

**FIRST AMENDMENT TO ECONOMIC DEVELOPMENT LOAN AND GRANT
AGREEMENT**

BETWEEN THE CITY OF SAN ANTONIO AND SITE B DATA SERVICES, LLC

This First Amendment to Economic Development Loan and Grant Agreement (this "First Amendment") is entered into as of December 15, 2016 (the "Effective Date"), by and between the City of San Antonio ("CITY"), a municipal corporation governed by the laws of the State of Texas, and Site B Data Services, LLC ("SITE B"), a Delaware limited liability company. Together, CITY and SITE B may be referred to herein as the "Parties."

RECITALS

A. CITY and SITE B entered into that certain Economic Development Loan and Grant Agreement (the "Agreement") authorized by City Ordinance No. 2010-01-0014-0021, passed and approved on January 14, 2010.

B. As of December 31, 2015, SITE B has failed to: (-1-) meet the required number of Full-Time Jobs; (-2-) meet the required capital investment; (-3-) meet the required electricity usage; and (-4-) repay the Loan Funds as and when required under the terms of the Agreement.

C. The Parties seek to amend the terms and conditions of the Agreement as of the Effective Date of this First Amendment and affirm that all other provisions of the Agreement remain in full force and effect.

AGREEMENT

NOW THEREFORE, the Parties hereby agree as follows:

1. **Definitions**. All capitalized terms used in this First Amendment without definition herein shall have the meanings ascribed to such terms in the Agreement.

2. **Amendment**. Notwithstanding anything contained in the Agreement, Site B hereby agrees to the following amended terms to the Agreement:

A. Full-Time Jobs. By the December 31, 2017, and continuing thereafter until January 1, 2021, Site B shall create and maintain at least 5 full-time jobs at the Building. Site B may count full-time contractor(s) as full-time employees, provided such contractor(s) meet the definition of a full-time job as follows: (-1-) is a non-temporary job; (-2-) will provide at least 2,080 straight-time hours of employment a year to a single employer; (-3-) there is a written contract between such contractor(s) and Site B to provide services at the Building; (-4-) such contractor(s) must not be temporarily assigned to Site B's data center operation; (-5-) must meet wage requirements set forth in the Agreement; and (-6-) such contractor(s) must be provided an opportunity to participate in an employer sponsored benefit plan.

B. Capital Investment. The cumulative capital investment required to be made by Site B at the Building, exclusive of any funding the CITY has provided under the Agreement, shall be Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00), with credit being given for a proportionate share of the assessed value of real property occupied by Site B's data operations at the Building.

C. Energy Use. Site B shall reach and maintain at least an eighty percent (80%) load factor to a minimum of 2.4MW of energy consumption monthly (i.e., at least an average 200 KW per month).

D. Liens. CITY will have a first lien on all the data center equipment based on the inventory list attached hereto and incorporated herein as **Exhibit A**, and a lien in favor CITY on the Building should the value of data center equipment be 90% or less than the amount of the advanced loan funds. In connection with such lien(s), Site B shall, within 30 days after the Effective Date of this First Amendment, file all necessary paperwork requested by CITY to secure CITY's lien against the data center equipment and Building, including, without limitation, Uniform Commercial Code filings and a Second Deed of Trust on the Building, and shall record these filings and Deed of Trust in the appropriate public records as directed by CITY.

E. Non-Compliance. Failure to meet and maintain the terms set forth in this First Amendment by December 31, 2017 and throughout the remainder of the Agreement term will result in, without further notice or cure right, termination of the Agreement and the recapture of Grant Funds by CITY as follows:

1. Recapture of grant funds:
 - a. By the end of 2017 – 100% (recapture payments of \$8,083.33 each)
 - b. By the end of 2018 – 80% (recapture payments of \$6,466.66 each)
 - c. By the end of 2019 – 60% (recapture payments of \$4,850.00 each)
 - d. By the end of 2020 – 40% (recapture payments of \$3,233.33 each)

SITE B shall be obligated to repay CITY the Grant Funds disbursed by CITY under its Economic Development Grant Program in twelve (12) semi-annual installments as set forth above, with the first payment due on the February 1st following such termination, and continuing through the repayment term on each August 1st and February 1st, until paid in full.

F. Repayment of Loan Funds. SITE B shall be obligated to repay CITY the Loan Funds disbursed by CITY under its Economic Development Loan Program in twelve (12) semi-annual installments of Eight Thousand Five Hundred Eighty-three and 33/100 Dollars (\$8,583.33) plus Accrued Interest (as defined in the Agreement), if any, in accordance with the following schedule:

SCHEDULE OF REPAYMENT*

January 31, 2018	\$8,583.33
June 30, 2018	\$8,583.33 plus Accrued Interest
January 31, 2019	\$8,583.33 plus unpaid Accrued Interest
June 30, 2019	\$8,583.33 plus unpaid Accrued Interest
January 31, 2020	\$8,583.33 plus unpaid Accrued Interest
June 30, 2020	\$8,583.33 plus unpaid Accrued Interest
January 31, 2021	\$8,583.33 plus unpaid Accrued Interest
June 30, 2021	\$8,583.33 plus unpaid Accrued Interest
January 31, 2022	\$8,583.33 plus unpaid Accrued Interest
June 30, 2022	\$8,583.33 plus unpaid Accrued Interest
January 31, 2023	\$8,583.33 plus unpaid Accrued Interest
June 30, 2023	\$8,583.33 plus unpaid Accrued Interest

This Schedule of Repayment is not subject to change except in the case of written agreement between CITY and SITE B and subject to force majeure extension under Section 24 of the Agreement.

G. Loan Forgiveness. SITE B shall only be required to repay the Loan Funds by making Loan Payments and Interest Payments set forth above should SITE B fail to achieve the requirements set forth in Paragraph 2. A., 2. B., and 2 C of this First Amendment by December 31, 2017.

3. **No Other Changes.** Except as specifically set forth in this First Amendment, all of the terms and conditions of the Agreement shall remain the same and are hereby ratified and confirmed. The Agreement shall continue in full force and effect and along with this First Amendment shall be read and construed as one instrument.

4. **Entire Agreement; Waiver.** This First Amendment constitutes the final, complete and exclusive statement between the parties to this First Amendment pertaining to the amendment of the terms and conditions of the Agreement as set forth herein, supersedes all prior and contemporaneous understandings or agreements of the parties pertaining to the matters set forth herein, and is binding on and inures to the benefit of their respective heirs, representatives, successors, successors-interest, and assigns. No Party has been induced to enter into this First Amendment by, nor is any Party relying on, any representation or warranty not expressly set forth in this First Amendment. Any agreement made after the date of this First Amendment is ineffective to modify, waive, or terminate this First Amendment, in whole or in part, unless that agreement is in writing, is signed by the parties to this First Amendment, and specifically states that agreement modifies this First Amendment.

5. **Choice of Law.** This First Amendment shall be construed in accordance with and governed by the laws of the State of Texas.

6. **Counterparts.** This First Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this First Amendment it shall not be necessary to produce or account for more than one

counterpart signed by each party hereto by and against which enforcement hereof is sought. A copy of a signature received through telefax or email transmission shall bind the party whose signature is so received as if such signature were an original.


Signatures appear on next page.

WITNESS HEREOF, the parties hereto have executed in triplicate originals this First Amendment as of the Effective Date first written above.

CITY OF SAN ANTONIO,
a municipal corporation

SITE B Data Services, LLC
a Delaware limited liability company

Sheryl L. Sculley
City Manager



Name: Fred Reyes
Title: President

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit: Exhibit A (Equipment)

Exhibit A (Equipment)

Invoice	Units	Price Per	Invoice Amount	Description	Serial Numbers
PEI Invoice # 000020	2	\$21,300	\$42,600.00	Unihart Defense System 3.80 Ton Upflow Computer Room Air Conditioning w/ humidification and RHC coil Model # VUC800AANOCPS	S1M343-003 S1M343-002
	2	\$6,804	\$13,608.00	Mastercraft 3 Fan Condenser Model # 1980503A002	T0820791 T0820792
	2	\$850	\$1,700.00	Unihart open Common Wt: 0 Model # 412D410	
EACON Invoice # 345373	1	\$48,678	\$48,678.00	Powerware 9350-180 UPS Powerware 9350-180 Battery Cabinet	EC304C0001 F8E10A000
Power Protection Services # 088625	40	\$289	\$10,760.00	Battery UPS12-4000R	
Sammit Invoice #0001637465	1	\$36,195.66	\$36,195.66	Cutler Hammer Switchboard Custom Inlets	
Sammit Invoice #0001728819	6	\$1,653	\$9,918.00	Cutler Hammer Transient Voltage Surge Suppressor Model # SPO12048023N	
Sammit Invoice #0001869530	1	\$3,861.21	\$3,861.21	Cutler Hammer Transient Voltage Surge Suppressor Model # SPO25048023N	62941
Sammit Invoice #0001869531	1	3861.21	\$3,861.21	Cutler Hammer Transient Voltage Surge Suppressor Model # SPO25048023N	62939
Sammit Invoice #0001855494	2	\$2,763	\$5,526.82	Cutler Hammer 75 ENA Dry Type Transformer Model #P4028M25770CLHE	J0802005 J08020461
Sammit Invoice #0001877465	1	\$6,798	\$6,798.18	Cutler Hammer 150 ENA Dry Type Transformer Model # 048M25P48CLHE	J0805103
Sammit Invoice #0001890341	1	1268.17	\$1,268.17	Cutler Hammer Switch Panel P402120L740CH01	
	1	2978.55	\$2,978.55	P402000L740CH01	
	1	2978.55	\$2,978.55	P402000L740CH01	
	1	1876.9	\$1,876.90	P304000P700CH01	
	1	955.89	\$955.89	E2720005	
	1	1471.89	\$1,471.89	P302800L740CH01	
	1	896.9	\$896.90	E2720005	
	1	2159.57	\$2,159.57	P402000P86CH01	
Black Box Invoice # SAN-002889	22	\$800	\$17,600.00	Select Plus Data Cabinet Model # 854040	80801576 80800028 80800020 80800008 80800088 80800050 80800404 80800000 80801766 80801717 80800544 80801111 80800411 80800000 80801101 80800400 80801104 80801000 80801104 80801105
Black Box Invoice # SAN-002751	2	\$800.00	\$1,600.00	Select Plus Data Cabinet	