE OF CA §

County OF San Mateo §

WINNER LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of CA, on this day personally appeared Rachel Peterson, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **WINNER LLC**, and as the Authorized Rep 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 10 day of



Leah McGettigan
Notary Public in and for
The State of CA

Leah McGettigan
Notary's Printed Name

My Commission Expires

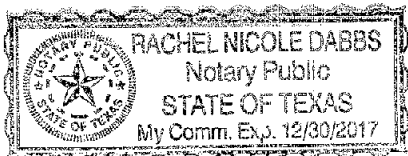
THE STATE OF TEXAS §

County OF TARRANT §

Tarrant County, Texas
Acknowledgment

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 25th day of October, 2016.



Rachel Nicole Dabbs

Notary Public in and for
The State of Texas

Rachel Nicole Dabbs
Notary's Printed Name

My Commission Expires

EXHIBIT "A"

DESCRIPTION OF LAND

DESCRIPTION OF 110.71 ACRES

BEING a tract of land situated in the F. Cuella Survey, Abstract Number 267, Tarrant County, Texas and being a portion of two tracts of land describe by deed to AIL Investment, L.P., recorded in Volume 13588, Page 195 (Tracts 12 and 13), County Records, Tarrant County, Texas, being more particularly described by metes and bounds as follows:

BEGINNING at the northeast corner of Lot 10, Block 3, Alliance Gateway North, an addition to the City of Fort Worth recorded in Instrument Number D208290670, in the south line of Lot 4R, Block 3 Alliance Gateway North, and addition to the City of Fort Worth recorded in Instrument Number D209069793, both of said County Records;

THENCE S 89°56'01"E, 368.25 feet;

THENCE S 00°04'42"W, 540.00

feet; **THENCE** S 89°55'36"E,

602.74 feet; **THENCE** N 71°51'00"E,

445.20 feet; **THENCE** N 62°28'25"E,

296.66 feet;

THENCE N 90°00'00"E, 1055.55 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 68.39 feet, through a central angle of 41°14'47", having a radius of 95.00 feet, the long chord which bears S 69°22'37"E, 66.92 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 94.33 feet, through a central angle of 38°19'47", having a radius of 141.00 feet, the long chord which bears S 67°55'07"E, 92.58 feet;

THENCE S 87°05'00"E, 103.97 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 200.88 feet, through a central angle of 05°55'58", having a radius of 1940.00 feet, the long chord which bears S 08°09'47"E, 200.79 feet;

THENCE S 05°15'42"E, 237.77 feet;

THENCE S 33°52'08"W, 95.68 feet to the beginning of a curve to the left;
THENCE with said curve to the left, an arc distance of 143.68 feet, through a central angle of 02°29'57", having a radius of 3294.04 feet, the long chord which bears S 61°40'59"W, 143.67 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 955.90 feet, through a central angle of 04°46'16", having a radius of 11479.16 feet, the long chord which bears S 58°08'59"W, 955.62 feet;

THENCE S 55°45'15"W, 459.78 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 1237.97 feet, through a central angle of 09°18'33", having a radius of 7619.44 feet, the long chord which bears S 60°24'08"W, 1236.61 feet;

THENCE S 65°04'38"W, 195.64 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 392.71 feet, through a central angle of 05°51'36", having a radius of 3839.72 feet, the long chord which bears S 62°07'36"W, 392.54 feet;

THENCE S 59°11'47"W, 152.11

feet; THENCE S 89°11'47"W, 80.00

feet; THENCE N 36°10'14"W,

86.37 feet;

THENCE N 00°04'17"W, 20.00 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 167.72 feet, through a central angle of 12°38'40", having a radius of 760.00 feet, the long chord which bears N 06°10'12"W, 167.38 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 162.11 feet, through a central angle of 12°33'05", having a radius of 740.00 feet, the long chord which bears N 06°12'59"W, 161.78 feet;

THENCE N 00°03'31"E, 1482.86 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 89.82 feet, through a central angle of $11^{\circ}58'07''$, having a radius of 430.00 feet, the long chord which bears N $06^{\circ}02'35''$ E, 89.66 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 102.36 feet, through a central angle of $11^{\circ}58'07''$, having a radius of 490.00 feet, the long chord which bears N $06^{\circ}02'35''$ E, 102.17 feet;

THENCE N $00^{\circ}01'34''$ E, 425.60 feet;

THENCE S $89^{\circ}56'45''$ E, 232.00 feet;

THENCE N $00^{\circ}01'18''$ E, 115.00 feet to the **Point of Beginning** and containing 4,822,528 square feet or 110.71 acres of land more or less.

DESCRIPTION OF ADDITIONAL 39.407 ACRES

BEING A TRACT OF LAND SITUATED IN THE F. CUELLA SURVEY, ABSTRACT NUMBER 267, TARRANT COUNTY, TEXAS AND BEING ALL OF LOT 5R AND 6, BLOCK 3, ALLIANCE GATEWAY NORTH, AN ADDITION TO THE CITY OF FORT WORTH AS RECORDED IN INSTRUMENT NUMBER D215150766, COUNTY RECORDS. TARRANT COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF SAID LOT 5R, BLOCK 3, THE SOUTHEAST CORNER OF LOT 1, BLOCK 3, ALLIANCE GATEWAY NORTH ADDITION, AN ADDITION TO THE CITY OF FORT WORTH RECORDED IN CABINET X, SLIDE 753, IN THE WEST LINE OF THAT TRACT OF LAND DESCRIBED IN A DEDICATION DEED (KNOWN AS INDEPENDENCE PARKWAY) TO THE CITY OF FORT WORTH, RECORDED IN VOLUME 13944, PAGE 528 OF COUNTY RECORDS, TARRANT COUNTY, TEXAS AND BEING THE BEGINNING OF A CURVE TO THE LEFT;

THENCE WITH SAID CURVE TO THE LEFT AND THE WEST RIGHT-OF-WAY LINE OF SAID INDEPENDENCE PARKWAY, AN ARC DISTANCE OF 673.39 FEET, THROUGH A CENTRAL ANGLE OF 119°46'46", HAVING A RADIUS OF 2060.00 FEET, THE LONG CHORD WHICH BEARS S 25°49'55"E, 670.40 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE S 35°11'48"E, 166.77 FEET, WITH SAID RIGHT-OF-WAY LINE, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE CONTINUING WITH SAID WEST RIGHT-OF-WAY LINE AND SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 814.90 FEET, THROUGH A CENTRAL ANGLE OF 24°04'02", HAVING A RADIUS OF 1940.00 FEET, THE LONG CHORD WHICH BEARS S 23°09'47"E, 808.92 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE N 87°05'00"W, 103.97 FEET DEPARTING SAID RIGHT-OF-WAY LINE TO A 5/8" INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND THE AT NORTHEAST CORNER OF LOT 7, BLOCK 3 OF AFOREMENTIONED ALLIANCE GATEWAY NORTH AT THE BEGINNING OF A CURVE TO THE RIGHT BEING;

THENCE CONTINUING WITH SAID NORTH LINE AND SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 68.39 FEET, THROUGH A CENTRAL ANGLE OF 41°14'47", HAVING A RADIUS OF 95.00 FEET, THE LONG CHORD WHICH BEARS N 69°22'37"W, 66.92 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE N 90°00'00"W, 155.55 FEET WITH SAID NORTH LINE TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE S 62°28'25"W, 296.66 FEET WITH SAID NORTH LINE TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND AT THE SOUTHEAST CORNER OF LOT 4R, BLOCK 3, ALLIANCE GATEWAY NORTH, AN ADDITION TO THE CITY OF FORT WORTH AS RECORDED IN INSTRUMENT NUMBER 0209069793, SAID COUNTY RECORDS;

THENCE N 00°19'15"W, 1483.52 FEET WITH THE EAST LINE OF SAID LOT 4R TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND IN THE SOUTH LINE OF THE AFOREMENTIONED LOT 1, BLOCK 3, ALLIANCE GATEWAY NORTH ADDITION;

THENCE N 89°38'27"E, 637.87 FEET WITH THE SOUTH LINE OF SAID LOT 1 TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON " FOUND;

THENCE N 73°33'03"E, 244.92 FEET CONTINUING WITH SAID LOT 1 TO THE POINT OF BEGINNING AND CONTAINING 1,716,584 SQUARE FEET OR 39.407 ACRES OF LAND MORE OR LESS.

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING A CERTAIN AREA IN THE CITY OF FORT WORTH AS "TAX ABATEMENT REINVESTMENT ZONE NUMBER NINETY, CITY OF FORT WORTH, TEXAS"; PROVIDING THE EFFECTIVE AND EXPIRATION DATES FOR THE ZONE AND A MECHANISM FOR RENEWAL OF THE ZONE; AND CONTAINING OTHER MATTERS RELATED TO THE ZONE.

WHEREAS, pursuant to the City Council's adoption on May 20, 2014 of Resolution No. 4322-05-2014 (the "**Tax Abatement Policy**"), the City of Fort Worth, Texas (the "**City**") has elected to be eligible to participate in tax abatement and has established guidelines and criteria governing tax abatement agreements entered into between the City and various third parties, as authorized by and in accordance with the Property Redevelopment and Tax Abatement Act, codified in Chapter 312 of the Texas Tax Code (the "**Code**"); and

WHEREAS, the City Council desires to promote the development of the area in the City more specifically described in Exhibit "A" of this Ordinance (the "**Zone**") through the creation of a reinvestment zone for purposes of granting a business expansion tax abatement, as authorized by and in accordance with Chapter 312 of the Code; and

WHEREAS, Winner, LLC ("**Company**") wishes to expend or cause to be expended at least \$125 million in real property improvements for the construction of a new data center located in the Zone, and Company intends to install new taxable tangible business personal property having a value of approximately \$125 million in such facility (collectively, the "**Improvements**"); and

EXHIBIT "B"

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

WHEREAS, Company expects that this project will create at least 40 new jobs once the Improvements are completed; and

WHEREAS, Company has applied for real and business personal property tax abatements from the City in return for the installation of the Improvements in the Zone and compliance with certain other employment and spending commitments that will foster economic development in the Zone and the City in general; and

WHEREAS, on May 12, 2015 the City Council held a public hearing regarding the creation of the Zone, received information concerning the Improvements proposed for the Zone and afforded a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone (“Public Hearing”), as required by Section 312.201(d) of the Code; and

WHEREAS, notice of the Public Hearing was published in a newspaper of general circulation in the City on May 4, 2015, which satisfies the requirement of Section 312.201(d)(1) of the Code that publication of the notice occur not later than the seventh day before the date of the public hearing; and

WHEREAS, in accordance with Sections 312.201(d)(2) and (e), of the Code notice of the Public Hearing was delivered in writing not later than the seventh day before the date of the public hearing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed Zone;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF FORT WORTH, TEXAS:**

Section 1.

FINDINGS.

That after reviewing all information before it regarding the establishment of the Zone and after conducting the Public Hearing and affording a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone, the City Council hereby makes the following findings of fact:

- 1.1. The statements and facts set forth in the recitals of this Ordinance are true and correct. Therefore, the City has met the notice and procedural requirements established by the Code for creation of a reinvestment zone under Chapter 312 of the Code.
- 1.2. The Improvements proposed for the Zone, as more specifically outlined in the Public Hearing, are feasible and practical and, once completed will benefit the land included in the Zone as well as the City for a period in excess of ten (10) years, which is the statutory maximum term of any tax abatement agreement entered into under the Chapter 312 of the Code.
- 1.3. As a result of designation as a reinvestment zone, the area within the Zone is reasonably likely to contribute to the expansion of primary employment and to attract major investment in the Zone that will be a benefit to property in the Zone and will contribute to the economic development of the City.

Section 2.

DESIGNATION OF ZONE.

That the City Council hereby designates the Zone described in the boundary description attached hereto as **Exhibit "A"** and made a part of this Ordinance for all purposes as a reinvestment zone for purposes of granting business expansion tax abatement, as authorized by and in accordance with Chapter 312 of the Code. This Zone shall be known as "Tax Abatement Reinvestment Zone Number Ninety, City of Fort Worth, Texas." This project is eligible for commercial/industrial tax abatement pursuant to Section 4.3 of the Tax Abatement Policy.

Section 3.

TERM OF ZONE.

That the Zone shall take effect upon the effective date of this Ordinance and expire five (5) years thereafter. The Zone may be renewed by the City Council for one or more subsequent terms of five (5) years or less.

Section 4.

SEVERABILITY.

That if any portion, section or part of a section of this Ordinance is subsequently declared invalid, inoperative or void for any reason by a court of competent jurisdiction, the remaining portions, sections or parts of sections of this Ordinance shall be and remain in full force and effect and shall not in any way be impaired or affected by such decision, opinion or judgment.

Section 5.

IMMEDIATE EFFECT.

That this Ordinance shall take effect upon its adoption.

ADOPTED AND EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Peter Vaky
Deputy City Attorney

M&C: _____

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING A CERTAIN AREA IN THE CITY OF FORT WORTH AS “TAX ABATEMENT REINVESTMENT ZONE NUMBER 90A, CITY OF FORT WORTH, TEXAS”; PROVIDING THE EFFECTIVE AND EXPIRATION DATES FOR THE ZONE AND A MECHANISM FOR RENEWAL OF THE ZONE; AND CONTAINING OTHER MATTERS RELATED TO THE ZONE.

WHEREAS, pursuant to the City Council’s adoption on June 28, 2016 of Resolution No. 4647-06-2016 (the “**Tax Abatement Policy**”), the City of Fort Worth, Texas (the “**City**”) has elected to be eligible to participate in tax abatement and has established guidelines and criteria governing tax abatement agreements entered into between the City and various third parties, as authorized by and in accordance with the Property Redevelopment and Tax Abatement Act, codified in Chapter 312 of the Texas Tax Code (the “**Code**”); and

WHEREAS, the City Council desires to promote the development of the real property located at 14101 and 14217 Independence Parkway in the City, as more specifically depicted in Exhibit “A” of this Ordinance (the “**Zone**”), through the creation of a reinvestment zone for purposes of granting a tax abatement, as authorized by and in accordance with Chapter 312 of the Code; and

WHEREAS, Winner, LLC (“**Company**”) wishes to construct a new Facebook data center or centers on property in the Zone, with a minimum expenditure of at least \$250 million in real and business property improvements (collectively, the “**Improvements**”); and

WHEREAS, the Zone is adjacent to that real property designated as Tax Abatement Reinvestment Zone No. 90, City of Fort Worth, Texas (the “**Initial Zone**”); and

WHEREAS, the City previously granted Company a tax abatement on property and improvements located in the Initial Zone in return for Company’s construction of a data center on such property, with a minimum expenditure of at least \$250 million in real and business property improvements, as set forth in that certain Tax Abatement Agreement on file in the City Secretary’s Office as City Secretary Contract No. 46727; and

WHEREAS, Company expects that the overall project in the Zone and the Initial Zone will create at least 40 new jobs; and

WHEREAS, the Improvements planned for the Zone will complement that portion of the project constructed in the Initial Zone; and

WHEREAS, on October 18, 2016 the City Council held a public hearing regarding the creation of the Zone, received information concerning the Improvements proposed for the Zone and afforded a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone (“**Public Hearing**”), as required by Section 312.201(d) of the Code; and

WHEREAS, notice of the Public Hearing was published in a newspaper of general circulation in the City on October 9, 2016, which satisfies the requirement of Section 312.201(d)(1) of the Code that publication of the notice occur not later than the seventh day before the date of the public hearing; and

WHEREAS, in accordance with Sections 312.201(d)(2) and (e), of the Code notice of the Public Hearing was delivered in writing not later than the seventh day before the date of the public hearing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed Zone;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

Section 1.

FINDINGS.

That after reviewing all information before it regarding the establishment of the Zone and after conducting the Public Hearing and affording a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone, the City Council hereby makes the following findings of fact:

- 1.1. The statements and facts set forth in the recitals of this Ordinance are true and correct. Therefore, the City has met the notice and procedural requirements established by the Code for creation of a reinvestment zone under Chapter 312 of the Code.
- 1.2. The Improvements proposed for the Zone, as more specifically outlined in the Public Hearing, are feasible and practical and, once completed will benefit the land included in the Zone as well as the City for a period in excess of ten (10)

years, which is the statutory maximum term of any tax abatement agreement entered into under the Chapter 312 of the Code.

- 1.3. As a result of designation as a reinvestment zone, the area within the Zone is reasonably likely to contribute to the expansion of primary employment and to attract major investment in the Zone that will be a benefit to property in the Zone and will contribute to the economic development of the City.

Section 2.

DESIGNATION OF ZONE.

That the City Council hereby designates the Zone described herein and depicted in the map attached hereto as **Exhibit "A"** and made a part of this Ordinance for all purposes as a reinvestment zone for purposes of granting a commercial-industrial tax abatement, as authorized by and in accordance with Chapter 312 of the Code. This Zone shall be known as "Tax Abatement Reinvestment Zone Number 90A, City of Fort Worth, Texas." This project is eligible for commercial/industrial tax abatement pursuant to Section 4.1 of the Tax Abatement Policy.

Section 3.

TERM OF ZONE.

That the Zone shall take effect upon the effective date of this Ordinance and expire five (5) years thereafter. The Zone may be renewed by the City Council for one or more subsequent terms of five (5) years or less.

Section 4.

SEVERABILITY.

That if any portion, section or part of a section of this Ordinance is subsequently declared invalid, inoperative or void for any reason by a court of competent jurisdiction, the remaining portions, sections or parts of sections of this Ordinance shall be and remain in full force and effect and shall not in any way be impaired or affected by such decision, opinion or judgment.

Section 5.

IMMEDIATE EFFECT.

That this Ordinance shall take effect upon its adoption.

ADOPTED AND EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____

Peter Vaky
Deputy City Attorney

M&C: _____

EXHIBIT "A"

MAP DEPICTING ZONE

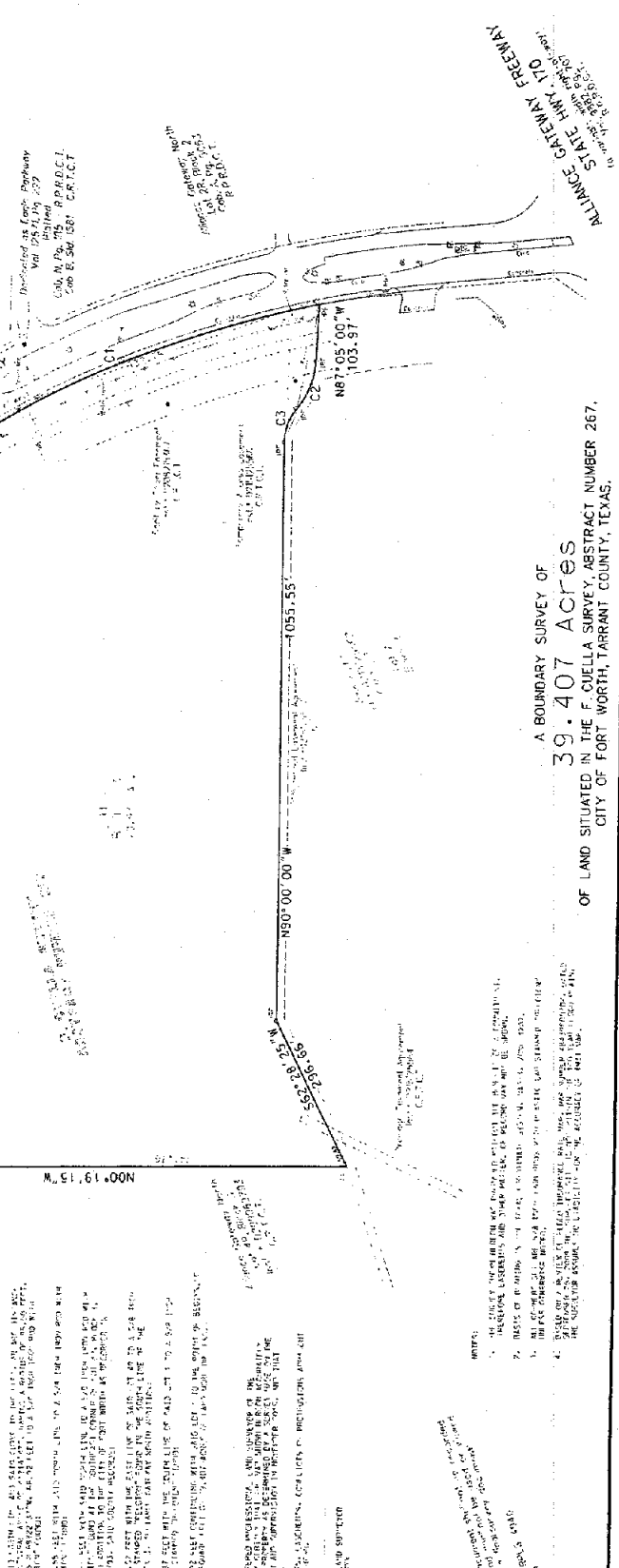
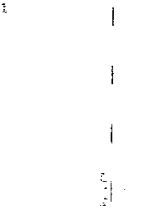
EXHIBIT "A"

Job #	WIN15001
Drawn By	W. Bridges
Checked By	T. Bridges
Date	11.30.2018
Revisions	

LINE	BEARING	LENGTH	ADJ. COR.	ADJ. BEARING	ADJ. LENGTH
1	N89°38'27"E	637.87	0.00	N89°38'27"E	637.87
2	N73°33'03"E	244.92	0.00	N73°33'03"E	244.92
3	N55°11'48"E	551.11	0.00	N55°11'48"E	551.11
4	N87°05'00"W	103.97	0.00	N87°05'00"W	103.97
5	N90°00'00"W	1055.55	0.00	N90°00'00"W	1055.55
6	S89°38'27"W	637.87	0.00	S89°38'27"W	637.87
7	S73°33'03"W	244.92	0.00	S73°33'03"W	244.92
8	S55°11'48"W	551.11	0.00	S55°11'48"W	551.11
9	S87°05'00"E	103.97	0.00	S87°05'00"E	103.97
10	S90°00'00"E	1055.55	0.00	S90°00'00"E	1055.55
11	S89°38'27"E	637.87	0.00	S89°38'27"E	637.87
12	S73°33'03"E	244.92	0.00	S73°33'03"E	244.92
13	S55°11'48"E	551.11	0.00	S55°11'48"E	551.11
14	S87°05'00"E	103.97	0.00	S87°05'00"E	103.97
15	S90°00'00"E	1055.55	0.00	S90°00'00"E	1055.55
16	S89°38'27"E	637.87	0.00	S89°38'27"E	637.87
17	S73°33'03"E	244.92	0.00	S73°33'03"E	244.92
18	S55°11'48"E	551.11	0.00	S55°11'48"E	551.11
19	S87°05'00"E	103.97	0.00	S87°05'00"E	103.97
20	S90°00'00"E	1055.55	0.00	S90°00'00"E	1055.55

Point of Beginning
 Alliance Gateway North
 Inst. # D215150766
 C.R.T.C.T.
 39.407 Acres

- 1. TRANSFORMER TAP
- 2. CHISEL IRON NAIL
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NOTES:
 1. THIS SURVEY WAS MADE IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE SURVEYING BOARD OF TEXAS.
 2. THE SURVEYOR HAS REVIEWED THE RECORDS OF THE SURVEYING BOARD OF TEXAS AND HAS FOUND NO RECORDS OF ANY OTHER SURVEYS OF THIS LAND.
 3. THE SURVEYOR HAS REVIEWED THE RECORDS OF THE SURVEYING BOARD OF TEXAS AND HAS FOUND NO RECORDS OF ANY OTHER SURVEYS OF THIS LAND.
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 7. THE SURVEYOR HAS REVIEWED THE RECORDS OF THE SURVEYING BOARD OF TEXAS AND HAS FOUND NO RECORDS OF ANY OTHER SURVEYS OF THIS LAND.
 8. THE SURVEYOR HAS REVIEWED THE RECORDS OF THE SURVEYING BOARD OF TEXAS AND HAS FOUND NO RECORDS OF ANY OTHER SURVEYS OF THIS LAND.
 9. THE SURVEYOR HAS REVIEWED THE RECORDS OF THE SURVEYING BOARD OF TEXAS AND HAS FOUND NO RECORDS OF ANY OTHER SURVEYS OF THIS LAND.
 10. THE SURVEYOR HAS REVIEWED THE RECORDS OF THE SURVEYING BOARD OF TEXAS AND HAS FOUND NO RECORDS OF ANY OTHER SURVEYS OF THIS LAND.

WITNESSED AND SUBSCRIBED AT FORT WORTH, TEXAS, THIS 15TH DAY OF NOVEMBER, 2018.
 My Commission Expires 11/15/2021

A BOUNDARY SURVEY OF 39.407 ACRES OF LAND SITUATED IN THE F. CUILLA SURVEY, ABSTRACT NUMBER 267, CITY OF FORT WORTH, TARRANT COUNTY, TEXAS.

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 May 20, 2014, the City Council adopted Resolution No. 4322-05-2014, 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 May 19, 2015 the City Council adopted Ordinance No. 21757-05-2015 (the "**Ordinance**") establishing Tax Abatement Reinvestment Zone No. 90, City of Fort Worth, Texas (the "**Zone**").

D. Company owns approximately 110 acres of Land in the City located at the northeast corner of Alliance Gateway and Park Vista Boulevard. The Land is located entirely within the Zone. Contingent upon receipt of the tax abatement herein, Company intends to construct and operate an approximately 250,000 square foot data center on the Land, with potential expansions and build-outs that could involve an aggregate investment of more than \$250,000,000.00 in real and business personal property investments.

E. On _____ 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 4.3 of the Policy.

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. _____ (the "EDPA") to be executed substantially simultaneously with this Agreement.

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 ten percent (10%) 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 2018 tax year over their values for the 2015 tax year (which is the year in which the parties entered into this Agreement); and (ii) the abatement of ten percent (10%) 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.

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.

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, 2017, subject to extension on account of force majeure, as provided in Section 22.

Comprehensive Plan means the City's 2015 Comprehensive Plan, adopted pursuant to Ordinance No. 21693-03-2015, adopted by the City Council on March 17, 2015.

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 4.3.

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 the Land 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, plus any additional land within a half-mile radius of the real property boundaries referenced on Exhibit "A" that is acquired by Company subsequent to the Effective Date for incorporation into the Project Improvements and otherwise allowable under Chapter 312 of the Texas Tax Code.

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 4.2.

Personal Property Report has the meaning ascribed to it in Section 4.4.2.

Policy has the meaning ascribed to it in Recital A.

Project Completion Report has the meaning ascribed to it in Section 4.4.1.

Project Improvements means improvements constructed or caused to be constructed on the Land by Company after the Effective Date of this Agreement.

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

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, 2018 (the "Term").

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 One Hundred Twenty-five Million Dollars (\$125,000,000.00) in Construction Costs for the Project Improvements; provided, however, that if the Personal Property Commitment outlined in Section 4.2 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 One Hundred Twenty-five Million Dollar (\$125,000,000.00) 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. Dollars counted as Construction Cost expenditures for purposes of measuring attainment of the Real Property Improvement Commitment under the EDPA will also be counted for purposes of measuring attainment of the Real Property Improvement Commitment under this Agreement.

4.2. 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 Twenty-five Million Dollars (\$125,000,000.00); 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 Twenty-five Million Dollar (\$125,000,000.00) 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**"). Dollars counted as expenditures for purposes of measuring attainment of the Personal Property Improvement Commitment under the EDPA will also be counted for purposes of measuring attainment of the Personal Property Commitment under this Agreement.

4.3. Employment Goal.

During 2018, Company will use commercially reasonable efforts to provide or cause to be provided at least forty (40) Full-time Jobs on the Land (the "**Employment Goal**"). Full-time Jobs counted for purposes of measuring attainment of the Employment Goal under the EDPA will also be counted for purposes of measuring attainment of the Employment Goal under this Agreement.

4.4. Reports and Filings.

4.4.1. 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 attached hereto as Exhibit "C", 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 Fort Worth Companies and Fort Worth Certified M/WBE Companies (as those terms are defined in the EDPA), together with supporting invoices and other documents reasonably necessary to demonstrate that such amounts were actually paid (the "**Project Completion Report**"). Provision of the Project Completion Report under the EDPA will also constitute provision of the Project Completion Report under this Agreement.

4.4.2. 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 attached hereto as **Exhibit "D"**, 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**"). Provision of the Personal Property Report under the EDPA will also constitute provision of the Personal Property Report under this Agreement.

4.4.3. 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 attached hereto as **Exhibit "E"**, that sets forth the total number of individuals who held Full-time Jobs on the Land as of December 1 (or such other date requested by Company and reasonably acceptable to the City) of the previous year, 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 7.7 below, a failure to meet the Employment Goal does not constitute a default under this Agreement. Notwithstanding anything to the contrary herein, provision of the employment report under the EDPA will also constitute provision of the employment report provided hereunder.

4.5. 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 and New Taxable Tangible Personal Property 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 Project Improvements and the purchase of New Taxable Tangible Personal Property. If documentation of any Construction Cost expenditures or costs of New Taxable Tangible Personal Property is contained in

financial and business records of Company that also contain unrelated matters, and the City cannot verify such expenditures or costs in any other documents of Company, such expenditures and costs 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 or costs of New Taxable Tangible Personal Property. If Company seeks to have Construction Cost expenditures made by another party or costs of New Taxable Tangible Personal Property 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. Company must make all such records described in this Section 4.5 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.

4.6. 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 its ongoing business operations on the Land.

4.7. Use of Land.

The Land must be used at all times during 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 4.4.1 and 4.4.2, 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 One Hundred Twenty-five Million Dollars (\$125,000,000.00) in Construction Costs 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 Twenty-five Million Dollars (\$125,000,000.00) (or such lower amount if authorized by the Director in writing in accordance with Section 4.2) 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 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 4.2, 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 2018 tax year. Section 11.5 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 4.2, 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 the Land or improvements located on the Land; (ii) the involuntary conveyance to a third party of the Land or improvements located on the Land; (iii) execution by Company or an Affiliate of any assignment of the Land or improvements located on the Land or deed in lieu of foreclosure to the Land or improvements located on the Land; or (iv) the appointment of a trustee or receiver for the Land or improvements located on the Land.

7.5. Failure to Submit Reports.

If Company fails to submit any report required by and in accordance with Section 4.4, 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 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.

7.8. 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), 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.

7.9. 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.

7.10. Termination of EDPA.

In the event that the EDPA is lawfully terminated in accordance with its terms and conditions prior to expiration of this Agreement, this Agreement will automatically terminate on the same date as the effective date of termination under the EDPA.

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.

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.

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
1000 Throckmorton
Fort Worth, TX 76102

Company:

Winner, LLC
Attn: _____

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.

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 "F", 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 11.4, 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.

EXECUTED as of the last date indicated below:

[SIGNATURES IMMEDIATELY FOLLOW ON NEXT TWO (2) PAGES]

CITY OF FORT WORTH:

By: _____
David Cooke
City Manager

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Peter Vaky
Deputy City Attorney

M&C: _____

STATE OF TEXAS §

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared **David Cooke**, 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 he was duly authorized to perform the same by appropriate resolution of the City Council of the City of Fort Worth and that he 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 ____ day of _____, 2015.

Notary Public in and for
the State of Texas

Notary's Printed Name

_____,
a _____:

By: _____
Name:
Title:

Date: _____

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 _____, 2015.

Notary Public in and for
the State of _____

Notary's Printed Name

EXHIBITS

“A” – Description and Map Depicting the Land

“B” – Company’s Tax Abatement Application

“C” – Form of Notice of Completion and Final Construction Report

“D” – Form of Personal Property Report

“E” – Form of Employment Report

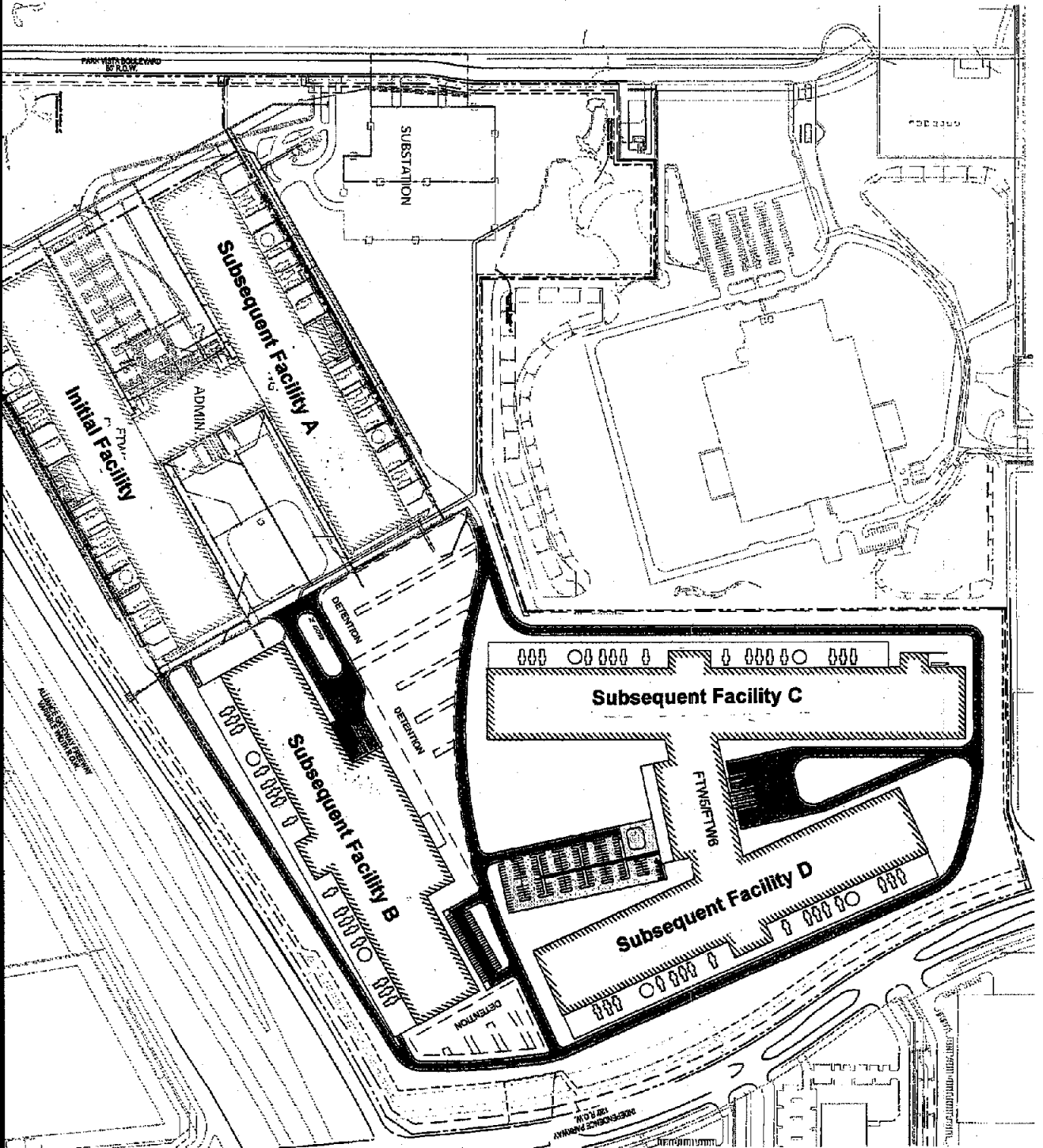
“F” – Form of Consent to Collateral Assignment

EXHIBIT "C"

**DESCRIPTION AND DEPICTION OF
ELIGIBLE PROPERTY IMPROVEMENTS**

101.4-B | PAVING PLAN - OPTION B+

FTW3 Issued for Revised Schematic Design
2016-06-10



LEGEND

- LIGHT DUTY PAVEMENT
- HEAVY DUTY PAVEMENT
- ▨ PROPERTY LINE

Description and Depiction of Eligible Property Improvements

- Construction of a new data center.
 - The proposed data center 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 data center 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 to video surveillance, and electronic systems to monitor the site.
 - The proposed data center would be approximately 250,000 square feet in area.
- 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.

EXHIBIT "D"

APPLICATION FOR TAX ABATEMENT



Tarrant County

Application for Tax Abatement/Reinvestment Zone

I. APPLICANT INFORMATION

Applicant/Property Owner: Winner LLC DBA Ernst LLC

Company/Project Name: Winner LLC DBA Ernst LLC

Mailing Address: To be supplemented at a later date.

Telephone: To be supplemented at a later date.

Fax: To be supplemented at a later date.

Applicant's Representative for contact regarding abatement request:

Name and Title: Paul Wageman – Shareholder, Winstead PC

Mailing Address: 500 Winstead Building, 2728 N. Harwood Street, Dallas, TX 75201

Telephone: 214.745.5173 **Fax:** 214.745.5390

E-mail: pwageman@winstead.com

II. PROPERTY AND PROJECT DESCRIPTION

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

Approximately 110 acres of vacant land located at the northeast corner of Alliance Gateway Freeway and Park Vista Blvd. See attached legal description.

Project Description: The proposed project would involve the purchase of approximately 110 acres of vacant land and the construction of a new data center. The data center 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 used primarily to provide data center services to Winner LLC's parent and parent's affiliates.

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

Current Assessed Value: Real Property: \$ 15,784 Personal Property: \$ 0

Estimated start date of construction/site improvements: 6/1/15

Projected date of occupancy/commencement of operations at project site: 12/31/16

Please indicate dates for phases if applicable: N/A

Location of existing company facilities: N/A

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. See Attached

III. PROJECTED VALUE OF IMPROVEMENTS

Estimated Value of Real Property Improvements: Building construction costs are estimated to be \$125 million, we don't have an estimate as to what the assessed value of these improvements will be.

Estimated Value of Personal Property Improvements \$ 93,750,000

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

Yes No

If yes, describe requested infrastructure improvements: All offsite city water and sewer infrastructure and public roads are already in place. Minor sewer line and transmission line extensions will be completed onsite.

Detail any direct benefits to Tarrant County as a result of this project (i.e., inventory tax, etc.): See attached.

IV. EMPLOYMENT IMPACT AT PROJECT LOCATION

A. NEW EMPLOYMENT

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

Full-time 25 Part-Time TBD

Provide types of jobs created and average salary levels: The proposed project estimates creating approximately 25 full-time jobs onsite. These jobs may be a mix of company employees and third party contractors working at the data center. Each new job will have at least 1,820 annual hours of employment and would be paid at least 120 percent of the county average weekly wage.

Start date and annual payroll of new permanent positions (if positions to be phased in, provide figures for each phase year): Jobs will be created over a 5-year period. Once fully staffed, payroll is estimated to reach \$1.6 million annually.

Percentage of new jobs to be filled by Tarrant County residents: TBD

Number of employees transferring from other company locations: TBD

B. CONSTRUCTION RELATED EMPLOYMENTS

Projected number of construction related jobs: We estimated having between 200 and 300 construction workers onsite daily during our 18 months of construction.

Estimated total construction payroll: TBD, 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 utilize as many local 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 utilize as many DBE 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 N/A Part-time N/A

Average annual payroll: \$ N/A

Detail on workforce diversity – percentage breakdown of current employees by gender and ethnicity: N/A

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: \$ Depending on the size of the employee's family and choice of PPO, EPO or HMO insurance would cost anywhere from \$110 to \$290 per month.

Other employee benefits provided or offered: Dental insurance, vision insurance, 401(k), pre-tax flex spending accounts, life insurance and accidental death and dismemberment.

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

Estimated amount of annual supply and services expenses: \$ \$1,000,000

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: TBD

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.): N/A

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

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 would be a new business 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 project;
- If ultimately approved for Tarrant County, Winner reasonably expects to create and sustain a minimum of 25 new full-time jobs that would not have the effect of transferring employment from one part of Tarrant County to another.

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, Winner will use its best efforts to hire Tarrant County residents and will make it a priority when evaluating candidates for full-time employment.
- 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, which will offset 120 MW of additional brown power production. This will have an extremely positive environmental impact.

- Lastly, the proposed data center expects meet or exceed all requirements for erosion control, storm water management and landscaping.
- If ultimately approved for Tarrant County, Winner proposes 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 me at Ernst@projectnobel.com.

Respectfully submitted,

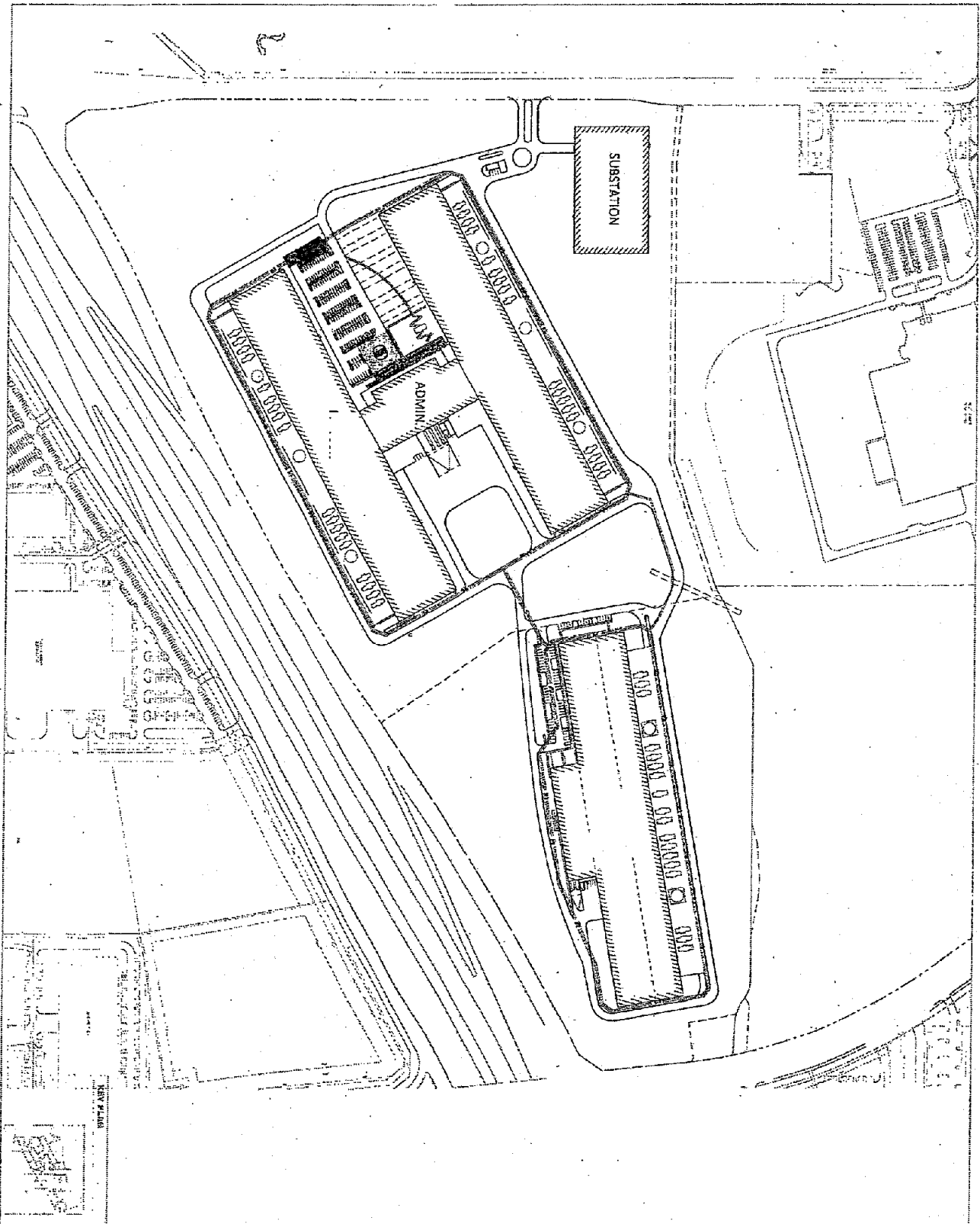
Project Ernst

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 \$250 million over a five-year period. The proposed qualified investment would include:

- The purchase of approximately 110 acres of vacant land.
- Construction of a new data center.
 - The data center 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 data center 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 to video surveillance, and electronic systems to monitor the site.
 - The proposed data center would be comprised of up to three large rectangular structures, each greater than 100,000 square feet. The first two rectangular structures would be connected via a shared administrative area and upon completion would resemble an "H" in its layout.
- 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 of project location




ALPHA
 CONSULTING GROUP
 1000 ...
 ...


PEOPLE ASSOCIATES
 ...

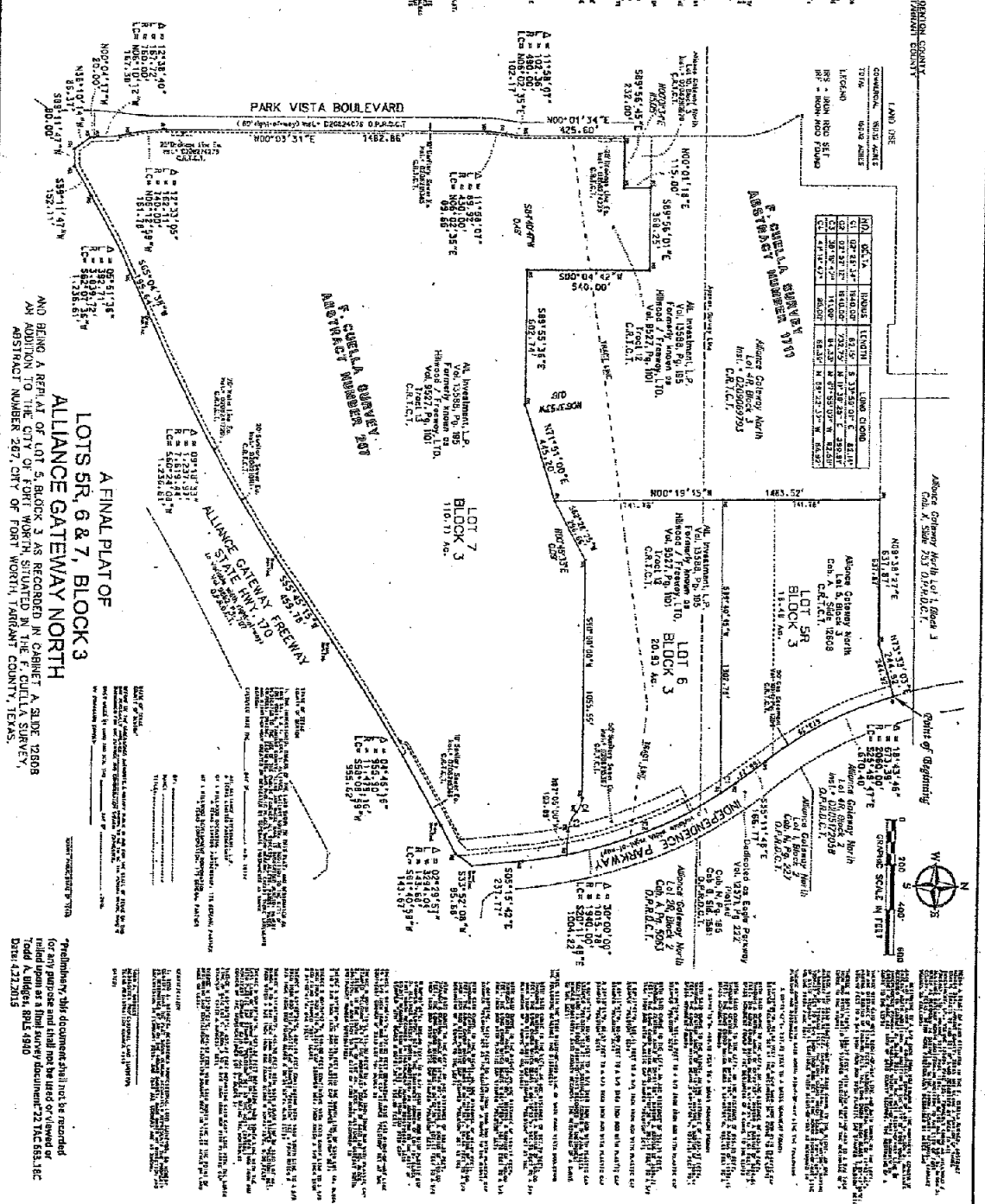

PELOTON
 LAND SOLUTIONS


M4
 ...


BSM
 ...

NOTICE TO CONTRACTORS
 The undersigned hereby certifies that the plat herein is a true and correct copy of the original as the same appears in the office of the County Clerk of Tarrant County, Texas, and that the same is a true and correct copy of the original as the same appears in the office of the County Clerk of Tarrant County, Texas, and that the same is a true and correct copy of the original as the same appears in the office of the County Clerk of Tarrant County, Texas.

NOTICE TO CONTRACTORS
 The undersigned hereby certifies that the plat herein is a true and correct copy of the original as the same appears in the office of the County Clerk of Tarrant County, Texas, and that the same is a true and correct copy of the original as the same appears in the office of the County Clerk of Tarrant County, Texas, and that the same is a true and correct copy of the original as the same appears in the office of the County Clerk of Tarrant County, Texas.

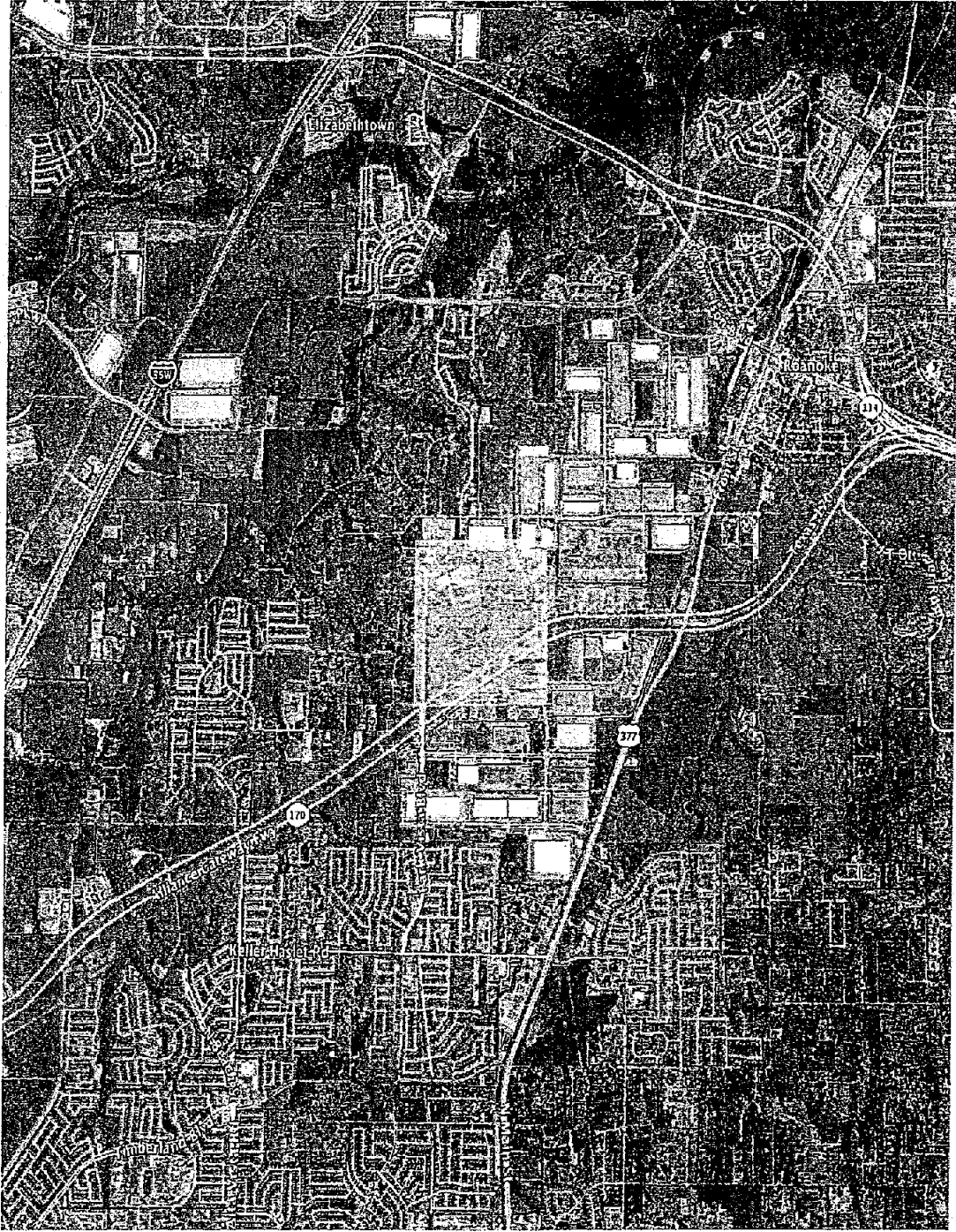


PELTON LAND SOLUTIONS
 1021 WOODROW STE. 301 COLLEGE FORT WORTH TEXAS 76104

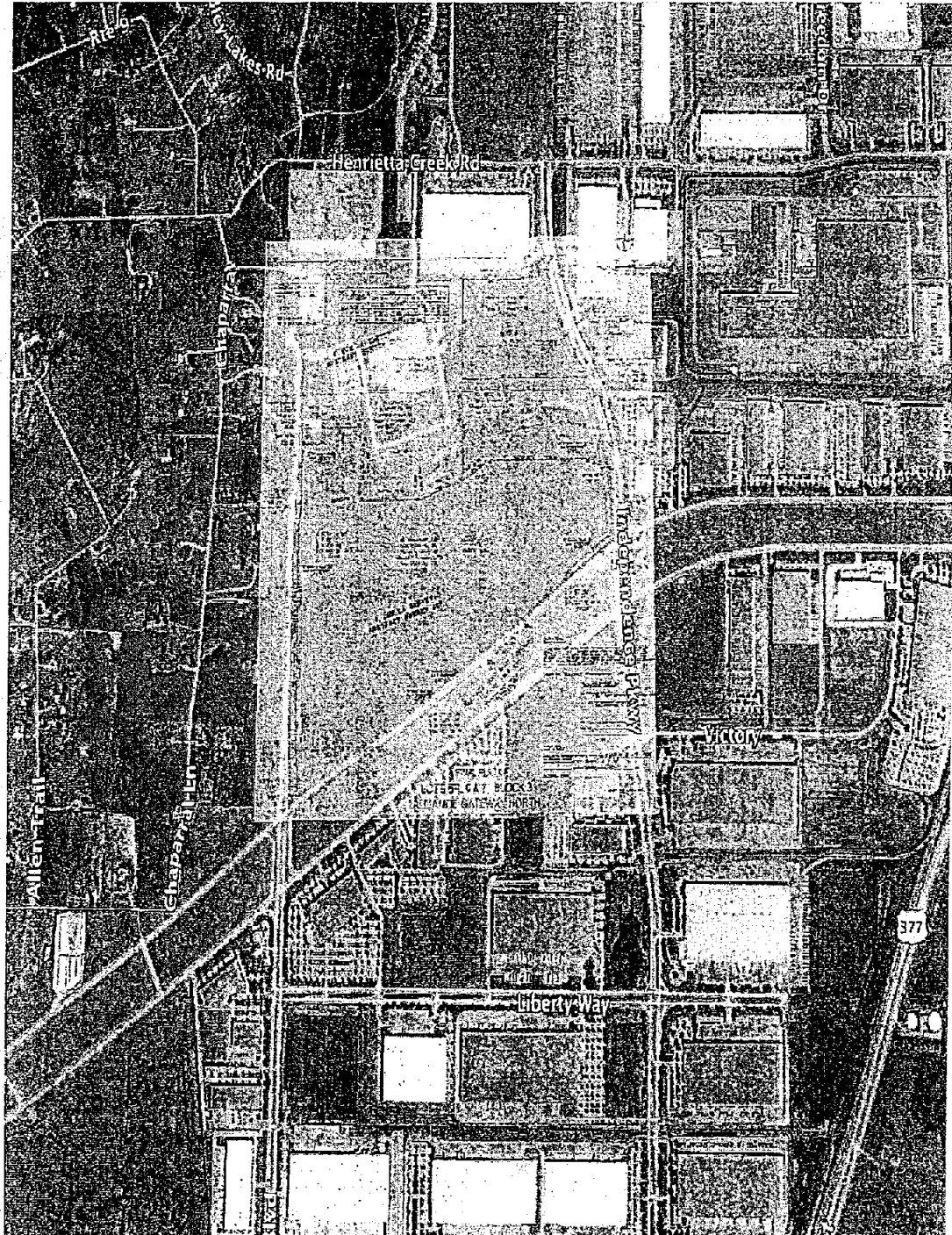
A FINAL PLAT OF LOTS 1-3, BLOCK 3 ALLIANCE GATEWAY NORTH

Job #: WH15001
 Drawn By: W. Bledsoe
 Checked By: T.B. Kiper
 Date: 4/22/2015

****Proposed Project Area in red.**



****Proposed Project Area in red.**



Legal description

DESCRIPTION OF 110.71 ACRES

BEING a tract of land situated in the F. Cuella Survey, Abstract Number 267, Tarrant County, Texas and being a portion of two tracts of land describe by deed to AIL Investment, L.P., recorded in Volume 13588, Page 195 (Tracts 12 and 13), County Records, Tarrant County, Texas, being more particularly described by metes and bounds as follows:

BEGINNING at the northeast corner of Lot 10, Block 3, Alliance Gateway North, an addition to the City of Fort Worth recorded in Instrument Number D208290670, in the south line of Lot 4R, Block 3 Alliance Gateway North, and addition to the City of Fort Worth recorded in Instrument Number D209069793, both of said County Records;

THENCE S 89°56'01"E, 368.25 feet;

THENCE S 00°04'42"W, 540.00

feet; **THENCE** S 89°55'36"E,

602.74 feet; **THENCE** N 71°51'00"E,

445.20 feet; **THENCE** N 62°28'25"E,

296.66 feet;

THENCE N 90°00'00"E, 1055.55 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 68.39 feet, through a central angle of 41°14'47", having a radius of 95.00 feet, the long chord which bears S 69°22'37"E, 66.92 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 94.33 feet, through a central angle of 38°19'47", having a radius of 141.00 feet, the long chord which bears S 67°55'07"E, 92.58 feet;

THENCE S 87°05'00"E, 103.97 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 200.88 feet, through a central angle of 05°55'58", having a radius of 1940.00 feet, the long chord which bears S 08°09'47"E, 200.79 feet;

THENCE S 05°15'42"E, 237.77 feet;

THENCE S 33°52'08"W, 95.68 feet to the beginning of a curve to the left;
THENCE with said curve to the left, an arc distance of 143.68 feet, through a central angle of 02°29'57", having a radius of 3294.04 feet, the long chord which bears S 61°40'59"W, 143.67 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 955.90 feet, through a central angle of 04°46'16", having a radius of 11479.16 feet, the long chord which bears S 58°08'59"W, 955.62 feet;

THENCE S 55°45'15"W, 459.78 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 1237.97 feet, through a central angle of 09°18'33", having a radius of 7619.44 feet, the long chord which bears S 60°24'08"W, 1236.61 feet;

THENCE S 65°04'38"W, 195.64 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 392.71 feet, through a central angle of 05°51'36", having a radius of 3839.72 feet, the long chord which bears S 62°07'36"W, 392.54 feet;

THENCE S 59°11'47"W, 152.11

feet; THENCE S 89°11'47"W, 80.00

feet; THENCE N 36°10'14"W,

86.37 feet;

THENCE N 00°04'17"W, 20.00 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 167.72 feet, through a central angle of 12°38'40", having a radius of 760.00 feet, the long chord which bears N 06°10'12"W, 167.38 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 162.11 feet, through a central angle of 12°33'05", having a radius of 740.00 feet, the long chord which bears N 06°12'59"W, 161.78 feet;

THENCE N 00°03'31"E, 1482.86 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 89.82 feet, through a central angle of 11°58'07", having a radius of 430.00 feet, the long chord which bears N 06°02'35"E, 89.66 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 102.36 feet, through a central angle of 11°58'07", having a radius of 490.00 feet, the long chord which bears N 06°02'35"E, 102.17 feet;

THENCE N 00°01'34"E, 425.60 feet;

THENCE S 89°56'45"E, 232.00 feet;

THENCE N 00°01'18"E, 115.00 feet to the **Point of Beginning** and containing 4,822,528 square feet or 110.71 acres of land more or less.

Project Time Schedule

- Proposed Ground Breaking: June 2015
- Complete Construction of 1st Building: June 2016
- Go live for 1st building (live traffic): December 2016

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, which will offset 120 MW of additional brown power production. 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

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41456696
Georeference: A 267-1A04B
Property Location: 4901 ALLIANCE GATEWAY FWY, FORT WORTH, 76177

Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1a04b

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$34,530	\$0	\$34,530
Appraised Value †	\$202	\$0	\$202
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt.			82,111
Land Acres			1.885

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$204	\$0	\$204	\$34,530	\$0	\$34,530
2012	\$204	\$0	\$204	\$34,530	\$0	\$34,530
2011	\$194	\$0	\$194	\$34,530	\$0	\$34,530
2010	\$194	\$0	\$194	\$34,530	\$0	\$34,530
2009	\$196	\$0	\$196	\$34,530	\$0	\$34,530

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1 23.51

Property Data:

Appraisal Site: 80270395

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 80270395

Class: Vacant Land-Ag
of Parcels: 3

State Code: D1 Qualified Open Space Land

TAD Map: 2072-480
MAPSCO: TAR-009S
Agent: RYAN LLC

Primary Building:
Building Name:
Building Type:
Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41045165
Georeference: A 267-1A01
Property Location: 14149 INDEPENDENCE PKWY, FORT WORTH, 76177



Owner Information: AIL INVESTMENTS LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-5398

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1a01

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$67,017	\$0	\$67,017
Appraised Value †	\$329	\$0	\$329
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			134,034
Land Acres			3.077

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$332	\$0	\$332	\$67,017	\$0	\$67,017
2012	\$332	\$0	\$332	\$67,017	\$0	\$67,017
2011	\$317	\$0	\$317	\$134,034	\$0	\$134,034
2010	\$317	\$0	\$317	\$134,034	\$0	\$134,034
2009	\$320	\$0	\$320	\$134,034	\$0	\$134,034

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1 23.51

Property Data:

Appraisal Site: 80868268

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 4901 HWY 170

Class: Vacant Land -Commercial

of Parcels: 1

State Code: DI Qualified Open Space Land

Primary Building:

TAD Map: 2072-480
MAPSCO: TAR-009J
Agent: RYAN LLC

Building Name:
Building Type:
Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 40778096
Georeference: A 267-1A
Property Location: 14301 INDEPENDENCE PKWY, FORT WORTH, 76177



Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1a

Taxing jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$202,728	\$0	\$202,728
Appraised Value †	\$996	\$0	\$996
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			405,456
Land Acres			9.308

† Appraised value may be less than market value due to state-mandated limitations on value increases.
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year.
 ††† Rounded.

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$1,005	\$0	\$1,005	\$202,728	\$0	\$202,728
2012	\$1,005	\$0	\$1,005	\$202,728	\$0	\$202,728
2011	\$959	\$0	\$959	\$304,092	\$0	\$304,092
2010	\$959	\$0	\$959	\$304,092	\$0	\$304,092
2009	\$968	\$0	\$968	\$405,456	\$0	\$405,456

2015 Notice Sent:

Protest Deadline:

Exemptions:

Property Data:

Appraisal Site: 80865672

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 4901 HWY 170

Class: Vacant Land -Commercial

of Parcels: 1

State Code: D1 Qualified Open Space Land

Primary Building:

TAD Map: 2072-480

Building Name:

MAPSCO: TAR-009J

Building Type:

Agent:

Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41410386
Georeference: 414K-3-5
Property Location: 14217 INDEPENDENCE PKWY, FORT WORTH, 76177



Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: ALLIANCE GATEWAY NORTH ADDN
 Block: 3 Lot: 5

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database

Certified Values for Tax Year 2014

	Land	Impr	2014 Total f†
Market Value	\$254,652	\$0	\$254,652
Appraised Value †	\$1,251	\$0	\$1,251
Gross Building Area f††			0
Net Leasable Area f††			0
Land SqFt			509,304
Land Acres			11.692

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$1,263	\$0	\$1,263	\$254,652	\$0	\$254,652
2012	\$1,263	\$0	\$1,263	\$254,652	\$0	\$254,652
2011	\$1,204	\$0	\$1,204	\$509,304	\$0	\$509,304
2010	\$1,204	\$0	\$1,204	\$509,304	\$0	\$509,304
2009	\$1,216	\$0	\$1,216	\$509,304	\$0	\$509,304

2015 Notice Sent:

Protest Deadline:

Exemptions:

Property Data:

Appraisal Site: 80873414

Deed Date: 01/01/2008
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 14217 INDEPENDENCE PKWY

Class: Vacant Land -Commercial

of Parcels: 1

State Code: D1 Qualified Open Space Land

Primary Building:

TAD Map: 2072-480
MAPSCO: TAR-009j
Agent: RYAN LLC

Building Name:
Building Type:
Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 03805794
Georeference: A 267-1C
Property Location: 4901 ALLIANCE GATEWAY FWY, FORT WORTH, 76177



Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

6 Prior Owners

Legal Description: CUJELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1c
 1D & 1F

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$2,468,700	\$0	\$2,468,700
Appraised Value †	\$13,208	\$0	\$13,208
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			5,376,829
Land Acres			123.435

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$13,331	\$0	\$13,331	\$2,468,700	\$0	\$2,468,700
2012	\$13,331	\$0	\$13,331	\$2,468,700	\$0	\$2,468,700
2011	\$12,714	\$0	\$12,714	\$2,468,700	\$0	\$2,468,700
2010	\$12,714	\$0	\$12,714	\$4,032,621	\$0	\$4,032,621
2009	\$14,088	\$0	\$14,088	\$4,425,609	\$0	\$4,425,609

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1 23.51

Property Data:

Appraisal Site: 80270395

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000
State Code: D1 Qualified Open Space Land
TAD Map: 2072-476
MAPSCO: TAR-009
Agent: RYAN LLC

Site Name: 80270395
Class: Vacant Land-Ag
of Parcels: 3

Primary Building:
Building Name:
Building Type:
Year Built:

Why tax abatement is necessary for the success of this project

The company is conducting a nationwide data center site selection effort. Our effort includes alternative locations in multiple jurisdictions outside of Texas. In completing our evaluation, many factors are considered, but we have an obligation to lower project related costs (both capital and operational). State and local taxes comprise a large piece of our ongoing operational expenses; therefore we need to be prudent in leveraging tax incentive programs when available. Competing states have the ability to offset state and local tax liability for twenty or more years.

Below are examples of states that have been successful in attracting large data center projects primarily based on their state and local tax incentives:

Oregon

- No sales and use tax in the state.
- Long-term Rural Enterprise Zones have the ability to abate up to 100% of new real and personal property tax value for 15-years. This includes all taxing districts.¹

Iowa

- The state offers a data center sales and use tax incentives that runs for the life of the data center (no sunset date).²
- No business personal property tax in the state.
- The High Quality Jobs Program grants local municipalities the ability to abate up to 100% of new real property tax value for up to 20-years. This includes all taxing districts.³

North Carolina

- The state offers a data center sales and use tax incentive that runs for the life of the data center (no sunset date).⁴
- Local governments have the ability to refund real and personal property taxes via annual incentive grants for up to 100% of the value added to the property. There are no statutory limitations on the term of these annual incentive grants.⁵

Based on the above, incentives are an important determining factor in locating this data center project in Tarrant County.

¹ ORS 285C.400-285C.420, OAR 123-690-5200

² Iowa Code §423.3(95)a

³ Iowa Code §15.329

⁴ N.C. Gen. Stat. §105-164.13 (55), N.C. Gen. Stat. §105-164.3

⁵ N.C. Gen. Stat. §158-7.1

Direct benefits to Tarrant County as a result of this project

Data centers generate multiplier spending effects that benefit workers and business owners in other sections of the local and regional economy. The construction alone can generate hundreds of millions of dollars in economic impact beyond the amount directly spent by the company.

The most significant direct economic impact of a large data center project locating in Fort Worth is generated by capital investment. Large data centers can create a significant amount of construction employment for the period of construction, which is approximately two years. Upon completion, data centers tend to create 30-50 full-time jobs, with relatively high salaries, to support their ongoing operations.

CBRE has studied the potential economic impact of a new data center development on a typical Texas community.⁶ For an average small data center of 150,000 gross square feet and about \$390 million of total capital investment, the total economic impact is estimated at nearly \$500 million over 10 years. An average large data center of 460,000 gross square feet and \$1.3 billion of total capital investment would have a total economic impact of about \$1.7 billion over the same period. The table below provides their detailed conclusions:

Figure 1: CBRE Estimates of the Impact of Data Centers

	Direct Impact	Total Impact ¹
Small Data Center		
Construction Jobs	794	1,430
Direct Jobs	16	46
Total Payroll	\$53,800,000	\$95,592,000
Potential Retail Sales	\$74,427,200	\$89,364,000
Economic Activity	\$374,164,000	\$499,032,000
Large Data Center		
Construction Jobs	2,941	5,366
Direct Jobs	64	184
Total Payroll	\$203,100,000	\$361,476,000
Potential Retail Sales	\$276,808,800	\$333,356,000
Economic Activity	\$1,244,656,000	\$1,716,928,000

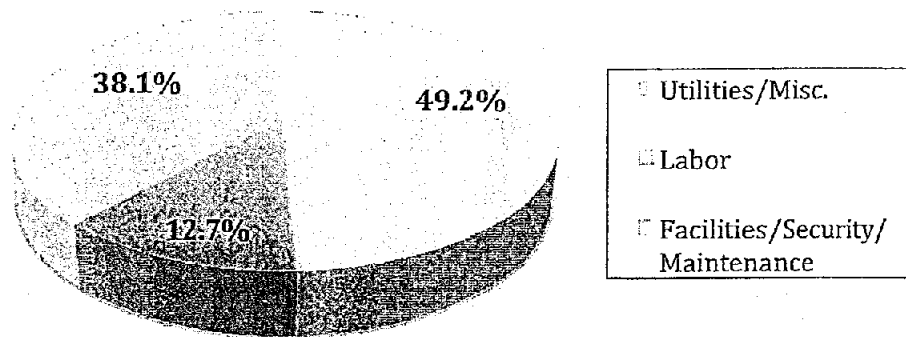
¹ Includes direct impacts as well as indirect and induced. Indirect includes suppliers supporting the operation. Induced includes jobs created from the spending of wages of the direct and indirect employees on goods and services.

The construction costs associated with the proposed project are estimated to be \$250 million, which are estimated to be spent over a two-year period. Initial equipping of the Project is projected to cost an additional \$250 million, coming in two tranches of \$125 million in the second and fifth year of the project (and presumably at three year increments going forward). However, at this point, the vendors of this equipment are not located in Texas, and so this investment is not

⁶ CBRE has the world's only fully integrated data center real estate team, offering strategy, acquisition and disposition representation, project management and facilities management from a single provider. See <http://www.cbre.us/services/office/data-center-solutions-group/Pages/home.aspx> for more information.

included in the economic impact calculations. Once the Project moves to the operations phase, annual spending will total just over \$43 million in year four, (including the cost of electricity & other utilities, labor, and contract security and maintenance). The share of each is presented in Figure 2, with the underlying figures used as inputs into the impact model.

Figure 2: Project Operational Spending by Major Category (2013)



Economic Impact Methodology

Input-output analysis includes three types of expenditure effects: direct, indirect, and induced. Direct effects are production changes associated with the immediate effects or final demand changes. The purchase of contract security by a data center is an example of a direct effect.

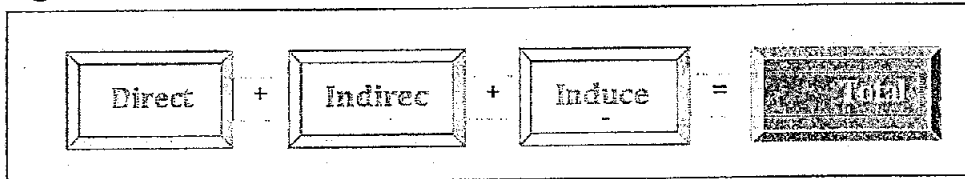
Indirect effects are production changes in backward-linked industries caused by the changing input needs of directly affected industries – typically, additional purchases to produce additional output. In order to provide security services, a contracted firm will need to hire workers, as well as provide them with whatever technology and/or equipment is necessary to do their jobs. These downstream purchases affect other local merchants and workers.

Induced effects are the changes in regional household spending patterns caused by changes in household income generated from the direct and indirect effects. The workers at the data center and security firm see increased compensation from their efforts, for example, as do the establishments that provide the necessary materials or other services to the designer and/or the producers. Induced effects capture the way in which this increased income is in turn spent in the local economy.

Once the ripple effects have been calculated, the results can be expressed in a number of ways. Three of the most common are “Output,” equivalent to sales or receipts; “Earnings,” which represents the compensation to employees and proprietors; and

“Employment,” which refers to permanent, full-time jobs that have been created in the local economy. The interdependence between different sectors of the economy is reflected in the concept of a “multiplier.” An output multiplier, for example, divides the total (direct, indirect and induced) effects by the direct effect.

Figure 3: The Flow of Economic Impacts



Results of the Modeling Effort

A large data center project is estimated to cost approximately \$250 million to build, with annual operations spending that will total just over \$43 million (including the cost of electricity, labor, other utilities, and contract security and maintenance). Per the discussion above, this data is used as inputs into local models of the regional economy; when the multiplier effects are included, the translation is a total injection of \$610.7 million in economic activity, total compensation of \$199.6 million, and 4,643 total jobs associated with the construction phase of the project. On the operations side, \$43.1 million in annual spending translates into of \$75.2 million in economic activity each year, total compensation of \$15.4 million, and 250 permanent total jobs. Summary results are in Table 1; Tables 2 and 3 provide a detailed breakdown of the impact by industry for Construction and Operations.

Table 1: Total Economic Impact of the Project by Phase (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employment
Total Construction-Related	\$610,700,000	\$199,625,000	4,643
Annual Operations-Related	\$75,156,766	\$15,371,613	250

Source: TXP

Table 2: Total Construction Economic Impact of the Project by Industry (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employment
Agriculture, etc.	\$575,000	\$100,000	5
Mining	\$2,550,000	\$550,000	9
Utilities	\$5,400,000	\$1,050,000	10
Construction	\$252,575,000	\$95,625,000	1,977
Manufacturing	\$68,950,000	\$13,875,000	270
Wholesale Trade	\$21,000,000	\$6,725,000	94
Retail Trade	\$33,825,000	\$11,700,000	427

Transportation/Warehouse	\$15,900,000	\$5,425,000	121
Information	\$18,775,000	\$4,250,000	68
Finance & Insurance	\$35,850,000	\$10,550,000	256
Real Estate	\$46,950,000	\$4,175,000	227
Prof./Technical Services	\$32,875,000	\$15,575,000	241
Management of Companies	\$7,750,000	\$3,125,000	44
Admin./Waste Services	\$12,450,000	\$5,450,000	211
Educational Services	\$2,825,000	\$1,125,000	41
Healthcare & Social	\$22,875,000	\$10,825,000	248
Arts, Entertainment, etc.	\$2,625,000	\$1,025,000	50
Accommodation	\$3,275,000	\$1,000,000	37
Food Services, etc.	\$9,400,000	\$3,000,000	167
Other Services	\$14,275,000	\$4,225,000	107
Households	N.A.	\$250,000	34
Total Annual	\$610,700,000	\$199,625,000	1,675

Source: TXP

Table 3: Annual Operations Economic Impact of the Project by Industry (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employment
Agriculture, etc.	\$23,425	\$3,909	0
Mining	\$756,491	\$153,846	2
Utilities	\$5,462,017	\$1,071,700	10
Construction	\$305,879	\$115,219	2
Manufacturing	\$1,805,901	\$328,083	7
Wholesale Trade	\$890,191	\$284,751	4
Retail Trade	\$1,627,293	\$563,502	21
Transportation/Warehouse	\$979,258	\$317,267	6
Information	\$44,312,165	\$5,747,102	45
Finance & Insurance	\$2,544,595	\$745,028	18
Real estate	\$3,383,629	\$287,578	16
Prof./Technical Services	\$7,721,474	\$3,604,991	50
Management of Companies	\$447,673	\$180,560	3
Admin./Waste services	\$789,315	\$360,329	15
Educational Services	\$214,355	\$86,230	3
Healthcare & Social	\$1,732,455	\$818,506	18
Arts, Entertainment, etc.	\$207,915	\$79,987	4
Accommodation	\$286,984	\$88,384	3
Food services, etc.	\$786,058	\$251,863	14
Other services	\$879,693	\$262,610	7
Households	N.A.	\$20,168	3
Total Annual	\$75,156,766	\$15,371,613	250

Source: TXP

The Impact of A Cluster Beyond an Individual Facility

Beyond the impact of an individual facility or facilities, it is generally accepted that there are economic benefits associated with agglomeration, or clustering within an industry that render the sum greater than the parts. In particular, there are three broad benefit categories associated with clustering. First, a cluster allows for a more efficient sharing of local infrastructure and facilities, a variety of intermediate input suppliers, or a pool of workers with similar skills. Second, a cluster also allows for a better matching between employers and employees, buyers and suppliers, or business partners. Finally, a well-developed cluster can also facilitate learning, for instance by promoting the development and widespread adoption of new technologies and business practices. In the case of data centers, the infrastructure created (especially related to power and telecommunications) can also become a competitive advantage to the attraction and/or development of new products, services, and industries. This is especially true given the focus on green energy, in this case wind, as the aggregate demand from a data center cluster would greatly enhance wind's scale, creating a range of associated consumer benefits.

EXHIBIT "E"

TARRANT COUNTY TAX ABATEMENT POLICY AND GUIDELINES

TARRANT COUNTY TAX ABATEMENT POLICY

TARRANT COUNTY POLICY & PROCEDURES SUMMARY

TARRANT COUNTY POLICY:

Minimum investment - New business: \$5,000,000 Expansion: \$3,000,000.

1. Applicable to new construction and expansions/modernization.
2. Abatement on eligible real and fixed personal property.
 - a) Minimum job requirements include 25 jobs for new business and sustained employment level for existing business expansions.
 - b) Abatement for companies moving within the County; considered if agreeable to both cities.
3. Additional evaluation criteria:
 - a) Environmental impacts of project (company must show intent to participate in regional air quality program educating employees on the Ozone Action Program);
 - b) Diversity of employment base and commitment to a diversified workforce;
 - c) Minimum of 25% of new jobs created filled by Tarrant County residents (includes transferring employees who move to and reside in Tarrant County);
 - d) Use of minimum 15% DBE and 25% Tarrant County contractors in total annual construction/suppliers/services contract costs;
 - e) Provision of health care benefits at rate reasonable to allow access by majority of employees.
4. County approval of a tax abatement applies to both County and Hospital District ad valorem taxes.
5. Value of existing personal property currently on tax rolls will remain taxable and be included in base value, even if it is moved to a new abated location or replaced due to modernization or expansion.

6. Project is ineligible for abatement if the application for County abatement was filed after the commencement of construction, alteration or installation of new improvements.

GENERAL PROCEDURES:

1. Company begins negotiations with City; City makes County aware of request and invites County comments during negotiations. County makes City aware of concerns/changes prior to final action by City.
2. Company makes application to County for participation in abatement. County negotiates additional performance criteria with Company required for County participation.
3. Once an abatement agreement is approved by City, County action to participate at terms specified by City agreement take place with 90 days of the execution date of the municipal abatement agreement.

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) Download a copy of the Tax Abatement Application
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.

- (h) 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**

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 _____, 2015 (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

B. Glen Whitley
County Judge

Date: October 25th 2014

ATTEST:

Jayne Phelps
Deputy County Clerk

APPROVED AS TO FORM*:

[Signature]
Asst. 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.*

EXHIBIT "G"

TAX ABATEMENT EVALUATION REPORT



Tarrant County Annual Tax Abatement Evaluation Report

Reporting Period: January 1, "[Response]" to December 31, "[Response]"

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* 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 Since Abatement Agreement: 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 / SUPPLIER / SERVICES CONTRACTS

CONSTRUCTION:

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

Percent Construction Dollars Spent With Tarrant County Contractors: "[Response]" %

Number of Construction Related Jobs This Period: "[Response]"

Total Construction Payroll This Period: \$"[Response]"

AWARDS TO DISADVANTAGED BUSINESS ENTERPRISES (DBE):

Total Dollars of Construction Contracts to DBE: \$"[Response]"

Percent of Total Construction Contracts to DBE: "[Response]" %

ANNUAL SUPPLIER / SERVICES EXPENSES:

Total Number Supplier/Services Contracts This Period: "[Response]"

Total Dollars Spent on Supplier/Services Contracts This Period: \$"[Response]"

Percent of Contracts Awarded to Tarrant County Businesses: "[Response]" %

Percent of Contract Dollars Spent with Tarrant County Businesses: "[Response]" %

Percent of Contracts Awarded to DBE: "[Response]" %

Percent of Contract Dollars Spent with DBE: "[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 (i.e., life insurance, pension plan, childcare, etc.): "[Response]"

Does Your Company Participate in The North Texas Clean Air Coalition Ozone Action Program?

Yes No If Yes, Please Attach Information on Company Program Initiatives.

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]"

Number of Fleet Vehicles Purchased This Period: "[Response]"

Describe Use of Vehicles: "[Response]"

Describe Type of Fuels Used in Fleet Vehicles (ie. Gas, Diesel, LPG, Electric; etc):

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 Rectification

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 Tarrant County Hospital District property taxes, you must return the completed report by April 30th to:

Ms. 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

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

THE STATE OF TEXAS §

Tax Abatement Agreement
Subsequent Facility C

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. 90 in the City of Fort Worth, Texas, established by Ordinance No. 21757-05-2015 adopted on May 19, 2015 and Reinvestment Zone No. 90A in the City of Fort Worth, Texas, established by Ordinance No. ~~22473~~-10-2016 adopted on October 18, 2016, being a commercial-industrial reinvestment zone for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code, as amended (Reinvestment Zone No. 90 and Reinvestment Zone No. 90A are sometimes referred to collectively herein as the "Zone"); 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 owns approximately 150 acres of land at the northeast corner of Alliance Gateway and Park Vista Boulevard, 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 and operate an approximately 250,000 square foot Data Center facility on the Land, with potential additional facilities to be constructed, resulting in an aggregate investment of more than \$250,000,000 in real and business personal property investments; and

WHEREAS, following completion of the Initial Facility, Owner contemplates the construction of up to three additional minimum 250,000 square foot facilities on the Land, Subsequent Facility A, Subsequent Facility B and Subsequent Facility

C, providing an additional investment of more than \$250,000,000 in real and business personal property investments for each facility; 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 2016 taxable value of real and personal property located on the Land in Reinvestment Zone 90 and Reinvestment Zone No. 90A on January 1, 2016, 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 Subsequent Facility C.
- G. "Completion Deadline" means June 1, 2030, 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 Subsequent Facility C as generally described in **Exhibit "C"**, constructed, delivered to, installed or placed on the Land after January 1, 2016 and throughout the Abatement Term, as set forth in this Agreement.

M. "Initial Facility" means the first building to be constructed and completed on the Land consisting of at least 250,000 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, plus any additional land within the Zone acquired by Owner subsequent to the Effective Date for incorporation into the Eligible Property and otherwise allowable under Chapter 312 of the Texas Tax Code.
- 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 Subsequent Facility C 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 Subsequent Facility C 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. 90" is defined as the real property located in the City and described by City of Fort Worth Ordinance No. 21757-05-2015 (substantially in the form included within **Exhibit "B"**).
- U. "Reinvestment Zone No. 90A" is defined as the real property located in the City and described by City of Fort Worth Ordinance No. _____ - ____-2016 (substantially in the form included within **Exhibit "B"**).
- V. "Subsequent Facility A" means the second facility to be constructed and completed on the Land consisting of at least 250,000 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"**.
- W. "Subsequent Facility B" means the third facility to be constructed and completed on the Land consisting of at least 250,000 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"**.
- X. "Subsequent Facility C" means the fourth facility to be constructed and completed on the Land consisting of at least 250,000 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"**.

- Y. "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.
- Z. "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.
- AA. "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 One Hundred Million Dollars (\$100,000,000) ("Personal Property Commitment").
- C. Owner shall expend or cause the expenditure by the Completion Deadline of at least One Hundred Fifty Million (\$150,000,000) 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 thirty (30) Jobs on the Land throughout the Abatement Term. These Jobs are cumulative and include Jobs created for the Initial Facility.

- 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 thirty (30) Jobs, the abatement percentage will be reduced by two percent (2%) for each one (1) Job deficiency, for that year.

(Example: A total of 28 Jobs would be a deficiency of 2 Jobs, which would provide for a 4% 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").

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 Owner's 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 the Zone. 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").

B. 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.

C. 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
c/o Tommy Mann
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, TX 75201

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

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 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

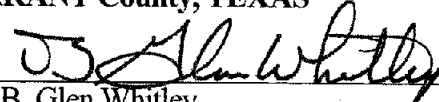
This Agreement shall terminate, in accordance with the terms of this Agreement, unless extended by written agreement of the parties or a written instrument signed by all parties evidencing a delay by force majeure; provided however, that the period of abatement may not extend beyond ten (10) years.

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: Rachel Peterson
Title: Authorized Representative
Date: Nov. 10, 2016

TARRANT County, TEXAS

By: 
B. Glen Whitley
County Judge

Date: October 25th 2016

ATTEST:


Deputy County Clerk

APPROVED AS TO FORM*:


Asst. Criminal District Attorney

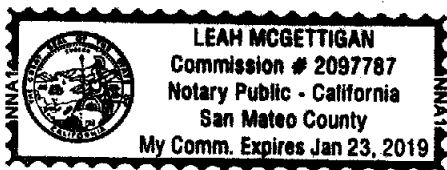
**By law, the District Attorney's Office may only approve contracts for its clients. We reviewed this document from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.*

THE STATE OF CA §
County OF San Mateo §

WINNER LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of CA, on this day personally appeared Rachel Peterson, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **WINNER LLC**, and as the Authorized Rep 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 10 day of November, 2016.



My Commission Expires

Leah McGettigan
Notary Public in and for
The State of CA

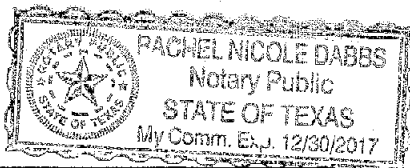
Leah McGettigan
Notary's Printed Name

THE STATE OF TEXAS §
County OF TARRANT §

Tarrant County, Texas
Acknowledgment

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 25th day of October, 2016.



My Commission Expires

Rachel Nicole Dabbs

Notary Public in and for
The State of Texas

Rachel Nicole Dabbs
Notary's Printed Name

EXHIBIT "A"

DESCRIPTION OF LAND

DESCRIPTION OF 110.71 ACRES

BEING a tract of land situated in the F. Cuella Survey, Abstract Number 267, Tarrant County, Texas and being a portion of two tracts of land describe by deed to AIL Investment, L.P., recorded in Volume 13588, Page 195 (Tracts 12 and 13), County Records, Tarrant County, Texas, being more particularly described by metes and bounds as follows:

BEGINNING at the northeast corner of Lot 10, Block 3, Alliance Gateway North, an addition to the City of Fort Worth recorded in Instrument Number D208290670, in the south line of Lot 4R, Block 3 Alliance Gateway North, and addition to the City of Fort Worth recorded in Instrument Number D209069793, both of said County Records;

THENCE S 89°56'01"E, 368.25 feet;

THENCE S 00°04'42"W, 540.00

feet; **THENCE** S 89°55'36"E,

602.74 feet; **THENCE** N 71°51'00"E,

445.20 feet; **THENCE** N 62°28'25"E,

296.66 feet;

THENCE N 90°00'00"E, 1055.55 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 68.39 feet, through a central angle of 41°14'47", having a radius of 95.00 feet, the long chord which bears S 69°22'37"E, 66.92 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 94.33 feet, through a central angle of 38°19'47", having a radius of 141.00 feet, the long chord which bears S 67°55'07"E, 92.58 feet;

THENCE S 87°05'00"E, 103.97 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 200.88 feet, through a central angle of 05°55'58", having a radius of 1940.00 feet, the long chord which bears S 08°09'47"E, 200.79 feet;

THENCE S 05°15'42"E, 237.77 feet;

THENCE S 33°52'08"W, 95.68 feet to the beginning of a curve to the left;
THENCE with said curve to the left, an arc distance of 143.68 feet, through a central angle of 02°29'57", having a radius of 3294.04 feet, the long chord which bears S 61°40'59"W, 143.67 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 955.90 feet, through a central angle of 04°46'16", having a radius of 11479.16 feet, the long chord which bears S 58°08'59"W, 955.62 feet;

THENCE S 55°45'15"W, 459.78 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 1237.97 feet, through a central angle of 09°18'33", having a radius of 7619.44 feet, the long chord which bears S 60°24'08"W, 1236.61 feet;

THENCE S 65°04'38"W, 195.64 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 392.71 feet, through a central angle of 05°51'36", having a radius of 3839.72 feet, the long chord which bears S 62°07'36"W, 392.54 feet;

THENCE S 59°11'47"W, 152.11

feet; **THENCE** S 89°11'47"W, 80.00

feet; **THENCE** N 36°10'14"W,

86.37 feet;

THENCE N 00°04'17"W, 20.00 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 167.72 feet, through a central angle of 12°38'40", having a radius of 760.00 feet, the long chord which bears N 06°10'12"W, 167.38 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 162.11 feet, through a central angle of 12°33'05", having a radius of 740.00 feet, the long chord which bears N 06°12'59"W, 161.78 feet;

THENCE N 00°03'31"E, 1482.86 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 89.82 feet, through a central angle of $11^{\circ}58'07''$, having a radius of 430.00 feet, the long chord which bears N $06^{\circ}02'35''$ E, 89.66 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 102.36 feet, through a central angle of $11^{\circ}58'07''$, having a radius of 490.00 feet, the long chord which bears N $06^{\circ}02'35''$ E, 102.17 feet;

THENCE N $00^{\circ}01'34''$ E, 425.60 feet;

THENCE S $89^{\circ}56'45''$ E, 232.00 feet;

THENCE N $00^{\circ}01'18''$ E, 115.00 feet to the **Point of Beginning** and containing 4,822,528 square feet or 110.71 acres of land more or less.

DESCRIPTION OF ADDITIONAL 39.407 ACRES

BEING A TRACT OF LAND SITUATED IN THE F. CUELLA SURVEY, ABSTRACT NUMBER 267, TARRANT COUNTY, TEXAS AND BEING ALL OF LOT 5R AND 6, BLOCK 3, ALLIANCE GATEWAY NORTH, AN ADDITION TO THE CITY OF FORT WORTH AS RECORDED IN INSTRUMENT NUMBER D215150766, COUNTY RECORDS. TARRANT COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF SAID LOT 5R, BLOCK 3, THE SOUTHEAST CORNER OF LOT 1, BLOCK 3, ALLIANCE GATEWAY NORTH ADDITION, AN ADDITION TO THE CITY OF FORT WORTH RECORDED IN CABINET X, SLIDE 753, IN THE WEST LINE OF THAT TRACT OF LAND DESCRIBED IN A DEDICATION DEED (KNOWN AS INDEPENDENCE PARKWAY) TO THE CITY OF FORT WORTH, RECORDED IN VOLUME 13944, PAGE 528 OF COUNTY RECORDS, TARRANT COUNTY, TEXAS AND BEING THE BEGINNING OF A CURVE TO THE LEFT;

THENCE WITH SAID CURVE TO THE LEFT AND THE WEST RIGHT-OF-WAY LINE OF SAID INDEPENDENCE PARKWAY, AN ARC DISTANCE OF 673.39 FEET, THROUGH A CENTRAL ANGLE OF $119^{\circ}46'46''$, HAVING A RADIUS OF 2060.00 FEET, THE LONG CHORD WHICH BEARS $S 25^{\circ}49'55''E$, 670.40 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE $S 35^{\circ}11'48''E$, 166.77 FEET, WITH SAID RIGHT-OF-WAY LINE, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE CONTINUING WITH SAID WEST RIGHT-OF-WAY LINE AND SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 814.90 FEET, THROUGH A CENTRAL ANGLE OF $24^{\circ}04'02''$, HAVING A RADIUS OF 1940.00 FEET, THE LONG CHORD WHICH BEARS $S 23^{\circ}09'47''E$, 808.92 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE $N 87^{\circ}05'00''W$, 103.97 FEET DEPARTING SAID RIGHT-OF-WAY LINE TO A 5/8" INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND THE AT NORTHEAST CORNER OF LOT 7, BLOCK 3 OF AFOREMENTIONED ALLIANCE GATEWAY NORTH AT THE BEGINNING OF A CURVE TO THE RIGHT BEING;

THENCE CONTINUING WITH SAID NORTH LINE AND SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 68.39 FEET, THROUGH A CENTRAL ANGLE OF $41^{\circ}14'47''$, HAVING A RADIUS OF 95.00 FEET, THE LONG CHORD WHICH BEARS $N 69^{\circ}22'37''W$, 66.92 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE N 90°00'00"W, 155.55 FEET WITH SAID NORTH LINE TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND;

THENCE S 62°28'25"W, 296.66 FEET WITH SAID NORTH LINE TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND AT THE SOUTHEAST CORNER OF LOT 4R, BLOCK 3, ALLIANCE GATEWAY NORTH, AN ADDITION TO THE CITY OF FORT WORTH AS RECORDED IN INSTRUMENT NUMBER 0209069793, SAID COUNTY RECORDS;

THENCE N 00°19'15"W, 1483.52 FEET WITH THE EAST LINE OF SAID LOT 4R TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" FOUND IN THE SOUTH LINE OF THE AFOREMENTIONED LOT 1, BLOCK 3, ALLIANCE GATEWAY NORTH ADDITION;

THENCE N 89°38'27"E, 637.87 FEET WITH THE SOUTH LINE OF SAID LOT 1 TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON " FOUND;

THENCE N 73°33'03"E, 244.92 FEET CONTINUING WITH SAID LOT 1 TO THE POINT OF BEGINNING AND CONTAINING 1,716,584 SQUARE FEET OR 39.407 ACRES OF LAND MORE OR LESS.

EXHIBIT "B"

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

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING A CERTAIN AREA IN THE CITY OF FORT WORTH AS "TAX ABATEMENT REINVESTMENT ZONE NUMBER NINETY, CITY OF FORT WORTH, TEXAS"; PROVIDING THE EFFECTIVE AND EXPIRATION DATES FOR THE ZONE AND A MECHANISM FOR RENEWAL OF THE ZONE; AND CONTAINING OTHER MATTERS RELATED TO THE ZONE.

WHEREAS, pursuant to the City Council's adoption on May 20, 2014 of Resolution No. 4322-05-2014 (the "**Tax Abatement Policy**"), the City of Fort Worth, Texas (the "**City**") has elected to be eligible to participate in tax abatement and has established guidelines and criteria governing tax abatement agreements entered into between the City and various third parties, as authorized by and in accordance with the Property Redevelopment and Tax Abatement Act, codified in Chapter 312 of the Texas Tax Code (the "**Code**"); and

WHEREAS, the City Council desires to promote the development of the area in the City more specifically described in Exhibit "A" of this Ordinance (the "**Zone**") through the creation of a reinvestment zone for purposes of granting a business expansion tax abatement, as authorized by and in accordance with Chapter 312 of the Code; and

WHEREAS, Winner, LLC ("**Company**") wishes to expend or cause to be expended at least \$125 million in real property improvements for the construction of a new data center located in the Zone, and Company intends to install new taxable tangible business personal property having a value of approximately \$125 million in such facility (collectively, the "**Improvements**"); and

WHEREAS, Company expects that this project will create at least 40 new jobs once the Improvements are completed; and

WHEREAS, Company has applied for real and business personal property tax abatements from the City in return for the installation of the Improvements in the Zone and compliance with certain other employment and spending commitments that will foster economic development in the Zone and the City in general; and

WHEREAS, on May 12, 2015 the City Council held a public hearing regarding the creation of the Zone, received information concerning the Improvements proposed for the Zone and afforded a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone (“Public Hearing”), as required by Section 312.201(d) of the Code; and

WHEREAS, notice of the Public Hearing was published in a newspaper of general circulation in the City on May 4, 2015, which satisfies the requirement of Section 312.201(d)(1) of the Code that publication of the notice occur not later than the seventh day before the date of the public hearing; and

WHEREAS, in accordance with Sections 312.201(d)(2) and (e), of the Code notice of the Public Hearing was delivered in writing not later than the seventh day before the date of the public hearing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed Zone;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF FORT WORTH, TEXAS:**

Section 1.

FINDINGS.

That after reviewing all information before it regarding the establishment of the Zone and after conducting the Public Hearing and affording a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone, the City Council hereby makes the following findings of fact:

- 1.1.** The statements and facts set forth in the recitals of this Ordinance are true and correct. Therefore, the City has met the notice and procedural requirements established by the Code for creation of a reinvestment zone under Chapter 312 of the Code.
- 1.2.** The Improvements proposed for the Zone, as more specifically outlined in the Public Hearing, are feasible and practical and, once completed will benefit the land included in the Zone as well as the City for a period in excess of ten (10) years, which is the statutory maximum term of any tax abatement agreement entered into under the Chapter 312 of the Code.
- 1.3.** As a result of designation as a reinvestment zone, the area within the Zone is reasonably likely to contribute to the expansion of primary employment and to attract major investment in the Zone that will be a benefit to property in the Zone and will contribute to the economic development of the City.

Section 2.

DESIGNATION OF ZONE.

That the City Council hereby designates the Zone described in the boundary description attached hereto as **Exhibit "A"** and made a part of this Ordinance for all purposes as a reinvestment zone for purposes of granting business expansion tax abatement, as authorized by and in accordance with Chapter 312 of the Code. This Zone shall be known as "Tax Abatement Reinvestment Zone Number Ninety, City of Fort Worth, Texas." This project is eligible for commercial/industrial tax abatement pursuant to Section 4.3 of the Tax Abatement Policy.

Section 3.

TERM OF ZONE.

That the Zone shall take effect upon the effective date of this Ordinance and expire five (5) years thereafter. The Zone may be renewed by the City Council for one or more subsequent terms of five (5) years or less.

Section 4.

SEVERABILITY.

That if any portion, section or part of a section of this Ordinance is subsequently declared invalid, inoperative or void for any reason by a court of competent jurisdiction, the remaining portions, sections or parts of sections of this Ordinance shall be and remain in full force and effect and shall not in any way be impaired or affected by such decision, opinion or judgment.

Section 5.

IMMEDIATE EFFECT.

That this Ordinance shall take effect upon its adoption.

ADOPTED AND EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____

Peter Vaky
Deputy City Attorney

M&C: _____

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING A CERTAIN AREA IN THE CITY OF FORT WORTH AS "TAX ABATEMENT REINVESTMENT ZONE NUMBER 90A, CITY OF FORT WORTH, TEXAS"; PROVIDING THE EFFECTIVE AND EXPIRATION DATES FOR THE ZONE AND A MECHANISM FOR RENEWAL OF THE ZONE; AND CONTAINING OTHER MATTERS RELATED TO THE ZONE.

WHEREAS, pursuant to the City Council's adoption on June 28, 2016 of Resolution No. 4647-06-2016 (the "**Tax Abatement Policy**"), the City of Fort Worth, Texas (the "**City**") has elected to be eligible to participate in tax abatement and has established guidelines and criteria governing tax abatement agreements entered into between the City and various third parties, as authorized by and in accordance with the Property Redevelopment and Tax Abatement Act, codified in Chapter 312 of the Texas Tax Code (the "**Code**"); and

WHEREAS, the City Council desires to promote the development of the real property located at 14101 and 14217 Independence Parkway in the City, as more specifically depicted in Exhibit "A" of this Ordinance (the "**Zone**"), through the creation of a reinvestment zone for purposes of granting a tax abatement, as authorized by and in accordance with Chapter 312 of the Code; and

WHEREAS, Winner, LLC ("**Company**") wishes to construct a new Facebook data center or centers on property in the Zone, with a minimum expenditure of at least \$250 million in real and business property improvements (collectively, the "**Improvements**"); and

WHEREAS, the Zone is adjacent to that real property designated as Tax Abatement Reinvestment Zone No. 90, City of Fort Worth, Texas (the “**Initial Zone**”); and

WHEREAS, the City previously granted Company a tax abatement on property and improvements located in the Initial Zone in return for Company’s construction of a data center on such property, with a minimum expenditure of at least \$250 million in real and business property improvements, as set forth in that certain Tax Abatement Agreement on file in the City Secretary’s Office as City Secretary Contract No. 46727; and

WHEREAS, Company expects that the overall project in the Zone and the Initial Zone will create at least 40 new jobs; and

WHEREAS, the Improvements planned for the Zone will complement that portion of the project constructed in the Initial Zone; and

WHEREAS, on October 18, 2016 the City Council held a public hearing regarding the creation of the Zone, received information concerning the Improvements proposed for the Zone and afforded a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone (“**Public Hearing**”), as required by Section 312.201(d) of the Code; and

WHEREAS, notice of the Public Hearing was published in a newspaper of general circulation in the City on October 9, 2016, which satisfies the requirement of Section 312.201(d)(1) of the Code that publication of the notice occur not later than the seventh day before the date of the public hearing; and

WHEREAS, in accordance with Sections 312.201(d)(2) and (e), of the Code notice of the Public Hearing was delivered in writing not later than the seventh day before the date of the public hearing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed Zone;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF FORT WORTH, TEXAS:**

Section 1.

FINDINGS.

That after reviewing all information before it regarding the establishment of the Zone and after conducting the Public Hearing and affording a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone, the City Council hereby makes the following findings of fact:

- 1.1. The statements and facts set forth in the recitals of this Ordinance are true and correct. Therefore, the City has met the notice and procedural requirements established by the Code for creation of a reinvestment zone under Chapter 312 of the Code.
- 1.2. The Improvements proposed for the Zone, as more specifically outlined in the Public Hearing, are feasible and practical and, once completed will benefit the land included in the Zone as well as the City for a period in excess of ten (10)

years, which is the statutory maximum term of any tax abatement agreement entered into under the Chapter 312 of the Code.

- 1.3. As a result of designation as a reinvestment zone, the area within the Zone is reasonably likely to contribute to the expansion of primary employment and to attract major investment in the Zone that will be a benefit to property in the Zone and will contribute to the economic development of the City.

Section 2.

DESIGNATION OF ZONE.

That the City Council hereby designates the Zone described herein and depicted in the map attached hereto as **Exhibit "A"** and made a part of this Ordinance for all purposes as a reinvestment zone for purposes of granting a commercial-industrial tax abatement, as authorized by and in accordance with Chapter 312 of the Code. This Zone shall be known as "Tax Abatement Reinvestment Zone Number 90A, City of Fort Worth, Texas." This project is eligible for commercial/industrial tax abatement pursuant to Section 4.1 of the Tax Abatement Policy.

Section 3.

TERM OF ZONE.

That the Zone shall take effect upon the effective date of this Ordinance and expire five (5) years thereafter. The Zone may be renewed by the City Council for one or more subsequent terms of five (5) years or less.

Section 4.

SEVERABILITY.

That if any portion, section or part of a section of this Ordinance is subsequently declared invalid, inoperative or void for any reason by a court of competent jurisdiction, the remaining portions, sections or parts of sections of this Ordinance shall be and remain in full force and effect and shall not in any way be impaired or affected by such decision, opinion or judgment.

Section 5.

IMMEDIATE EFFECT.

That this Ordinance shall take effect upon its adoption.

ADOPTED AND EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Peter Vaky
Deputy City Attorney

M&C: _____

EXHIBIT "A"

MAP DEPICTING ZONE

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 May 20, 2014, the City Council adopted Resolution No. 4322-05-2014, 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 May 19, 2015 the City Council adopted Ordinance No. 21757-05-2015 (the "**Ordinance**") establishing Tax Abatement Reinvestment Zone No. 90, City of Fort Worth, Texas (the "**Zone**").

D. Company owns approximately 110 acres of Land in the City located at the northeast corner of Alliance Gateway and Park Vista Boulevard. The Land is located entirely within the Zone. Contingent upon receipt of the tax abatement herein, Company intends to construct and operate an approximately 250,000 square foot data center on the Land, with potential expansions and build-outs that could involve an aggregate investment of more than \$250,000,000.00 in real and business personal property investments.

E. On _____ 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 4.3 of the Policy.

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. _____ (the "EDPA") to be executed substantially simultaneously with this Agreement.

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 ten percent (10%) 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 2018 tax year over their values for the 2015 tax year (which is the year in which the parties entered into this Agreement); and (ii) the abatement of ten percent (10%) 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.

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.

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, 2017, subject to extension on account of force majeure, as provided in Section 22.

Comprehensive Plan means the City's 2015 Comprehensive Plan, adopted pursuant to Ordinance No. 21693-03-2015, adopted by the City Council on March 17, 2015.

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 4.3.

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 the Land 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, plus any additional land within a half-mile radius of the real property boundaries referenced on Exhibit "A" that is acquired by Company subsequent to the Effective Date for incorporation into the Project Improvements and otherwise allowable under Chapter 312 of the Texas Tax Code.

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 4.2.

Personal Property Report has the meaning ascribed to it in Section 4.4.2.

Policy has the meaning ascribed to it in Recital A.

Project Completion Report has the meaning ascribed to it in Section 4.4.1.

Project Improvements means improvements constructed or caused to be constructed on the Land by Company after the Effective Date of this Agreement.

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

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, 2018 (the “**Term**”).

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 One Hundred Twenty-five Million Dollars (\$125,000,000.00) in Construction Costs for the Project Improvements; provided, however, that if the Personal Property Commitment outlined in Section 4.2 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 One Hundred Twenty-five Million Dollar (\$125,000,000.00) 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. Dollars counted as Construction Cost expenditures for purposes of measuring attainment of the Real Property Improvement Commitment under the EDPA will also be counted for purposes of measuring attainment of the Real Property Improvement Commitment under this Agreement.

4.2. 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 Twenty-five Million Dollars (\$125,000,000.00); 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 Twenty-five Million Dollar (\$125,000,000.00) 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**"). Dollars counted as expenditures for purposes of measuring attainment of the Personal Property Improvement Commitment under the EDPA will also be counted for purposes of measuring attainment of the Personal Property Commitment under this Agreement.

4.3. Employment Goal.

During 2018, Company will use commercially reasonable efforts to provide or cause to be provided at least forty (40) Full-time Jobs on the Land (the "**Employment Goal**"). Full-time Jobs counted for purposes of measuring attainment of the Employment Goal under the EDPA will also be counted for purposes of measuring attainment of the Employment Goal under this Agreement.

4.4. Reports and Filings.

4.4.1. 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 attached hereto as **Exhibit "C"**, 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 Fort Worth Companies and Fort Worth Certified M/WBE Companies (as those terms are defined in the EDPA), together with supporting invoices and other documents reasonably necessary to demonstrate that such amounts were actually paid (the "**Project Completion Report**"). Provision of the Project Completion Report under the EDPA will also constitute provision of the Project Completion Report under this Agreement.

4.4.2. 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 attached hereto as **Exhibit "D"**, 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**"). Provision of the Personal Property Report under the EDPA will also constitute provision of the Personal Property Report under this Agreement.

4.4.3. 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 attached hereto as **Exhibit "E"**, that sets forth the total number of individuals who held Full-time Jobs on the Land as of December 1 (or such other date requested by Company and reasonably acceptable to the City) of the previous year, 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 7.7 below, a failure to meet the Employment Goal does not constitute a default under this Agreement. Notwithstanding anything to the contrary herein, provision of the employment report under the EDPA will also constitute provision of the employment report provided hereunder.

4.5. 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 and New Taxable Tangible Personal Property 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 Project Improvements and the purchase of New Taxable Tangible Personal Property. If documentation of any Construction Cost expenditures or costs of New Taxable Tangible Personal Property is contained in

financial and business records of Company that also contain unrelated matters, and the City cannot verify such expenditures or costs in any other documents of Company, such expenditures and costs 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 or costs of New Taxable Tangible Personal Property. If Company seeks to have Construction Cost expenditures made by another party or costs of New Taxable Tangible Personal Property 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. Company must make all such records described in this Section 4.5 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.

4.6. 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 its ongoing business operations on the Land.

4.7. Use of Land.

The Land must be used at all times during 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 4.4.1 and 4.4.2, 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 One Hundred Twenty-five Million Dollars (\$125,000,000.00) in Construction Costs 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 Twenty-five Million Dollars (\$125,000,000.00) (or such lower amount if authorized by the Director in writing in accordance with Section 4.2) 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 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 4.2, 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 2018 tax year. Section 11.5 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 4.2, 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 the Land or improvements located on the Land; (ii) the involuntary conveyance to a third party of the Land or improvements located on the Land; (iii) execution by Company or an Affiliate of any assignment of the Land or improvements located on the Land or deed in lieu of foreclosure to the Land or improvements located on the Land; or (iv) the appointment of a trustee or receiver for the Land or improvements located on the Land.

7.5. Failure to Submit Reports.

If Company fails to submit any report required by and in accordance with Section 4.4, 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 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.

7.8. 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), 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.

7.9. 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.

7.10. Termination of EDPA.

In the event that the EDPA is lawfully terminated in accordance with its terms and conditions prior to expiration of this Agreement, this Agreement will automatically terminate on the same date as the effective date of termination under the EDPA.

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.

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.

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
1000 Throckmorton
Fort Worth, TX 76102

Company:

Winner, LLC
Attn: _____

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.

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 "F", 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 11.4, 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.

EXECUTED as of the last date indicated below:

[SIGNATURES IMMEDIATELY FOLLOW ON NEXT TWO (2) PAGES]

CITY OF FORT WORTH:

By: _____
David Cooke
City Manager

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Peter Vaky
Deputy City Attorney

M&C: _____

STATE OF TEXAS §

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared **David Cooke**, 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 he was duly authorized to perform the same by appropriate resolution of the City Council of the City of Fort Worth and that he 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 ____ day of _____, 2015.

Notary Public in and for
the State of Texas

Notary's Printed Name

_____,
a _____:

By: _____
Name:
Title:

Date: _____

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 _____, 2015.

Notary Public in and for
the State of _____

Notary's Printed Name

EXHIBITS

“A” – Description and Map Depicting the Land

“B” – Company’s Tax Abatement Application

“C” – Form of Notice of Completion and Final Construction Report

“D” – Form of Personal Property Report

“E” – Form of Employment Report

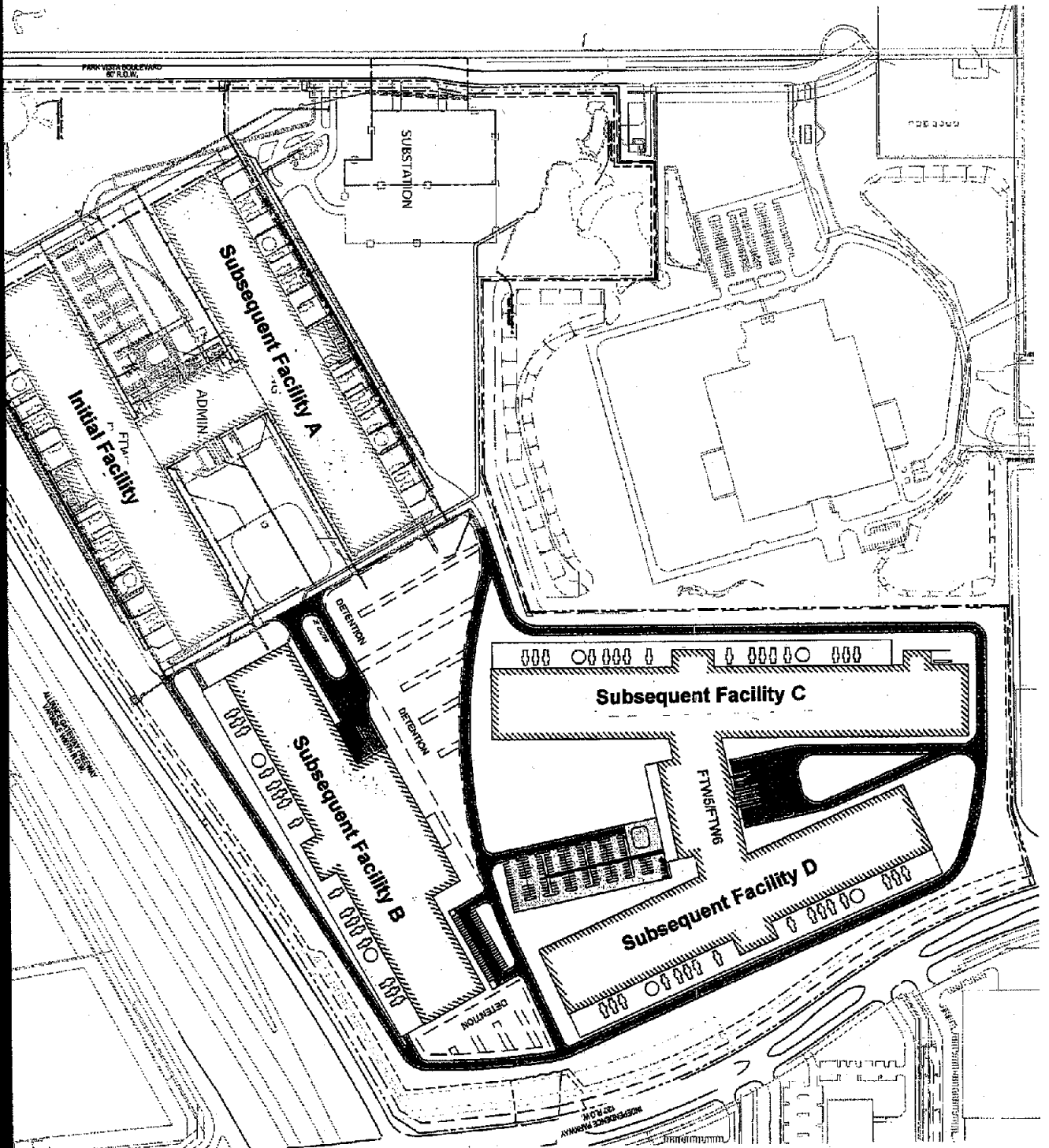
“F” – Form of Consent to Collateral Assignment

EXHIBIT "C"

**DESCRIPTION AND DEPICTION OF
ELIGIBLE PROPERTY IMPROVEMENTS**

101.4-B | PAVING PLAN - OPTION B+

FTW3 Issued for Revised Schematic Design
2016-06-10



LEGEND

- Light Duty Pavement
- Heavy Duty Pavement
- Property Line

Description and Depiction of Eligible Property Improvements

- Construction of a new data center.
 - The proposed data center 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 data center 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 to video surveillance, and electronic systems to monitor the site.
 - The proposed data center would be approximately 250,000 square feet in area.
- 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.

EXHIBIT "D"

APPLICATION FOR TAX ABATEMENT



Tarrant County Application for Tax Abatement/Reinvestment Zone

I. APPLICANT INFORMATION

Applicant/Property Owner: Winner LLC DBA Ernst LLC

Company/Project Name: Winner LLC DBA Ernst LLC

Mailing Address: To be supplemented at a later date.

Telephone: To be supplemented at a later date. **Fax:** To be supplemented at a later date.

Applicant's Representative for contact regarding abatement request:

Name and Title: Paul Wageman – Shareholder, Winstead PC

Mailing Address: 500 Winstead Building, 2728 N. Harwood Street, Dallas, TX 75201

Telephone: 214.745.5173 **Fax:** 214.745.5390 **E-mail:** pwageman@winstead.com

II. PROPERTY AND PROJECT DESCRIPTION

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

Approximately 110 acres of vacant land located at the northeast corner of Alliance Gateway Freeway and Park Vista Blvd. See attached legal description.

Project Description: The proposed project would involve the purchase of approximately 110 acres of vacant land and the construction of a new data center. The data center 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 used primarily to provide data center services to Winner LLC's parent and parent's affiliates.

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

Current Assessed Value: Real Property: \$ 15,784 Personal Property: \$ 0

Estimated start date of construction/site improvements: 6/1/15

Projected date of occupancy/commencement of operations at project site: 12/31/16

Please indicate dates for phases if applicable: N/A

Location of existing company facilities: N/A

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. See Attached

III. PROJECTED VALUE OF IMPROVEMENTS

Estimated Value of Real Property Improvements: Building construction costs are estimated to be \$125 million, we don't have an estimate as to what the assessed value of these improvements will be.

Estimated Value of Personal Property Improvements \$ 93,750,000

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

Yes No

If yes, describe requested infrastructure improvements: All offsite city water and sewer infrastructure and public roads are already in place. Minor sewer line and transmission line extensions will be completed onsite.

Detail any direct benefits to Tarrant County as a result of this project (i.e., inventory tax, etc.): See attached.

IV. EMPLOYMENT IMPACT AT PROJECT LOCATION

A. NEW EMPLOYMENT

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

Full-time 25 Part-Time TBD

Provide types of jobs created and average salary levels: The proposed project estimates creating approximately 25 full-time jobs onsite. These jobs may be a mix of company employees and third party contractors working at the data center. Each new job will have at least 1,820 annual hours of employment and would be paid at least 120 percent of the county average weekly wage.

Start date and annual payroll of new permanent positions (if positions to be phased in, provide figures for each phase year): Jobs will be created over a 5-year period. Once fully staffed, payroll is estimated to reach \$1.6 million annually.

Percentage of new jobs to be filled by Tarrant County residents: TBD

Number of employees transferring from other company locations: TBD

B. CONSTRUCTION RELATED EMPLOYMENTS

Projected number of construction related jobs: We estimated having between 200 and 300 construction workers onsite daily during our 18 months of construction.

Estimated total construction payroll: TBD, 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 utilize as many local 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 utilize as many DBE 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 N/A Part-time N/A

Average annual payroll: \$ N/A

Detail on workforce diversity – percentage breakdown of current employees by gender and ethnicity: N/A

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: \$ Depending on the size of the employee's family and choice of PPO, EPO or HMO insurance would cost anywhere from \$110 to \$290 per month.

Other employee benefits provided or offered: Dental insurance, vision insurance, 401(k), pre-tax flex spending accounts, life insurance and accidental death and dismemberment.

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

Estimated amount of annual supply and services expenses: \$ \$1,000,000

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: TBD

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.): N/A

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

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 would be a new business 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 project;
- If ultimately approved for Tarrant County, Winner reasonably expects to create and sustain a minimum of 25 new full-time jobs that would not have the effect of transferring employment from one part of Tarrant County to another.

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, Winner will use its best efforts to hire Tarrant County residents and will make it a priority when evaluating candidates for full-time employment.
- 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, which will offset 120 MW of additional brown power production. This will have an extremely positive environmental impact.

- Lastly, the proposed data center expects meet or exceed all requirements for erosion control, storm water management and landscaping.
- If ultimately approved for Tarrant County, Winner proposes 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 me at Ernst@projectnobel.com.

Respectfully submitted,

Project Ernst

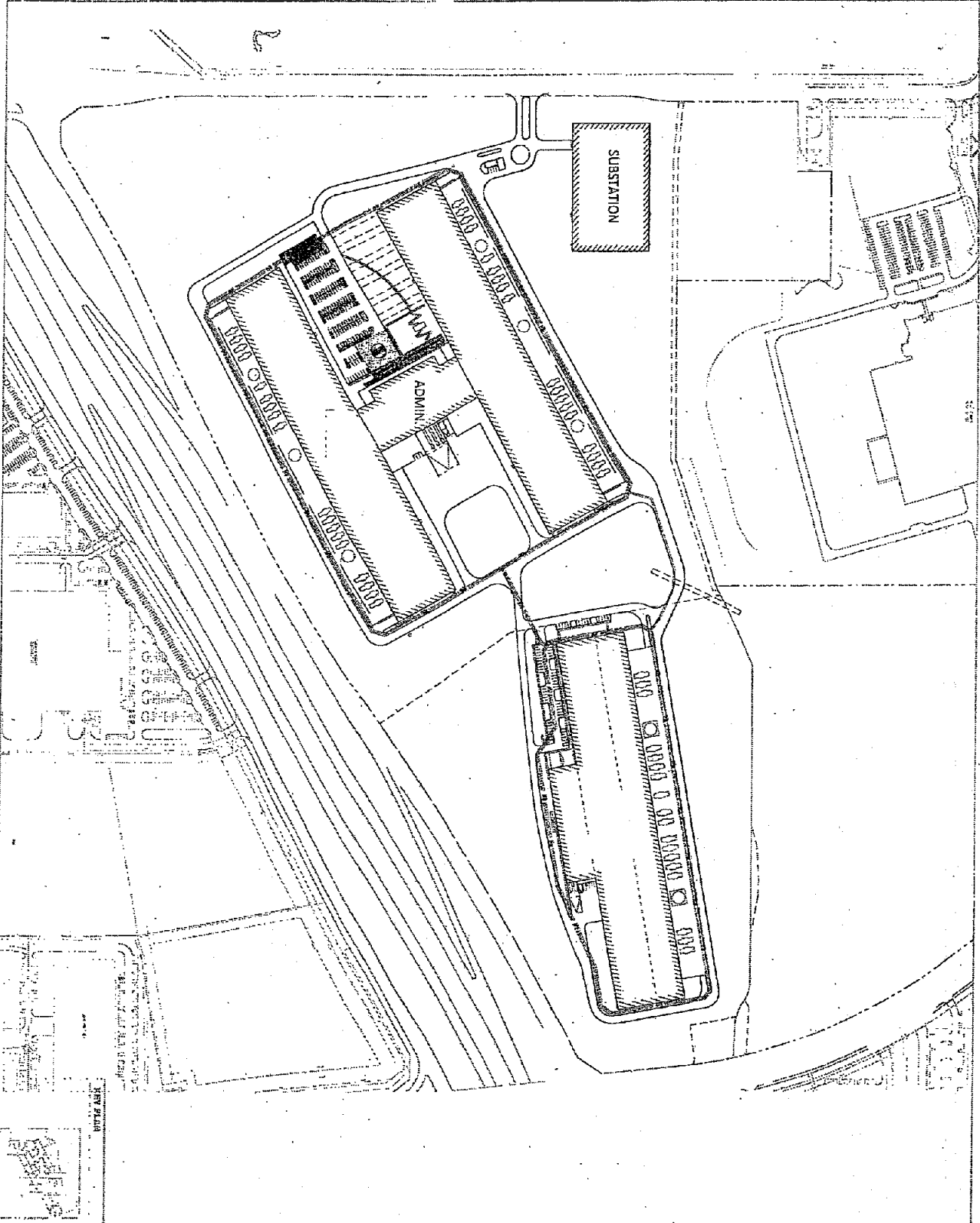
Descriptive list and value of real and personal property improvements

In total, data center construction and equipping would involve a capital investment of at least \$250 million over a five-year period. The proposed qualified investment would include:

- The purchase of approximately 110 acres of vacant land.
- Construction of a new data center.
 - The data center 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 data center 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 to video surveillance, and electronic systems to monitor the site.
 - The proposed data center would be comprised of up to three large rectangular structures, each greater than 100,000 square feet. The first two rectangular structures would be connected via a shared administrative area and upon completion would resemble an "H" in its layout.
- 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 of project location

THIS PLAN IS THE PROPERTY OF THE ARCHITECT AND IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT HIS WRITTEN PERMISSION.



DATE: 11/11/11
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT NO.: [Number]
 SHEET NO.: [Number]

ALFA
 ARCHITECTS
 1000 [Address]
 [City, State, Zip]

PELTON
 ENGINEERS
 1000 [Address]
 [City, State, Zip]

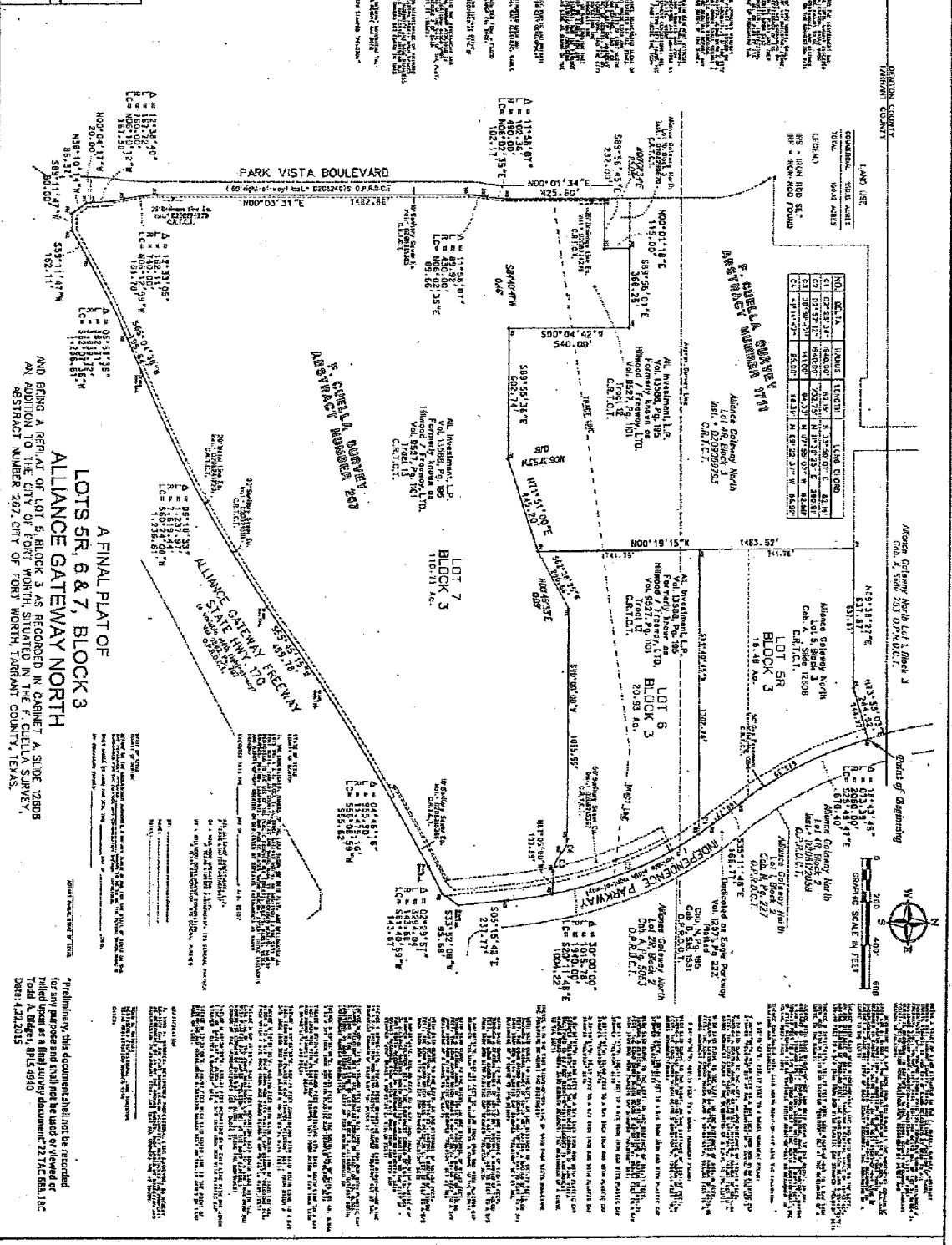
POPULUS ASSOCIATES
 ARCHITECTS
 1000 [Address]
 [City, State, Zip]

ALFA
 ARCHITECTS
 1000 [Address]
 [City, State, Zip]

ALFA
 ARCHITECTS
 1000 [Address]
 [City, State, Zip]

FORT WORTH
CITY OF FORT WORTH, TEXAS
PLANNING DEPARTMENT
300 NORTH MAIN STREET, SUITE 200
FORT WORTH, TEXAS 76102
TEL: 817.325.2200

PROJECT INFORMATION
PROJECT NAME: ALLIANCE GATEWAY NORTH
PROJECT NUMBER: 227
DATE: 4/23/2015

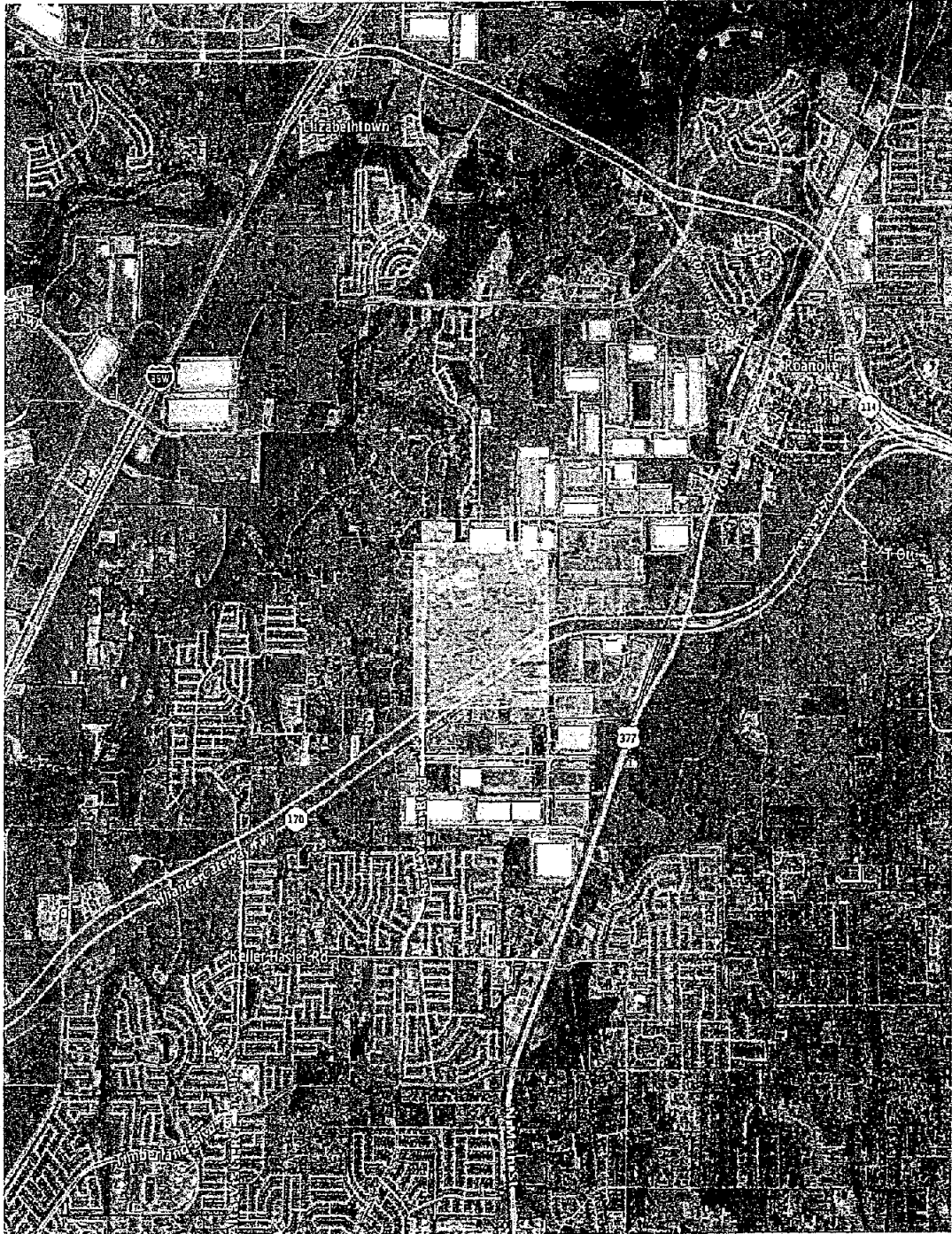


PELTON
LAND SOLUTIONS
2015 PROPOSED BY: PLS, 1001 HICKORY, FORT WORTH, TEXAS 76104

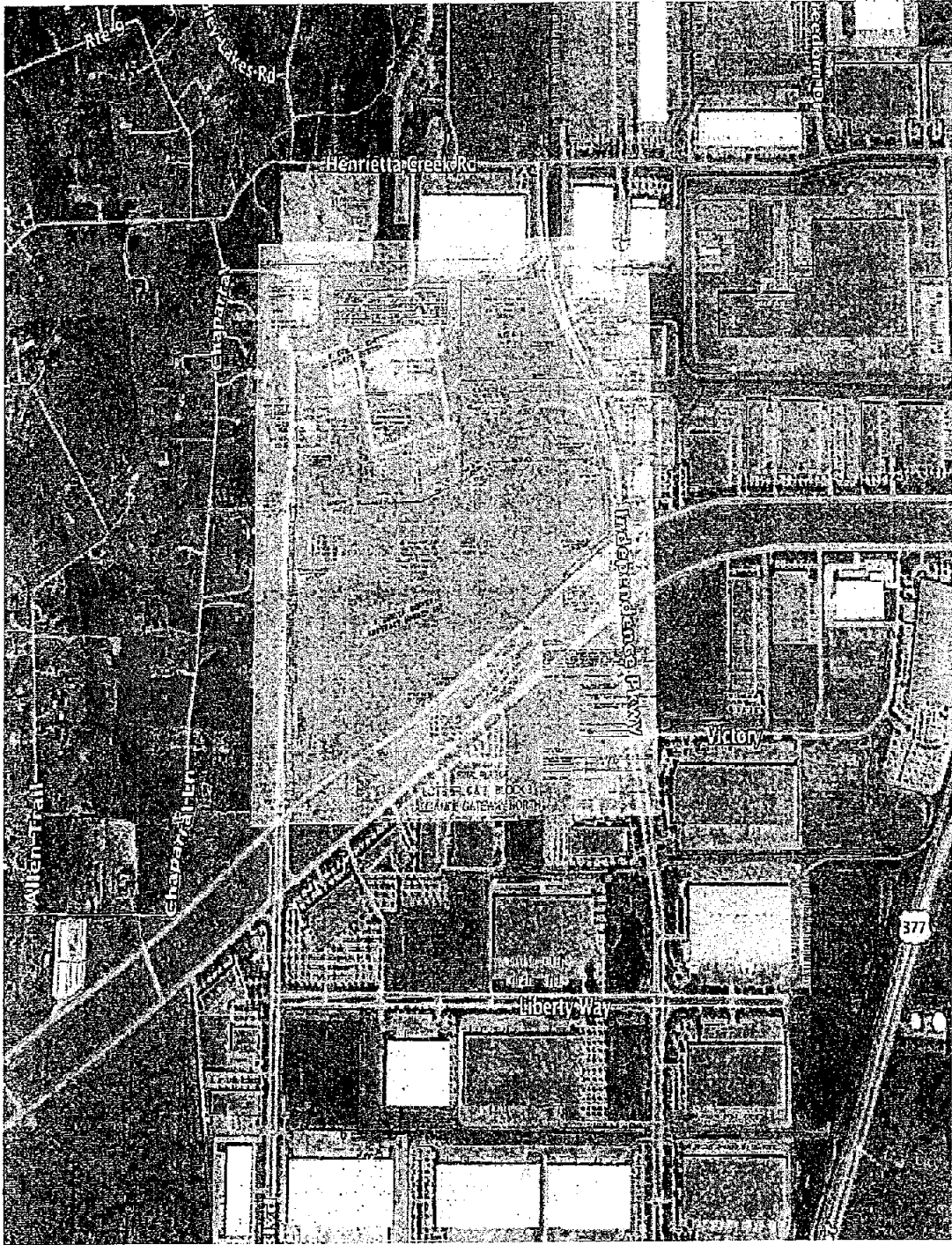
A FINAL PLAT OF
LOTS 1-3, BLOCK 3
ALLIANCE GATEWAY NORTH

Job #: WFL15001
Drawn By: W.Blaas
Checked By: T.Bridges
Date: 4.20.2015

****Proposed Project Area in red.**



****Proposed Project Area in red.**



Legal description

DESCRIPTION OF 110.71 ACRES

BEING a tract of land situated in the F. Cuella Survey, Abstract Number 267, Tarrant County, Texas and being a portion of two tracts of land describe by deed to AIL Investment, L.P., recorded in Volume 13588, Page 195 (Tracts 12 and 13), County Records, Tarrant County, Texas, being more particularly described by metes and bounds as follows:

BEGINNING at the northeast corner of Lot 10, Block 3, Alliance Gateway North, an addition to the City of Fort Worth recorded in Instrument Number D208290670, in the south line of Lot 4R, Block 3 Alliance Gateway North, and addition to the City of Fort Worth recorded in Instrument Number D209069793, both of said County Records;

THENCE S 89°56'01"E, 368.25 feet;

THENCE S 00°04'42"W, 540.00

feet; **THENCE** S 89°55'36"E,

602.74 feet; **THENCE** N 71°51'00"E,

445.20 feet; **THENCE** N 62°28'25"E,

296.66 feet;

THENCE N 90°00'00"E, 1055.55 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 68.39 feet, through a central angle of 41°14'47", having a radius of 95.00 feet, the long chord which bears S 69°22'37"E, 66.92 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 94.33 feet, through a central angle of 38°19'47", having a radius of 141.00 feet, the long chord which bears S 67°55'07"E, 92.58 feet;

THENCE S 87°05'00"E, 103.97 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 200.88 feet, through a central angle of 05°55'58", having a radius of 1940.00 feet, the long chord which bears S 08°09'47"E, 200.79 feet;

THENCE S 05°15'42"E, 237.77 feet;

THENCE S 33°52'08"W, 95.68 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 143.68 feet, through a central angle of 02°29'57", having a radius of 3294.04 feet, the long chord which bears S 61°40'59"W, 143.67 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 955.90 feet, through a central angle of 04°46'16", having a radius of 11479.16 feet, the long chord which bears S 58°08'59"W, 955.62 feet;

THENCE S 55°45'15"W, 459.78 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 1237.97 feet, through a central angle of 09°18'33", having a radius of 7619.44 feet, the long chord which bears S 60°24'08"W, 1236.61 feet;

THENCE S 65°04'38"W, 195.64 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 392.71 feet, through a central angle of 05°51'36", having a radius of 3839.72 feet, the long chord which bears S 62°07'36"W, 392.54 feet;

THENCE S 59°11'47"W, 152.11

feet; THENCE S 89°11'47"W, 80.00

feet; THENCE N 36°10'14"W,

86.37 feet;

THENCE N 00°04'17"W, 20.00 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 167.72 feet, through a central angle of 12°38'40", having a radius of 760.00 feet, the long chord which bears N 06°10'12"W, 167.38 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 162.11 feet, through a central angle of 12°33'05", having a radius of 740.00 feet, the long chord which bears N 06°12'59"W, 161.78 feet;

THENCE N 00°03'31"E, 1482.86 feet to the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 89.82 feet, through a central angle of 11°58'07", having a radius of 430.00 feet, the long chord which bears N 06°02'35"E, 89.66 feet to the beginning of a curve to the left;

THENCE with said curve to the left, an arc distance of 102.36 feet, through a central angle of 11°58'07", having a radius of 490.00 feet, the long chord which bears N 06°02'35"E, 102.17 feet;

THENCE N 00°01'34"E, 425.60 feet;

THENCE S 89°56'45"E, 232.00 feet;

THENCE N 00°01'18"E, 115.00 feet to the **Point of Beginning** and containing 4,822,528 square feet or 110.71 acres of land more or less.

Project Time Schedule

- Proposed Ground Breaking: June 2015
- Complete Construction of 1st Building: June 2016
- Go live for 1st building (live traffic): December 2016

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, which will offset 120 MW of additional brown power production. 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

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41456696
Georeference: A 267-1A04B
Property Location: 4901 ALLIANCE GATEWAY FWY, FORT WORTH, 76177

Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1a04b

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$34,530	\$0	\$34,530
Appraised Value †	\$204	\$0	\$204
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt.			82,111
Land Acres			1.885

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$204	\$0	\$204	\$34,530	\$0	\$34,530
2012	\$204	\$0	\$204	\$34,530	\$0	\$34,530
2011	\$194	\$0	\$194	\$34,530	\$0	\$34,530
2010	\$194	\$0	\$194	\$34,530	\$0	\$34,530
2009	\$196	\$0	\$196	\$34,530	\$0	\$34,530

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1.23.51

Property Data:

Appraisal Site: 80270395

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 80270395

State Code: D1 Qualified Open Space Land

Class: Vacant Land-Ag

of Parcels: 3

TAD Map: 2072-480

Primary Building:

MAPSCO: TAR-0095

Building Name:

Agent: RYAN LLC

Building Type:

Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41045165
Georeference: A 267-1A01
Property Location: 14149 INDEPENDENCE PKWY, FORT WORTH, 76177

Owner Information: AIL INVESTMENTS LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-5398

Legal Description: CUELLA, FRANCISCO SURVEY
Lot:
 Abstract: 267 Tract: 1a01

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$67,017	\$0	\$67,017
Appraised Value †	\$329	\$0	\$329
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			134,034
Land Acres			3.077

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$332	\$0	\$332	\$67,017	\$0	\$67,017
2012	\$332	\$0	\$332	\$67,017	\$0	\$67,017
2011	\$317	\$0	\$317	\$134,034	\$0	\$134,034
2010	\$317	\$0	\$317	\$134,034	\$0	\$134,034
2009	\$320	\$0	\$320	\$134,034	\$0	\$134,034

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1 23.51

Property Data:

Appraisal Site: 80868268

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 4901 HWY 170

State Code: D1 Qualified Open Space Land

Class: Vacant Land -Commercial
of Parcels: 1

TAD Map: 2072-480
MAPSCO: TAR-009J
Agent: RYAN LLC

Primary Building:
Building Name:
Building Type:
Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 40778096
Georeference: A267-1A
Property Location: 14301 INDEPENDENCE PKWY, FORT WORTH, 76177

Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1a

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$202,728	\$0	\$202,728
Appraised Value †	\$996	\$0	\$996
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			405,456
Land Acres			9.308

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$1,005	\$0	\$1,005	\$202,728	\$0	\$202,728
2012	\$1,005	\$0	\$1,005	\$202,728	\$0	\$202,728
2011	\$959	\$0	\$959	\$304,092	\$0	\$304,092
2010	\$959	\$0	\$959	\$304,092	\$0	\$304,092
2009	\$968	\$0	\$968	\$405,456	\$0	\$405,456

2015 Notice Sent:

Protest Deadline:

Exemptions:

Property Data:

Appraisal Site: 80865672

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000
State Code: D1 Qualified Open Space Land

Site Name: 4901 HWY 170
Class: Vacant Land -Commercial
of Parcels: 1

TAD Map: 2072-480
MAPSCO: TAR-009
Agent:

Primary Building:
Building Name:
Building Type:
Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 41410386
Georeference: 414K-3-5
Property Location: 14217 INDEPENDENCE PKWY, FORT WORTH, 76177

[X]

Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

Legal Description: ALLIANCE GATEWAY NORTH ADDN
 Block: 3 Lot: 5

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$254,652	\$0	\$254,652
Appraised Value †	\$1,251	\$0	\$1,251
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			509,304
Land Acres			11.692

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$1,263	\$0	\$1,263	\$254,652	\$0	\$254,652
2012	\$1,263	\$0	\$1,263	\$254,652	\$0	\$254,652
2011	\$1,204	\$0	\$1,204	\$509,304	\$0	\$509,304
2010	\$1,204	\$0	\$1,204	\$509,304	\$0	\$509,304
2009	\$1,216	\$0	\$1,216	\$509,304	\$0	\$509,304

2015 Notice Sent:

Protest Deadline:

Exemptions:

Property Data:

Appraisal Site: 80873414

Deed Date: 01/01/2008
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

State Code: D1 Qualified Open Space Land

TAD Map: 2072-480
MAPSCO: TAR-009J
Agent: RYAN LLC

Site Name: 14217 INDEPENDENCE PKWY

Class: Vacant Land -Commercial
of Parcels: 1

Primary Building:
Building Name:
Building Type:
Year Built:

Tarrant Appraisal District

Real Estate

02/12/2015

Account Number: 03805794
Georeference: A 267-1C
Property Location: 4901 ALLIANCE GATEWAY FWY, FORT WORTH, 76177

Owner Information: AIL INVESTMENT LP
 13600 HERITAGE PKWY STE 200
 FORT WORTH TX 76177-4320

6 Prior Owners

Legal Description: CUELLA, FRANCISCO SURVEY
 Lot:
 Abstract: 267 Tract: 1C
 1D & 1F

Taxing Jurisdictions: 026 CITY OF FORT WORTH
 220 TARRANT COUNTY
 911 NORTHWEST ISD
 223 REGIONAL WATER DISTRICT
 224 TARRANT COUNTY HOSPITAL
 225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$2,468,700	\$0	\$2,468,700
Appraised Value †	\$13,208	\$0	\$13,208
Gross Building Area †††			0
Net Leasable Area †††			0
Land SqFt			5,376,829
Land Acres			123.435

† Appraised value may be less than market value due to state-mandated limitations on value increases
 †† A zero value indicates that the property record has not yet been completed for the indicated tax year
 ††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$13,331	\$0	\$13,331	\$2,468,700	\$0	\$2,468,700
2012	\$13,331	\$0	\$13,331	\$2,468,700	\$0	\$2,468,700
2011	\$12,714	\$0	\$12,714	\$2,468,700	\$0	\$2,468,700
2010	\$12,714	\$0	\$12,714	\$4,032,621	\$0	\$4,032,621
2009	\$14,088	\$0	\$14,088	\$4,425,609	\$0	\$4,425,609

2015 Notice Sent:

Protest Deadline:

Exemptions: AGRICULTURAL 1D1 23.51

Property Data:

Appraisal Site: 80270395

Deed Date: 12/31/1997
Deed Page: 0000000
Deed Volume: 0000000
Instrument: 00000000000000

Site Name: 80270395

Class: Vacant Land-Ag
of Parcels: 3

State Code: D1 Qualified Open Space Land

TAD Map: 2072-476
MAPSCO: TAR-009
Agent: RYAN LLC

Primary Building:
Building Name:
Building Type:
Year Built:

Why tax abatement is necessary for the success of this project

The company is conducting a nationwide data center site selection effort. Our effort includes alternative locations in multiple jurisdictions outside of Texas. In completing our evaluation, many factors are considered, but we have an obligation to lower project related costs (both capital and operational). State and local taxes comprise a large piece of our ongoing operational expenses; therefore we need to be prudent in leveraging tax incentive programs when available. Competing states have the ability to offset state and local tax liability for twenty or more years.

Below are examples of states that have been successful in attracting large data center projects primarily based on their state and local tax incentives:

Oregon

- No sales and use tax in the state.
- Long-term Rural Enterprise Zones have the ability to abate up to 100% of new real and personal property tax value for 15-years. This includes all taxing districts.¹

Iowa

- The state offers a data center sales and use tax incentives that runs for the life of the data center (no sunset date).²
- No business personal property tax in the state.
- The High Quality Jobs Program grants local municipalities the ability to abate up to 100% of new real property tax value for up to 20-years. This includes all taxing districts.³

North Carolina

- The state offers a data center sales and use tax incentive that runs for the life of the data center (no sunset date).⁴
- Local governments have the ability to refund real and personal property taxes via annual incentive grants for up to 100% of the value added to the property. There are no statutory limitations on the term of these annual incentive grants.⁵

Based on the above, incentives are an important determining factor in locating this data center project in Tarrant County.

¹ ORS 285C.400-285C.420, OAR 123-690-5200

² Iowa Code §423.3(95)a

³ Iowa Code §15.329

⁴ N.C. Gen. Stat. §105-164.13 (55), N.C. Gen. Stat. §105-164.3

⁵ N.C. Gen. Stat. §158-7.1

Direct benefits to Tarrant County as a result of this project

Data centers generate multiplier spending effects that benefit workers and business owners in other sections of the local and regional economy. The construction alone can generate hundreds of millions of dollars in economic impact beyond the amount directly spent by the company.

The most significant direct economic impact of a large data center project locating in Fort Worth is generated by capital investment. Large data centers can create a significant amount of construction employment for the period of construction, which is approximately two years. Upon completion, data centers tend to create 30-50 full-time jobs, with relatively high salaries, to support their ongoing operations.

CBRE has studied the potential economic impact of a new data center development on a typical Texas community.⁶ For an average small data center of 150,000 gross square feet and about \$390 million of total capital investment, the total economic impact is estimated at nearly \$500 million over 10 years. An average large data center of 460,000 gross square feet and \$1.3 billion of total capital investment would have a total economic impact of about \$1.7 billion over the same period. The table below provides their detailed conclusions:

Figure 1: CBRE Estimates of the Impact of Data Centers

	Direct Impact	Total Impact ¹
Small Data Center		
Construction Jobs	794	1,430
Direct Jobs	16	46
Total Payroll	\$53,800,000	\$95,592,000
Potential Retail Sales	\$74,427,200	\$89,364,000
Economic Activity	\$374,164,000	\$499,032,000
Large Data Center		
Construction Jobs	2,941	5,366
Direct Jobs	64	184
Total Payroll	\$203,100,000	\$361,476,000
Potential Retail Sales	\$276,808,800	\$333,356,000
Economic Activity	\$1,244,656,000	\$1,716,928,000

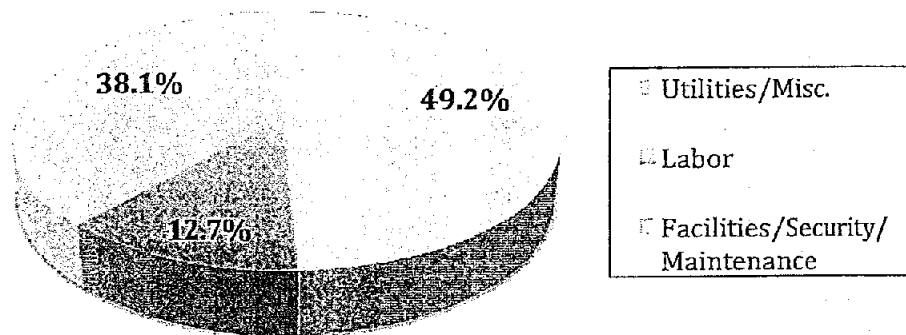
¹ Includes direct impacts as well as indirect and induced. Indirect includes suppliers supporting the operation. Induced includes jobs created from the spending of wages of the direct and indirect employees on goods and services.

The construction costs associated with the proposed project are estimated to be \$250 million, which are estimated to be spent over a two-year period. Initial equipping of the Project is projected to cost an additional \$250 million, coming in two tranches of \$125 million in the second and fifth year of the project (and presumably at three year increments going forward). However, at this point, the vendors of this equipment are not located in Texas, and so this investment is not

⁶ CBRE has the world's only fully integrated data center real estate team, offering strategy, acquisition and disposition representation, project management and facilities management from a single provider. See <http://www.cbre.us/services/office/data-center-solutions-group/Pages/home.aspx> for more information.

included in the economic impact calculations. Once the Project moves to the operations phase, annual spending will total just over \$43 million in year four, (including the cost of electricity & other utilities, labor, and contract security and maintenance). The share of each is presented in Figure 2, with the underlying figures used as inputs into the impact model.

Figure 2: Project Operational Spending by Major Category (2013)



Economic Impact Methodology

Input-output analysis includes three types of expenditure effects: direct, indirect, and induced. Direct effects are production changes associated with the immediate effects or final demand changes. The purchase of contract security by a data center is an example of a direct effect.

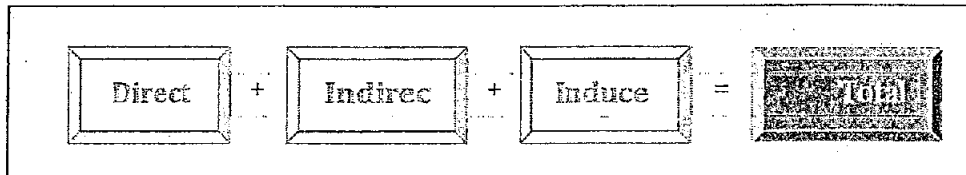
Indirect effects are production changes in backward-linked industries caused by the changing input needs of directly affected industries – typically, additional purchases to produce additional output. In order to provide security services, a contracted firm will need to hire workers, as well as provide them with whatever technology and/or equipment is necessary to do their jobs. These downstream purchases affect other local merchants and workers.

Induced effects are the changes in regional household spending patterns caused by changes in household income generated from the direct and indirect effects. The workers at the data center and security firm see increased compensation from their efforts, for example, as do the establishments that provide the necessary materials or other services to the designer and/or the producers. Induced effects capture the way in which this increased income is in turn spent in the local economy.

Once the ripple effects have been calculated, the results can be expressed in a number of ways. Three of the most common are “Output,” equivalent to sales or receipts; “Earnings,” which represents the compensation to employees and proprietors; and

“Employment,” which refers to permanent, full-time jobs that have been created in the local economy. The interdependence between different sectors of the economy is reflected in the concept of a “multiplier.” An output multiplier, for example, divides the total (direct, indirect and induced) effects by the direct effect.

Figure 3: The Flow of Economic Impacts



Results of the Modeling Effort

A large data center project is estimated to cost approximately \$250 million to build, with annual operations spending that will total just over \$43 million (including the cost of electricity, labor, other utilities, and contract security and maintenance). Per the discussion above, this data is used as inputs into local models of the regional economy; when the multiplier effects are included, the translation is a total injection of \$610.7 million in economic activity, total compensation of \$199.6 million, and 4,643 total jobs associated with the construction phase of the project. On the operations side, \$43.1 million in annual spending translates into of \$75.2 million in economic activity each year, total compensation of \$15.4 million, and 250 permanent total jobs. Summary results are in Table 1; Tables 2 and 3 provide a detailed breakdown of the impact by industry for Construction and Operations.

Table 1: Total Economic Impact of the Project by Phase (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employee
Total Construction-Related	\$610,700,000	\$199,625,000	4,643
Annual Operations-Related	\$75,156,766	\$15,371,613	250

Source: TXP

Table 2: Total Construction Economic Impact of the Project by Industry (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employee
Agriculture, etc.	\$575,000	\$100,000	5
Mining	\$2,550,000	\$550,000	9
Utilities	\$5,400,000	\$1,050,000	10
Construction	\$252,575,000	\$95,625,000	1,977
Manufacturing	\$68,950,000	\$13,875,000	270
Wholesale Trade	\$21,000,000	\$6,725,000	94
Retail Trade	\$33,825,000	\$11,700,000	427

Transportation/Warehouse	\$15,900,000	\$5,425,000	121
Information	\$18,775,000	\$4,250,000	68
Finance & Insurance	\$35,850,000	\$10,550,000	256
Real Estate	\$46,950,000	\$4,175,000	227
Prof./Technical Services	\$32,875,000	\$15,575,000	241
Management of Companies	\$7,750,000	\$3,125,000	44
Admin./Waste Services	\$12,450,000	\$5,450,000	211
Educational Services	\$2,825,000	\$1,125,000	41
Healthcare & Social	\$22,875,000	\$10,825,000	248
Arts, Entertainment, etc.	\$2,625,000	\$1,025,000	50
Accommodation	\$3,275,000	\$1,000,000	37
Food Services, etc.	\$9,400,000	\$3,000,000	167
Other Services	\$14,275,000	\$4,225,000	107
Households	N.A.	\$250,000	34
Total Annual	\$640,700,000	\$199,625,000	1,643

Source: TXP

Table 3: Annual Operations Economic Impact of the Project by Industry (\$2013)

Industry	Output/Receipts	Earnings/Payroll	Employee
Agriculture, etc.	\$23,425	\$3,909	0
Mining	\$756,491	\$153,846	2
Utilities	\$5,462,017	\$1,071,700	10
Construction	\$305,879	\$115,219	2
Manufacturing	\$1,805,901	\$328,083	7
Wholesale Trade	\$890,191	\$284,751	4
Retail Trade	\$1,627,293	\$563,502	21
Transportation/Warehouse	\$979,258	\$317,267	6
Information	\$44,312,165	\$5,747,102	45
Finance & Insurance	\$2,544,595	\$745,028	18
Real estate	\$3,383,629	\$287,578	16
Prof./Technical Services	\$7,721,474	\$3,604,991	50
Management of Companies	\$447,673	\$180,560	3
Admin./Waste services	\$789,315	\$360,329	15
Educational Services	\$214,355	\$86,230	3
Healthcare & Social	\$1,732,455	\$818,506	18
Arts, Entertainment, etc.	\$207,915	\$79,987	4
Accommodation	\$286,984	\$88,384	3
Food services, etc.	\$786,058	\$251,863	14
Other services	\$879,693	\$262,610	7
Households	N.A.	\$20,168	3
Total Annual	\$75,156,766	\$15,371,615	250

Source: TXP

The Impact of A Cluster Beyond an Individual Facility

Beyond the impact of an individual facility or facilities, it is generally accepted that there are economic benefits associated with agglomeration, or clustering within an industry that render the sum greater than the parts. In particular, there are three broad benefit categories associated with clustering. First, a cluster allows for a more efficient sharing of local infrastructure and facilities, a variety of intermediate input suppliers, or a pool of workers with similar skills. Second, a cluster also allows for a better matching between employers and employees, buyers and suppliers, or business partners. Finally, a well-developed cluster can also facilitate learning, for instance by promoting the development and widespread adoption of new technologies and business practices. In the case of data centers, the infrastructure created (especially related to power and telecommunications) can also become a competitive advantage to the attraction and/or development of new products, services, and industries. This is especially true given the focus on green energy, in this case wind, as the aggregate demand from a data center cluster would greatly enhance wind's scale, creating a range of associated consumer benefits.

EXHIBIT "E"

TARRANT COUNTY TAX ABATEMENT POLICY AND GUIDELINES

TARRANT COUNTY TAX ABATEMENT POLICY

TARRANT COUNTY POLICY & PROCEDURES SUMMARY

TARRANT COUNTY POLICY:

Minimum investment - New business: \$5,000,000 Expansion: \$3,000,000.

1. Applicable to new construction and expansions/modernization.
2. Abatement on eligible real and fixed personal property.
 - a) Minimum job requirements include 25 jobs for new business and sustained employment level for existing business expansions.
 - b) Abatement for companies moving within the County; considered if agreeable to both cities.
3. Additional evaluation criteria:
 - a) Environmental impacts of project (company must show intent to participate in regional air quality program educating employees on the Ozone Action Program);
 - b) Diversity of employment base and commitment to a diversified workforce;
 - c) Minimum of 25% of new jobs created filled by Tarrant County residents (includes transferring employees who move to and reside in Tarrant County);
 - d) Use of minimum 15% DBE and 25% Tarrant County contractors in total annual construction/suppliers/services contract costs;
 - e) Provision of health care benefits at rate reasonable to allow access by majority of employees.
4. County approval of a tax abatement applies to both County and Hospital District ad valorem taxes.
5. Value of existing personal property currently on tax rolls will remain taxable and be included in base value, even if it is moved to a new abated location or replaced due to modernization or expansion.

6. Project is ineligible for abatement if the application for County abatement was filed after the commencement of construction, alteration or installation of new improvements.

GENERAL PROCEDURES:

1. Company begins negotiations with City; City makes County aware of request and invites County comments during negotiations. County makes City aware of concerns/changes prior to final action by City.
2. Company makes application to County for participation in abatement. County negotiates additional performance criteria with Company required for County participation.
3. Once an abatement agreement is approved by City, County action to participate at terms specified by City agreement take place with 90 days of the execution date of the municipal abatement agreement.

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) Download a copy of the Tax Abatement Application
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.

- (h) 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**

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 _____, 2015 (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:

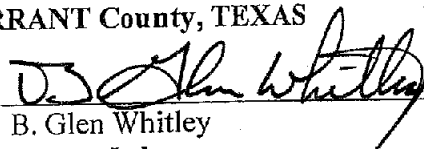
[SIGNATURES IMMEDIATELY FOLLOW ON NEXT PAGE]

WINNER, LLC,
a limited liability company:

By: _____
Name:
Title:

Date: _____

TARRANT County, TEXAS

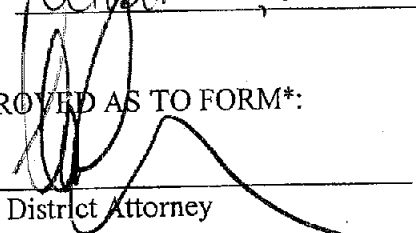
By: 
B. Glen Whitley
County Judge

Date: October 25th 2016

ATTEST:

Deputy County Clerk

APPROVED AS TO FORM*:



Asst. 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.*

EXHIBIT "G"

TAX ABATEMENT EVALUATION REPORT



Tarrant County Annual Tax Abatement Evaluation Report

Reporting Period: January 1, "[Response]" to December 31, "[Response]"

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* 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 Since Abatement Agreement: 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 / SUPPLIER / SERVICES CONTRACTS

CONSTRUCTION:

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

Percent Construction Dollars Spent With Tarrant County Contractors: "[Response]" %

Number of Construction Related Jobs This Period: "[Response]"

Total Construction Payroll This Period: \$"[Response]"

AWARDS TO DISADVANTAGED BUSINESS ENTERPRISES (DBE):

Total Dollars of Construction Contracts to DBE: \$"[Response]"

Percent of Total Construction Contracts to DBE: "[Response]" %

ANNUAL SUPPLIER / SERVICES EXPENSES:

Total Number Supplier/Services Contracts This Period: "[Response]"

Total Dollars Spent on Supplier/Services Contracts This Period: \$"[Response]"

Percent of Contracts Awarded to Tarrant County Businesses: "[Response]" %

Percent of Contract Dollars Spent with Tarrant County Businesses: "[Response]" %

Percent of Contracts Awarded to DBE: "[Response]" %

Percent of Contract Dollars Spent with DBE: "[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 (i.e., life insurance, pension plan, childcare, etc.): "[Response]"

Does Your Company Participate in The North Texas Clean Air Coalition Ozone Action Program?

Yes No If Yes, Please Attach Information on Company Program Initiatives.

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]"

Number of Fleet Vehicles Purchased This Period: "[Response]"

Describe Use of Vehicles: "[Response]"

Describe Type of Fuels Used in Fleet Vehicles (ie. Gas, Diesel, LPG, Electric; etc):

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 Rectification

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 Tarrant County Hospital District property taxes, you must return the completed report by April 30th to:

Ms. 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

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