COURT ORDER
2019-0196

Tax Abatement Request from Equinix

On a motion made by Honorable Clay Lewis Jenkins, County Judge, and seconded by Commissioner J.J. Koch, District 2, the following order was passed and adopted by the Commissioners Court of Dallas County, State of Texas:

BRIEFING DATE: 2/19/2019

Be it resolved and ordered that the Dallas County Commissioners Court does hereby authorize the provision of a five-year, 50% tax abatement on real property to Equinix for the location of a new data center in Dallas, effective no later than January 1, 2021 and subject to the firm creating twenty-five new full-time-equivalent jobs and increasing the County's tax base by at least $108 million no later than this same January 1, 2021 effective date.

It is further resolved and ordered that the County Judge is authorized to sign the related tax abatement agreement which shall govern the provision of this abatement.

Done in open court February 19, 2019, by the following vote:

IN FAVOR:	Honorable Clay Lewis Jenkins, County Judge
	Commissioner Dr. Theresa M. Daniel, District 1
	Commissioner J.J. Koch, District 2
OPPOSED:	Commissioner John Wiley Price, District 3
ABSTAINED:	Commissioner Dr. Elba Garcia, District 4
ABSENT:	None

Recommended by: Rick Loessberg
Originating Department: Planning and Development

COMMISSIONERS COURT BRIEFING

DATE: 2/19/2019

SUBMITTING DEPARTMENT: Planning and Development

SUBJECT: Tax Abatement Request from Equinix

BACKGROUND:
Equinix, which operates more than 200 data centers in twenty-four countries, has been considering where to place an additional data center in the U.S. As several sites nationally were under consideration for this additional center, Dallas County, in order to help facilitate the selection of a local site, proposed providing a five-year, 50% tax abatement on real property. As Equinix is now prepared to locate this new facility in Dallas adjacent to the Infomart, it has requested that the County formally authorize the proposed abatement.

DESCRIPTION OF PROJECT:
The project involves the construction of a four-story, 242,000-square-foot data center tower that will employ twenty-five people at an average salary of $62,000 and that will become operational in 2020. It is estimated that when completed, the project will increase the County's tax base by at least $108 million, of which about $75.6 million is associated with the four-story data center tower and about $32.4 million is associated with business personal property.

These job creation and tax base increase figures have been refined and are both about one-half less than what was first proposed in 2018 when this item was initially placed on the Court's October 16 agenda, but then removed as the figures began to be refined. Accordingly, the proposed tax abatement has also been revised and no longer applies to business personal property.

Equinix also hopes to undertake up to two additional phases associated with this project; however, this possibility has not been included in this analysis.

IMPACT ON OPERATIONS:
Equinix's proposed facility is considered to be an economically significant project under the County's abatement policy. As such projects must increase the County's tax base by at least $100 million to be eligible for consideration, and as this project is anticipated to increase the County's tax base by at least $108 million, it is eligible for consideration.

IMPACT ON FINANCE:
The proposed incentive would go into effect no later than January 1, 2021 and would result in the County's tax base increasing by at least $108 million. This increase would result in the County abating about $91,900 a year in tax revenue that does not presently exist while simultaneously collecting/retaining about $170,700 in new revenue.

RECOMMENDED BY:	Planning and Development	**PREPARED BY:**	Rick Loessberg
		APPROVED BY DEPT HEAD:	Rick Loessberg

The project would also increase the estimated total amount of property that the County would abate in tax year 2021 from approximately $472 million to $526 million. This project would slightly change the estimated total percentage of the County's tax base that would be abated in 2021 from 0.18% to 0.20% which is still less than any figure from 2006-2017.

ADMINISTRATIVE PLAN COMPLIANCE:
The County's administrative plan recommends that the County undertake activities which will allow it to become the destination of choice for businesses and residents. Facilitating the establishment of the proposed data center will directly create new jobs and may help encourage other businesses to locate in the area.

M/WBE PARTICIPATION:
M/WBE information pertaining to Equinix has previously been provided to the Court under separate cover.

RECOMMENDATION:
It is recommended that the County provide Equinix with a five-year, 50% abatement on real property for the new data center that it will be establishing in Dallas.

TAX ABATEMENT AGREEMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

This Tax Abatement Agreement ("*Agreement*") is made and entered into as of the ______ day of ______________, 2019, by and between Dallas County, Texas ("*County*"), a political subdivision of the State of Texas duly acting by and through its Commissioners Court, and Equinix Inc. ("*Owner*"), a Delaware limited liability company, duly acting by and through its authorized officers for the purposes and considerations stated below:

WITNESSETH:

WHEREAS, the County has adopted a Tax Abatement Policy ("*Policy*"), by the passage of Dallas County Commissioners Court Order 2019-_____ on the 5th day of February, 2019, that contains the guidelines and criteria used to determine the provision of tax abatement assistance from the County authorized under the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended, Section 11.24 of the Texas Tax Code and Chapter 381 of the Texas Local Government Code;

WHEREAS, the County's current Tax Abatement Policy is attached as **Exhibit "A"** hereto;

WHEREAS, Owner anticipates undertaking certain Economic Activity (as hereafter defined) on or about the Property (as hereinafter defined), including, without limitation, (i) construction of the Improvements (as hereinafter defined) for the purpose of creating a data center; (ii) generating employment opportunities on or related to the Property as more particularly described herein; and (iii) making certain Business Personal Property (hereinafter defined) investments with respect to the Property, and the County finds that the other terms hereof are consistent with encouraging development in accordance with Court Order 2019-_____ and 2019-_____ and all applicable laws; and

WHEREAS, the County finds that the Owner's contemplated use of the Property, the contemplated generation of employment opportunities on or related to the Property, and the contemplated real property Improvements and Business Personal Property investments on or about the Property are feasible and practical and will be of significant benefit to the County and its citizens; and

WHEREAS, the County finds that the terms of this Agreement and the Property and proposed Improvements, as hereinafter defined, meet the applicable guidelines and criteria of the County's Tax Abatement Policy; and

WHEREAS, Court Orders 2019-_____ and 2019-______ authorize the County to enter into this Agreement with Owner.

NOW THEREFORE, the County, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the attraction of new investment and increased job generation that contributes to the economic development of the County and the enhancement of the County's tax base; and the Owner, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the tax abatement set forth herein below, as authorized by Court Orders 2019-_____ and 2019-______ do hereby contract, covenant, and agree as follows:

SECTION I.
DEFINITIONS

Wherever used in this Agreement, the following capitalized terms shall have the meanings set forth below:

1. "*Economic Activity*" shall mean the following acts undertaken by or on behalf of Owner: (i) use and operation of the Improvements as a data center; (ii) the creation of twenty-five (25) Full-Time Permanent Positions (as hereinafter defined) and/or Full-Time Equivalent Positions (as hereinafter defined) to be located on the Property, such creation of employment opportunities being more particularly described in the Job Creation Requirement set forth below; and (iii) the investment of funds with regard to certain real property improvements and Business Personal Property located on or re-located to the Property or used in connection with operations on the Property.

2. "*Eligible Real Property Value*" shall mean the value, as annually established by Dallas Central Appraisal District ("*DCAD*"), of all Property and Improvements within the Property less the Property's Base Value, as defined herein and as established by DCAD.

3. "*Eligible Business Personal Property Value*" shall mean the value, as annually established by DCAD, of all Business Personal Property, owned or leased by the Owner, excluding any Freeport-eligible inventory, within the Property less the Business Personal Property's Base Value, as defined herein and as established by DCAD.

4. "*Base Value*" shall mean the appraised value of the respective Property and the Business Personal Property as determined by DCAD as of January 1, 2018.

5. "*Property*" shall mean that land physically located at 2000 N. Stemmons in Dallas, Texas, presently defined as property tax account 00100100010030000 by the County and DCAD and legally described in **Exhibit "B",** attached hereto and incorporated by reference. The County relies on the attached Exhibit "B", provided by Owner to be a full, complete and accurate legal description of said parcel, and to the extent that said description might exceed said parcel, it is excluded from any abatement provided for hereunder.

6. *"Business Personal Property"* shall include all personal property owned or leased by Owner located on or re-located to the Property used in connection with operation of the Improvements and for which Owner is responsible for paying any applicable property taxes, but excluding any business personal property that is exempt from ad valorem taxation as Freeport goods pursuant to Section 11.251 of the Texas Tax code and Article VIII, Section 1-j of the Texas Constitution.

7. "*Improvements*" shall mean those certain improvements constructed or to be constructed on or about the Property. The Improvements shall be used in connection with the Economic Activity undertaken by Owner.

8. *"Job Creation Requirement"* shall refer to Owner's agreement to first annually employ an aggregate number of a minimum of twenty-five persons in Full-Time Permanent Positions and/or Full-Time Equivalent Permanent Positions to be located on or based out of the Property as of January 1, 2021 and maintain this number for the remainder of the Tax Abatement.

9. *"Owner"* shall mean and refer to the parties to this Agreement who are the respective owners from time to time of the Property that is subject to tax abatement hereunder and any Successor Entity.

10. *"Successor Entity"* shall mean (i) any entity which is a successor or assign to an Owner by merger, consolidation, assignment or reorganization; or (ii) a purchaser of all or substantially all of an Owner's assets.

SECTION II.
GENERAL PROVISIONS

1. The County has adopted guidelines and criteria governing tax abatement agreements such that it is authorized to enter into this Agreement.

2. The Property is not located in an improvement project financed by tax increment bonds.

3. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the County.

4. The Property is not owned or leased by any member of the Dallas County Commissioners Court.

5. Owner covenants and agrees that the construction of the Improvements and use of the Property and Business Personal Property subject to this Agreement will be in accordance with and comply with all applicable city, county, state and federal laws, rules, regulations, statutes, ordinances and policies including, but not limited to, Title VI of the Civil Rights Act of 1964, as amended.

6. During the Tax Abatement Period (hereinafter defined), Owner shall be subject to all County taxation not specifically abated or exempted.

7. Owner shall have the right to protest and/or contest DCAD appraisals of the Property, the Improvements and/or Business Personal Property over and above the respective Base Value of the Property, the Improvements and/or the Business Personal Property, as the case may be, under the procedures in place by the Tax Code of the State of Texas. The Tax Abatement (as hereinafter defined) shall be applied to the amount of taxes finally determined by DCAD to be due as a result of any such protest and/or contest by Owner.

SECTION III.
RATE AND CONDITIONS OF TAX ABATEMENT

1. Owner shall receive the Real Property Tax Abatement (hereinafter defined) upon satisfaction of the conditions set forth in <u>Section III(1)(a)-(d) below</u>. For purposes of this

Agreement, the Real Property Tax Abatement shall be referred to herein as the "*Tax Abatement*". Owner shall receive a fifty percent (50%) abatement of the taxes assessed on the Eligible Real Property Value from the County for each qualifying year during the Tax Abatement Period subject to the terms of this Agreement.

(a) Owner shall construct the Improvements on or about the Property for the purpose of operating a data center.

(b) The aggregate of the Eligible Real Property Value and the Eligible Business Personal Property Value by January 1 of each year during the Tax Abatement Period, as determined by DCAD, shall be at least equal to One-Hundred-Eight-Million-Dollars ($108 million) (*"Aggregate Value Condition")*.

(c) Owner shall file the annual exemption application (the "*Exemption Application*") forms with DCAD for the Tax Abatement that it believes it is eligible to receive under this Agreement.

(d) Owner shall comply with the Job Creation Requirement. Employment positions applied toward satisfaction of the Job Creation Requirement shall include Full-Time Permanent Positions or Full-Time Equivalent Permanent Positions (as such terms are hereinafter defined). A Full-Time Permanent Position means a "position for which an individual is scheduled to work at least 1800 hours in a twelve-month period for Owner, its subsidiaries, or its affiliates either under contract or as an employee." A Full-Time Equivalent Permanent Position means "two or more part-time positions filled by individuals working with or for Owner, its subsidiaries, or its affiliates a combined total of at least 35 hours per week either under contract or as an employee" which shall be counted as one Full-Time Equivalent Permanent Position.

SECTION IV.
ABATEMENT PERIODS

The Tax Abatement provided under this Agreement is for a period of five (5) years and will begin no later than January 1, 2021 (the "*Tax Abatement Period*"). Owner and the County shall have no further obligations under this Agreement upon expiration of the Tax Abatement Period, except as otherwise provided herein.

SECTION V.
RECORDS AND AUDITS

1. No later than March 31 of the first year that this abatement goes into effect and January 31 of each applicable year thereafter during the Tax Abatement Period, Owner shall submit to the County a certification as to the number of Full-Time Permanent Positions and Full-Time Equivalent Permanent Positions that are located on or based out of the Property as of January 1 of such year.

2. At all times throughout the Tax Abatement Period, the County shall have reasonable access during normal business hours to the Property by County employees (upon one-week prior notice to Owner) for the purpose of inspecting same to ensure that the Property is being used for the required Economic Activity in accordance with the

specifications and conditions of this Agreement; provided that Owner shall have the right to accompany County employees on any such inspection. In no event shall such inspections interfere with Owner's ownership and operation of the Property.

3. The Property at all times during the Tax Abatement Period shall be used in a manner consistent with Court Orders 2019-_____ and 2019-_____ and shall be consistent with the general purpose of encouraging economic development within the County.

SECTION VI.
DEFAULT

1. Subject to the cure provisions of this Section VI, a default under this Agreement occurs in the event that the Owner: (i) allows its ad valorem real property taxes and/or tangible business personal property taxes owed to the County from the Property associated with this Agreement as well as from other property the Owner may own within the County to become delinquent during the Tax Abatement Period and fail to timely and properly follow the legal procedures for protest and/or contest of any such taxes; (ii) fails to file an annual Exemption Application; (iii) fails to meet the Aggregate Value Condition for each relevant year; (iv) fails to comply with the Job Creation Requirement; (v) is convicted of a violation under 8 USC Section 1324a(f); or (vi) fails to materially comply with any of the terms or conditions set forth in this Agreement. In the event that Owner defaults in its performance as set forth in any of (i), (ii), or (vi) above, the County or DCAD shall give Owner written notice of such default. If Owner has not cured a default under (i), (ii), or (vi) within ninety (90) days of said written notice or if a default under (iii) or (iv)occurs, an event of default (an "*Event of Default*") shall exist and this Agreement shall terminate (and Owner shall not receive any Tax Abatement for years after such Event of Default, it being understood that, an Event of Default shall not entitle County to reclaim or receive a repayment right with respect to any Tax Abatement for any year before the Event of Default occurs, and that the sole remedy by the County for an Event of Default which results from a failure by the Owner to meet a condition is the termination of this Agreement and not damages or specific performance or any other remedy). In the event that Owner cures any such default within the applicable cure period or prior to termination of this Agreement, no Event of Default shall exist and this Agreement shall continue in full force and effect, without penalty to Owner.

2. Upon the occurrence of a court finding a violation of Section VI (1)(v), all taxes which otherwise would have been paid to the County without the benefit of the Tax Abatement, including interest and penalties thereon ("Recapture Liability"), will become a debt to the County and shall be due, owing, and paid to the County within one hundred twenty (120) calendar days of a final determination by a court of competent jurisdiction that Owner has violated 8 USC 1324a(f) as the sole remedy of the County, subject to any and all lawful offsets, settlements, deductions, or credits to which Owners may be entitled, and subject to the rights of the Owner under applicable law to contest an assertion that a violation of Section VI(1)(v)has occurred. The Recapture Liability interest and penalties shall 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.

3. This Agreement inures to the benefit of and is enforceable by the County. The County has the right to prosecute or take appropriate action, at law or in equity, against the Owner to enforce any other covenant or provision (but not a condition) contained within

this Agreement. If the County substantially prevails in a legal proceeding to enforce this Agreement against the Owner, the County is further entitled to recover damages, reasonable attorney's fees, and court costs from the Owner. Any payment due to the County under this Agreement is a lien which attaches to the Property on January 1 of each year to enforce the payment of all taxes, penalties, and interest ultimately imposed for the year on the Property.

SECTION VII.
EFFECT OF SALE, ASSIGNMENT, OR LEASE OF PROPERTY

The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. The Owner, including any Successor Entity, may assign its rights and responsibilities under this Agreement including the right to receive the Tax Abatement to a parent, subsidiary, or an affiliate entity of Owner or Successor Entity, or any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of Owner or Successor Entity acquiring title to the Property without the prior approval of the County so long as the Owner shall give County prior written notice of such assignment at least sixty (60) calendar days prior to such assignment. Owner agrees that such an assignment will in no way relieve it from any obligation created under this Agreement attributable to the period prior to the assignment.

SECTION VIII.
NOTICE

All notices called for or required by this Agreement shall be reduced to writing and addressed to the person shown at the respective addresses set forth below, or such other party or address as either party designates in writing, and shall be deemed properly given by (i) on the third (3rd) business day after being deposited in the U.S. mail by certified mail or registered mail, return receipt requested and postage prepaid; (ii) on the first (1st) business day after being deposited in the custody of a nationally recognized overnight delivery service; or (iii) on the date personally delivered, with signed acceptance thereof by the person designated below :

OWNER:

Equinix Inc.
One Lagoon Drive
Redwood City, CA 94065
Atten: Paul Zhu, VP of Tax

COUNTY:

Director of Planning & Development
Dallas County Commissioners Court
411 Elm Street, 3rd Floor
Dallas, Texas 75202

Copies to:

Chief, Civil Division
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202

SECTION IX.
COUNTY AUTHORIZATION

This Agreement is authorized by Court Orders 2019-_____ and 2019-_____ approved at the Commissioners Court meetings on the 5th day of February, 2019 and the ____ day of _______, 2019, respectively.

SECTION X.
OWNER AUTHORIZATION

The execution and performance of this Agreement by Owner has been duly authorized by its governing authority and does not require the consent or approval of any other person which has not been obtained. Additionally, the person or persons executing this Agreement on behalf of the Owner represents, warrants, assures and guarantees that he, she or they have full legal authority to execute this Agreement on behalf of the Owner and to bind the Owner to all terms, performances, and provisions herein contained.

SECTION XI.
SEVERABILITY

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.

SECTION XII
ESTOPPEL CERTIFICATE

Any party hereto may request an estoppel certificate from the other party hereto so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which, if requested, will be addressed to a subsequent purchaser or assignee of Owners, shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default (or if default exists, the nature of default and curative action which should be undertaken to cure same), the remaining term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party to receive the certificate.

SECTION XIII.
APPLICABLE LAW AND VENUE

The validity and interpretation of this Agreement, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable and enforceable in Dallas County, Texas where the principal office of County is located and the federal and state courts physically located in Dallas County, Texas shall be the sole and exclusive venue for any litigation, special proceeding, or other proceeding as between the Parties that may be brought, or arise out of, in connection with, or by reason of this Agreement.

SECTION XIV.
SOVEREIGN IMMUNITY

THIS AGREEMENT IS EXPRESSLY MADE SUBJECT TO THE COUNTY'S SOVEREIGN IMMUNITY, TITLE 5 OF THE TEXAS CIVIL PRACTICES AND REMEDIES CODE, AND ALL APPLICABLE FEDERAL AND STATE LAW. THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT THE COUNTY HAS BY OPERATION OF LAW. NOTHING IN THIS AGREEMENT IS INTENDED TO BENEFIT ANY THIRD PARTY BENEFICIARY.

SECTION XV.
AMENDMENTS AND CHANGES IN THE LAW

No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition, or deletion to the terms of this Agreement which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

SECTION XVI.
INDEMNIFICATION

OWNER, INCLUDING ITS ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, INVITEES, SUBCONTRACTORS AND REPRESENTATIVES (COLLECTIVELY "INDEMNIFYING PARTY") AGREES TO WAIVE, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE COUNTY, INCLUDING ITS COMMISSIONERS, ELECTED OFFICIALS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ASSIGNS AND REPRESENTATIVES (COLLECTIVELY "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIENS, SUITS, LOSSES, COSTS, DAMAGES, JUDGMENTS, AND EXPENSES, (INCLUDING WITHOUT LIMITATION, COURT COSTS, ATTORNEY'S FEES AND COSTS OF INVESTIGATION) OR OTHERWISE OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART), INDEMNIFYING PARTY'S PERFORMANCE, FAILURE TO PERFORM OR COMPLY OR BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT.

<u>NO INDEMNIFICATION BY COUNTY: OWNER ACKNOWLEDGES AND AGREES THAT COUNTY DOES NOT HAVE THE ABILITY UNDER ARTICLE XI, SECTION 7 OF THE TEXAS CONSTITUTION TO INDEMNIFY OWNER OR ANY OTHER THIRD PARTY FOR DAMAGES ARISING UNDER THIS AGREEMENT.</u>

<u>SURVIVAL</u>: THESE PROVISIONS IN SECTION XVI SHALL SURVIVE TERMINATION, EXPIRATION, OR CANCELLATION OF THIS AGREEMENT, OR ANY DETERMINATION THAT THIS AGREEMENT OR ANY PORTION HEREOF IS VOID, VOIDABLE, INVALID, OR UNENFORCEABLE.

SECTION XVII.
CONTRA PROFERENTUM

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, this Agreement shall not be construed against the party who drafted this Agreement, and such party shall not be responsible for the language used.

SECTION XVIII.
ENTIRE AGREEMENT

This Agreement, including all Exhibits, Attachments, and Addendums, constitutes the entire agreement between the Parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written, by and between Owner and the County.

SECTION XIX.
NUMBER/GENDER AND HEADINGS

Words of any gender used in this Agreement shall be held and construed to include any other gender and any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION XX.
EFFECTIVE DATE OF AGREEMENT

This Agreement shall not become effective (the "*Effective Date*") until executed by both the County and the Owner. This Agreement may be signed and executed in counterparts.

SECTION XXI.
FORCE MAJEURE

It is expressly understood and agreed by the Parties to this Agreement that if a Party's ability to satisfy any obligation under this Agreement including, but not limited to the substantial completion of the Improvements is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by franchised utilities or their contractors, fire or other casualty, court injunction, necessary condemnation proceedings, or any 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 circumstances are 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 performance shall be extended for a period of time equal to the period such Party was delayed.

SECTION XXII.
NOTICE TO OTHER GOVERNING BODIES

At least seven (7) days prior to the execution of this Agreement, notice of the County's intention to enter into this Agreement shall be delivered to the governing bodies of each other taxing unit that includes in its boundaries the real property that is the subject of this Agreement.

SECTION XXIII.
OWNER CERTIFICATIONS

TEXAS GOVERNMENT CODE CHAPTER 2264 CERTIFICATION. Owner, by execution of this Agreement and in accordance with Chapter 2264 of the Texas Government Code, certifies that they do not and will not knowingly employ any undocumented workers at the Property during the Term of this Agreement and that if the Owner is convicted of a violation under 8 U.S.C. Section 1324a(f), Owner shall repay all taxes which otherwise would have been paid to the County without the benefit of the tax abatement, including interest and penalties thereon within the time period set forth in Section VI (2) of this Agreement,

SECTION XXIV.
NON-WAIVER OF DEFAULT

Failure of any Party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the Party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach. It is not a waiver of default if the non-defaulting Party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either Party's use of any right or remedy will not preclude or waive its right to use any other remedy at law or in equity. These rights and remedies are in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. Parties have a duty to mitigate damages.

[SIGNATURES ON FOLLOWING PAGE]

EXECUTED this the _______ day of ______________, 2019.

DALLAS COUNTY:	**OWNER:**
By: ______________________	By: ______________________
Name: Clay Lewis Jenkins	Name: Paul Zhu
Title: County Judge	Title: VP, Tax

RECOMMENDED BY:

____
Rick Loessberg
Director of Planning & Development

APPROVED AS TO FORM:*

JOHN CRUEZOT
DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY

RUSSELL RODEN
CHIEF, CIVIL DIVISION

By: ______________________ 1/28/2019
Tina R. Patel
Assistant District Attorney – Civil Division

*BY LAW, THE DISTRICT ATTORNEY'S OFFICE MAY ONLY ADVISE OR APPROVE CONTRACTS OR LEGAL DOCUMENTS ON BEHALF OF ITS CLIENTS. IT MAY NOT ADVISE OR APPROVE A LEASE, CONTRACT, OR LEGAL DOCUMENT ON BEHALF OF OTHER PARTIES. OUR REVIEW OF THIS DOCUMENT WAS CONDUCTED SOLELY FROM THE LEGAL PERSPECTIVE OF OUR CLIENT. OUR APPROVAL OF THIS DOCUMENT WAS OFFERED SOLELY FOR THE BENEFIT OF OUR CLIENT. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL, AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE ATTORNEY(S).

EXHIBIT A

(Dallas County Tax Abatement Policy)

EXHIBIT B

(Legal Description of Property)

INFOMART PHASE II
LOT 3, BLOCK 1/1001
JAMES A SYLVESTER, ABSTRACT NO. 1383
CITY OF DALLAS, DALLAS COUNTY, TEXAS

LOT 3:

Being a tract of land situated in the James A Sylvester Survey, Abstract No. 1383, City of Dallas, Dallas County, Texas, being all of Lot 3, Block 1/1001, Infomart Phase II, an addition to the City of Dallas according to the plat recorded in Volume 85245, Page 4318, Deed Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at the Northwest corner of said Lot 3, being in the southerly line of the Dallas Area Rapid Transit right-of-way (variable width), formerly the Missouri, Kansas and Texas Railroad, being in the easterly line of a tract of land (Parcel 5) conveyed to ITP Fee, L.P. by Special Warranty Deed recorded in Instrument No. 201500109033, Official Public Records, Dallas County, Texas and being the beginning of a curve to the right;

THENCE along southerly line of said Dallas Area Rapid Transit right-of-way and said curve to the right, whose chord bears South 56° 20' 11" East a distance of 75.29 feet, having a radius of 1599.88 feet, a delta angle of 2° 41' 48" and an arc length of 75.30 feet to a point at the end of said curve to the right;

THENCE North 51° 14' 07" East, continuing along the southerly line of said Dallas Area Rapid Transit right-of-way, a distance of 30.11 feet to a point at the beginning of a curve to the right;

THENCE continuing along the southerly line of said Dallas Area Rapid Transit right-of-way and said curve to the right, whose chord bears South 56° 49' 44" East a distance of 93.87 feet, having a radius of 1553.95 feet, a delta angle of 3° 27' 41" and an arc length of 93.88 feet to a point, being a northeast corner of Lot 3 and a northwest corner of Lot 2, Block 1/1001, Infomart Phase I, an addition to the City of Dallas according to the plat recorded in Volume 85245, Page 4327, Deed Records, Dallas County, Texas;

THENCE along the common line between said Lot 3 and said Lot 2 the following courses and distances;

South 33° 33' 22" West, a distance of 86.82 feet, to a point;

South 56° 26' 38" East, a distance of 287.10 feet, to a point;

South 24° 29' 24" East, a distance of 117.52 feet, to a point;

South 33° 33' 22" West, a distance of 843.30 feet, to a point in the northerly line of Interstate Highway No. 35 (variable width right-of-way), being the southeast corner of said Lot 3 and a southwest corner of said Lot 2

THENCE North 56° 26' 38" West, along the northerly line of said Interstate Highway No. 35, a distance of 34.18 feet to a point, being the beginning of a curve to the left;

THENCE in a northwesterly direction, along the northerly line of said Interstate Highway No. 35 and said curve to the left, whose chord bears North 57° 08' 21" West a distance of 79.75 feet, having a radius of 3289.04 feet, a delta angle of 01° 23' 21" and an arc length of 79.75 feet to a point, said point being the southwest corner of said Lot 3 and the southeast corner of said Parcel 5;

THENCE North 08° 28' 37" East, along the common line between said Lot 3 and said Parcel 5, a distance of 1064.46 feet to the **POINT OF BEGINNING** and containing 304,748 square feet or 6.996 acres, more or less.

TOWER 1:

Being a tract of land situated in the James A Sylvester Survey, Abstract No. 1383, City of Dallas, Dallas County, Texas, being a part of Lot 3, Block 1/1001, Infomart Phase II, an addition to the City of Dallas according to the plat recorded in Volume 85245, Page 4318, Deed Records, Dallas County, Texas and being more particularly described as follows:

COMMENCING at the Northwest corner of said Lot 3, being in the southerly line of the Dallas Area Rapid Transit right-of-way (variable width), formerly the Missouri, Kansas and Texas Railroad, being in the easterly line of a tract of land (Parcel 5) conveyed to ITP Fee, L.P. by Special Warranty Deed recorded in Instrument No. 201500109033, Official Public Records, Dallas County, Texas;

THENCE South 08° 28' 37" West, along the common line between said Lot 3 and said Parcel 5, a distance of 506.82 feet to the **POINT OF BEGINNING**;

THENCE South 81° 36' 37" East, departing said common line, a distance of 387.02 feet to a point in the easterly line of said Lot 3 and the westerly line of Lot 2, Block 1/1001, Infomart Phase I, an addition to the City of Dallas according to the plat recorded in Volume 85245, Page 4327, Deed Records, Dallas County, Texas;

THENCE South 33° 33' 22" West, along the common line between said Lot 3 and said Lot 2, a distance of 668.68 feet to a point in the northerly line of Interstate Highway No. 35 (variable width right-of-way), being the southeast corner of said Lot 3 and a southwest corner of said Lot 2;

THENCE North 56° 26' 38" West, along the northerly line of said Interstate Highway No. 35, a distance of 34.18 feet to a point, being the beginning of a curve to the left;

THENCE in a northwesterly direction, along the northerly line of said Interstate Highway No. 35 and said curve to the left, whose chord bears North 57° 08' 21" West a distance of 79.75 feet, having a radius of 3289.04 feet, a delta angle of 01° 23' 21" and an arc length of 79.75 feet to a point, said point being the southwest corner of said Lot 3 and the southeast corner of said Parcel 5;

THENCE North 08° 28' 37" East, along the common line between said Lot 3 and said Parcel 5, a distance of 557.64 feet to the **POINT OF BEGINNING** and containing 145,969 square feet or 3.351 acres, more or less.

INFOMART PHASE II
LOT 3, BLOCK 1/1001
JAMES A SYLVESTER, ABSTRACT NO. 1383
CITY OF DALLAS, DALLAS COUNTY, TEXAS

TOWER 2:

Being a tract of land situated in the James A Sylvester Survey, Abstract No. 1383, City of Dallas, Dallas County, Texas, being a part of Lot 3, Block 1/1001, Infomart Phase II, an addition to the City of Dallas according to the plat recorded in Volume 85245, Page 4318, Deed Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at the Northwest corner of said Lot 3, being in the southerly line of the Dallas Area Rapid Transit right-of-way (variable width), formerly the Missouri, Kansas and Texas Railroad, being in the easterly line of a tract of land (Parcel 5) conveyed to ITP Fee, L.P. by Special Warranty Deed recorded in Instrument No. 201500109033, Official Public Records, Dallas County, Texas and being the beginning of a curve to the right;

THENCE along southerly line of said Dallas Area Rapid Transit right-of-way and said curve to the right, whose chord bears South 56° 20' 11" East a distance of 75.29 feet, having a radius of 1599.88 feet, a delta angle of 2° 41' 48" and an arc length of 75.30 feet to a point at the end of said curve to the right;

THENCE North 51° 14' 07" East, continuing along the southerly line of said Dallas Area Rapid Transit right-of-way, a distance of 30.11 feet to a point at the beginning of a curve to the right;

THENCE continuing along the southerly line of said Dallas Area Rapid Transit right-of-way and said curve to the right, whose chord bears South 56° 49' 44" East a distance of 93.87 feet, having a radius of 1553.95 feet, a delta angle of 3° 27' 41" and an arc length of 93.88 feet to a point, being a northeast corner of Lot 3 and a northwest corner of Lot 2, Block 1/1001, Infomart Phase I, an addition to the City of Dallas according to the plat recorded in Volume 85245, Page 4327, Deed Records, Dallas County, Texas;

THENCE along the common line between said Lot 3 and said Lot 2 the following courses and distances;

South 33° 33' 22" West, a distance of 86.82 feet, to a point;

South 56° 26' 38" East, a distance of 287.10 feet, to a point;

South 24° 29' 24" East, a distance of 117.52 feet, to a point;

South 33° 33' 22" West, a distance of 174.62 feet, to a point;

THENCE North 81° 36' 37" West, departing the common line between said Lot 3 and said Lot 2, a distance of 387.02 feet, to a point in the west line of said Lot 3 and the east line of said Parcel 5;

THENCE North 08° 28' 37" East, along the common line between said Lot 3 and said Parcel 5, a distance of 506.82 feet to the **POINT OF BEGINNING** containing 158,780 square feet or 3.6451 acres, more or less.