

DRAFT

STATE OF TEXAS	§	
	§	CITY OF SAN ANTONIO
	§	TAX ABATEMENT AGREEMENT
COUNTY OF BEXAR	§	FOR REAL AND PERSONAL PROPERTY

1. PARTIES

THIS AGREEMENT (the “Agreement”) is entered into on this ___ day of _____ 2017 (the “Effective Date”) by and between ERNST AND YOUNG U.S. LLP (hereinafter referred to as “OPERATOR”), a limited liability partnership formed in the State of Delaware, who will hold a leasehold interest in the real property described herein and personal property located on said real property, Farinon Building Two, LLC (“Landlord”), who owns the fee simple interest in the real property that is the subject of this Agreement, and the CITY of SAN ANTONIO, a municipal corporation, (hereinafter referred to as the “CITY”), acting by and through its City Manager under the authority of its City Council.

2. AUTHORIZATION AND FINDINGS

A. This Agreement is entered into pursuant to the following authorities:

1. The Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312, as amended;
2. CITY COUNCIL RESOLUTION No. 89-07-12, dated the 15th day of February 1989, and most recently revised by Ordinance No. 2016-12-15-1003 on December 15, 2016, together which established the City of San Antonio Guidelines and Criteria for tax abatements, (hereinafter referred to as the “Guidelines and Criteria”);
3. The Project Site is located within an existing Texas Enterprise Zone area, and in accordance with Section 312.2011 of the Texas Tax Code, designation of an area as a State Enterprise Zone constitutes designation of the area as a Reinvestment Zone (“Reinvestment Zone”) for tax abatement purposes without further hearing or procedural requirements; and
4. CITY COUNCIL ORDINANCE NO. 2017-__-__-____, dated _____, 2017, which specifically approved this Agreement and authorized execution hereof.

B. The City Council, by its approval of this Agreement, hereby finds that the terms of this Agreement abide by the Guidelines and Criteria as adopted and in place as of the time this Agreement is approved by City Council and approving this Agreement will not have any substantial long-term adverse effect on the provision of city services or the City’s tax base and the planned use of the Property (defined below) inside the qualifying Reinvestment Zone by OPERATOR for the uses contemplated herein will not constitute a hazard to public safety, health or morals.

3. PROPERTY

A. Landlord has the fee simple interest in the real property located at 12707 Silicon Drive, San Antonio, TX 78249 (the "Property"), legally described in Exhibit A, attached hereto and incorporated herein, and has entered into a lease agreement with Operator for the occupation of a portion of the Property for a period of not less than the Abatement Term of this Agreement as described below. The Property is located within a qualifying Reinvestment Zone for the purposes of the Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312.

For the purposes of this Agreement, the only obligations of Landlord are: 1) to enter into a lease agreement with Operator; 2) to pay the required property tax on the Property; and 3) to keep the Property in good repair for the Term of this Agreement.

Operator shall have a leasehold interest in the Property as described in Exhibit A (the "Leased Premises") for a term which is a period of not less than the Term of this Agreement as described below, inclusive of options to extend the term of such lease upon mutual agreement of the Operator and Landlord. The Property is located within an existing Texas Enterprise Zone area, and in accordance with Section 312.4011 of the Texas Tax Code, designation of an area as a State Enterprise Zone constitutes designation of the area as a Reinvestment Zone without further hearing or other procedural requirements.

B. OPERATOR will control the Leased Premises for the Term of this Agreement and intends to locate a client service delivery center on the Property following completion of: (i) real property improvements on the Property, which includes without limitation, the value of the improvements to the buildings on the Property (the "Real Property Improvements") and (ii) personal property improvements within its Leased Premises on the Property (the "Personal Property Improvements"). Following the completion of the Real Property Improvements and Personal Property Improvements, OPERATOR will locate its client service delivery center on the Property and conduct its Business Activities at the Property, which are defined for the purposes of this Agreement as the provision of certain technology, business process support and other professional services to its clients (the "Business Activities").

C. In order for OPERATOR to conduct the Business Activities on the Property, OPERATOR shall invest in certain Real Property Improvements and Personal Property Improvements (collectively, the "Improvements") in the cumulative amount of at least EIGHT MILLION AND FIVE HUNDRED THOUSAND DOLLARS (\$8,500,000). OPERATOR's investment in the Property shall be determined as of December 31, 2019. No Personal Property Improvements shall be placed on the Property sooner than the Effective Date of this Agreement or in the event they are, such Personal Property Improvements shall not be eligible toward the Improvements investment requirement. Notwithstanding the foregoing, OPERATOR may invest in Personal Property Improvements at the Temporary Space which shall count towards to the requisite

Improvements investment amount provided that such Personal Property Improvements are subsequently transferred to the Property.

D. Landlord and Operator, shall establish separate tax accounts with the Bexar Appraisal District for the Real Property Improvements and the Personal Property Improvements, respectively, and provide these tax account numbers and the related entity information to the CITY. The information from such accounts shall be used to determine the total value of Landlord's and OPERATOR's investment in the Property. In the event Bexar Appraisal District will not segregate the Real Property Improvements and the underlying land value into a separate tax accounts, then the respective value of the Real Property Improvements and the underlying land value shall be apportioned for purposes of this Agreement based on the respective tax value of the Real Property Improvements and the underlying land value.

E. CITY acknowledges that OPERATOR may establish a temporary location ("Temporary Space") upon which to commence Business Activities prior to its move to the Property. Operator shall use its commercial best efforts so that such temporary location is within the city limits of CITY; however, in the event such Temporary Space is not located within the CITY's city limits, no penalty, liability, default or termination right shall apply or be triggered hereunder.

4. **OPERATOR'S REPRESENTATIONS**

A. OPERATOR and Landlord represent that neither has any knowledge that any interest in the Property is presently owned, held or leased by a member of the San Antonio City Council, Zoning Commission, Planning Commission, the City's Economic Development Department, or any other City officer or employee. OPERATOR further represents that it shall not knowingly sell, lease or otherwise convey an interest in the Property to a member of the San Antonio City Council, the Zoning Commission, the Planning Commission, the City's Economic Development Department or any other City officer or employee, as long as this Agreement remains in effect.

B. OPERATOR represents that there is no litigation pending against OPERATOR for any violations under the Occupational Safety and Health Act ("OSHA") in Bexar County, Texas.

5. **OPERATOR'S OBLIGATIONS**

In order for OPERATOR to take advantage of the tax abatement offered by the CITY, OPERATOR will be required to fulfill all of the obligations set forth within this Article 5.

A. OPERATOR is required to:

- 1) Lease the Real Property Improvements and own, hold an interest in, or otherwise control the Personal Property Improvements that are the subject of this Agreement; and

2) Invest, or cause to be invested, at least EIGHT MILLION AND FIVE HUNDRED THOUSAND DOLLARS (\$8,500,000) in Real Property Improvements and Personal Property Improvements at the Property by December 31, 2019; and

(3) Use the Leased Premises at the Property for the Business Activities as described in this Agreement; and

(4) Create and maintain six hundred (600) Full-Time Jobs (as defined in Article 5 Section D) at the Property as follows:

(i) Prior to January 1, 2020, OPERATOR shall have created ONE HUNDRED (100) Full-Time Jobs at the Property;

(ii) Prior to January 1, 2021, OPERATOR shall have retained not less than one hundred (100) Full-Time Jobs at the Property and created an additional one hundred (100) Full-Time Jobs at the Property for a cumulative total of at least two hundred (200) Full-Time Jobs at the Property;

(iii) Prior to January 1, 2022, OPERATOR shall have retained not less than two hundred (200) Full-Time Jobs at the Property and created an additional one hundred (100) Full-Time Jobs at the Property for a cumulative total of at least three hundred (300) Full-Time Jobs at the Property;

(iv) Prior to January 1, 2023, OPERATOR shall have retained not less than three hundred (300) Full-Time Jobs at the Property and created at least an additional one hundred fifty (150) Full-Time Jobs at the Property for a cumulative total of at least four hundred fifty (450) Full-Time Jobs at the Property; and

(v) Prior to January 1, 2024, OPERATOR shall have retained not less than four hundred fifty (450) Full-Time Jobs at the Property and created an additional one hundred fifty (150) Full-Time Jobs at the Property for a cumulative total of at least six hundred (600) Full-Time Jobs at the Property.

B. Operator covenants and agrees that it shall pay one hundred percent (100%) of its employees located at the Property an amount equal to at least the City's effective prevailing "living" wage as determined by the City Council in its Tax Abatement Guidelines, which is ELEVEN DOLLARS AND EIGHTY-THREE CENTS (\$11.83) per hour. From and after the second anniversary of this Agreement, seventy percent (70%) of all new and existing employees working at the Property shall earn at least FIFTEEN DOLLARS AND SIXTY-EIGHT CENTS (\$15.68) per hour.

C. For the purposes of this Agreement, a “Full-Time Job” shall constitute the performance by one individual the amount of two thousand eighty (2,080) straight-time paid hours in a fiscal year.

D. OPERATOR covenants and agrees that it shall offer all of the Full-Time Job employees performing Business Activities at the Leased Premises on the Property and their dependents with access to a benefits package, including a health insurance program, within one year from date of employment.

E. OPERATOR covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees.

F. OPERATOR covenants and agrees that it shall conduct its Business Activities (as defined in Article 3, Paragraph A) at the Property in accordance with all applicable federal, state and local laws.

G. Any construction OPERATOR performs or causes to be performed on the Property shall be in accordance with all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and ordinances, Historic Preservation and Urban Design ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended.

I. Except as provided herein, OPERATOR covenants and agrees that it shall use the Property only to conduct its Business Activities. Without additional consent or approval by the City Council, a parent, subsidiary or affiliate organization of OPERATOR or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of OPERATOR, or any component thereof (hereinafter “Related Organization”) may occupy and use the leased premises on the Property for such Related Organization’s normal business activities, so long as such business activities are those of a client service delivery center providing financial services and technology support or comparable to the Business Activities of OPERATOR at the Property. To be eligible for the tax abatements as provided in this Agreement, such Related Organization must agree in writing to fully comply with all applicable terms of this Agreement. Except as authorized above, OPERATOR covenants and agrees not to change the Business Activities provided at the Property without prior approval by the City Council, as evidenced in a duly approved ordinance.

J. OPERATOR and Landlord covenant and agree that they shall maintain the Leased Premises and the Property, respectively, and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the negligence, intentional act or misconduct of OPERATOR excepted.

K. OPERATOR covenants and agrees that, upon five business days prior notice received by it from the CITY, OPERATOR shall allow designated representatives of the CITY access to the OPERATOR's books and records during normal business hours for inspection to in accordance with this section. This inspection is independent of CITY'S police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances. The CITY's access to OPERATOR's books and records will be limited to information needed to verify that OPERATOR is and has been conducting Business Activities, and to verify the number of full-time employees at the Facility; provided, however, that the CITY shall not have the ability to obtain copies of OPERATOR's records or remove any information or documents from OPERATOR's files. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right to require OPERATOR to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of OPERATOR. CITY representatives may be accompanied by OPERATOR representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of the Property or the Facility; and (b) comply with OPERATOR's reasonable security requirements.

L. During the Term of this Agreement, OPERATOR and LANDLORD covenant and agree to furnish each year in which each is eligible for an abatement of taxes, as applicable, the Chief Appraiser of Bexar Appraisal District with information outlined in Chapter 22, V.A.T.S. Tax Code, as amended, as may be necessary for the tax abatement and for appraisal purposes ("Required Information). OPERATOR's and LANDLORD's failure to provide the Required Information within sixty (60) days after it is due (including any extension periods granted by the authorities) may result in Operator's loss of the tax abatement for such year for which the statutory information is not provided.

M. No more than sixty (60) days following June 30th and December 31st, OPERATOR covenants and agrees to provide the CITY's Director of its Economic Development Department or designated representative with a certification from an officer of OPERATOR attesting to the number of full-time jobs retained and created at the Property, as well as wages paid to such employees by OPERATOR. OPERATOR shall also submit this information to the CITY upon request, as deemed necessary at the sole discretion of the CITY, during the Term of this Agreement. The information provided shall be on the forms set forth in, or substantially similar to the forms set forth in, Exhibit "B" (attached hereto and incorporated herein), as amended. OPERATOR shall use reasonable efforts to protect the personal information of its employees such as addresses, social security numbers, ages, etc. City agrees to accept a unique identifier established for each position reflecting annual wages, exclusive of benefits, overtime, bonuses, overtime, shift differentials, or any other amount not guaranteed to be paid each year, and zip code of an employees home address.

N. OPERATOR agrees to utilize its established internship program in association with local colleges and universities to provide internship opportunities to residents of CITY in the ordinary course of OPERATOR's operations consistent with past practice.

O. OPERATOR and Landlord covenant and agree to notify CITY in writing at least 30 days prior to any assign or sub-lease of OPERATOR's premises on the Property during the Term. CITY shall not unreasonably withhold approval of any requests for assignment of this Agreement by OPERATOR under Article 11 and any new transferee requesting assignment shall be bound by same. Failure to provide the required notification under this Article 5, Paragraph O may render OPERATOR subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph E).

P. OPERATOR covenants and agrees to notify CITY in writing at least 30 days prior to Relocating or Ceasing its Business Activities (as defined in Article 7, Paragraphs B and C). Failure to provide the required notification under this Article 5, Paragraph P may render OPERATOR subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph E).

Q. If, during this Agreement OPERATOR fails to create and retain at least the minimum number of full-time jobs required under Article 5, Paragraph A of this Agreement, or OPERATOR fails to pay at least the minimum wages required under Article 5, Paragraph B of this Agreement for a period of one year based on the average of that year's reporting periods, then the termination and recapture provisions of Article 7 of this Agreement shall apply against OPERATOR.

R. If, during this Agreement, OPERATOR and/or Landlord, as applicable, allows its ad valorem taxes due on the land, real and/or personal property or inventory and supplies to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, such failure may render OPERATOR subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph E).

6. TAX ABATEMENT

A. So long as OPERATOR performs its Business Activities in the Leased Premises at the Property and otherwise materially performs all obligations set forth in Article 5 above, the CITY shall give Landlord a one hundred percent (100%) tax abatement for a period of SIX (6) years (the "Abatement Term") for the Real Property Improvements and Operator a one hundred percent (100%) tax abatement for the Abatement Term for the Personal Property Improvements at the Property commencing on the OPERATOR's receipt of a Certificate of Occupancy for the Property; provided that any Personal Property Improvements acquired at the Temporary Space which are subsequently transferred to the Property shall count towards to the Improvements investment requirement. The base year for calculating the value of the Real Property Improvements existing and located upon the Property prior to the effective date of this Agreement shall be January 1, 2017. The "Base Year Value" of the Personal Property Improvements not covered by this Agreement shall be its assessed value (determined by the Bexar Appraisal District), as of the Base Year and prior to the execution of this Agreement. This Agreement only provides for the abatement of taxes on the Personal Property

Improvements brought onto the Property (or Temporary Space, as the case may be) after the execution of this Agreement.

B. At the commencement of the Abatement Term, OPERATOR shall lease, have an interest in, or otherwise control the Leased Premises and shall be conducting its Business Activities on a daily basis and continuously throughout the Term of this Agreement.

C. Provided that OPERATOR and/or Landlord has invested or caused to be invested approximately EIGHT MILLION AND FIVE HUNDRED THOUSAND DOLLARS (\$8,500,000) in Real Property Improvements and Personal Property Improvements as described in Article 5, Paragraph A(2) of this Agreement by December 31, 2019, OPERATOR has hired and retained the number of employees specified in Article 5, Paragraph A(4) of this Agreement, OPERATOR pays at least the minimum wages required under Article 5, Paragraph B of this Agreement, OPERATOR uses the Leased Premises at the Property for its Business Activities, and OPERATOR is otherwise in material compliance with Article 5 of this Agreement, then ONE HUNDRED PERCENT (100%) of the ad valorem taxes for the Real Property Improvements and Personal Property Improvements above the Base Year Value, shall be abated for the Abatement Term of this Agreement. There shall be no abatement of taxes for the underlying land value, inventory, or supplies.

D. OPERATOR and Landlord acknowledge and agree that the Base Year Value of the Real Property Improvements and Personal Property Improvements on the Property and the tax levy based on said Base Year Value of the Real Property Improvements and Personal Property Improvements in the Reinvestment Zone shall not decrease, but taxes may increase and that the amount of property taxes paid by OPERATOR to the CITY attributable to the Property during Abatement Term shall not be less than the amount of taxes attributable to the Property paid to the CITY for the Base Year tax year, if any, except in the event of casualty or condemnation of the Real Property Improvements and Personal Property Improvements in the Reinvestment Zone.

E. OPERATOR and/or Landlord shall have the right to protest appraisals of the Property, real or personal, or any portion thereof, over and above the Base Year Value as applicable.

F. The term of this Agreement (herein, the "Term") is TEN (10) years and shall commence on the Effective Date and continue in full force and effect unless terminated pursuant to the provisions of Article 7 until the end of the fourth (4th) calendar year after expiration of the Abatement Term.

7. **DEFAULT/TERMINATION/RECAPTURE**

A. For purposes of this section, "Relocation" or "Relocate" shall mean OPERATOR, or a Related Organization which has taken the place of OPERATOR, transferring substantially all Business Activities conducted at the Property to a location outside the Reinvestment Zone.

B. Should OPERATOR occupy and use the Property for its Business Activities and subsequently Relocate (as defined in this Article 7, Paragraph A) during the Term, unless such Relocation is caused by a Force Majeure, as defined in Article 8, then CITY shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless OPERATOR presents credible evidence to clearly indicate a date of Relocation, CITY's determination shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY from OPERATOR, and CITY shall be entitled to the payment of such recaptured taxes, calculated pursuant to Section 7(G), from OPERATOR within sixty (60) calendar days from the date it notifies OPERATOR in writing of termination of this Agreement.

C. If OPERATOR occupies and uses the Leased Premises at the Property for its Business Activities and subsequently ceases conducting Business Activities (or a substantial portion thereof) at the site for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure as defined in Article 8, then the CITY shall have the right to terminate this Agreement. Said terminations shall be effective for the calendar year during which the leased premises at the Property was no longer used for the required purposes stated herein. Unless OPERATOR presents credible evidence to clearly indicate a date of cessation, CITY's determination of a date of cessation shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY from OPERATOR and CITY shall be entitled to the payment of such recaptured taxes, calculated pursuant to Section 7(G) from OPERATOR within sixty (60) calendar days from the date it notifies OPERATOR in writing of termination.

D. If OPERATOR, a Related Organization or City-approved assignee fails to hire and retain the required Full-Time Jobs at the Property as described in Section 5(A)(4) of this Agreement, for any given year during the Abatement Term of this Agreement, calculated by the averaging of the two most current semi-annual Employee Wage Information for Tax Abatement Request Forms, or substantially similar form, (Exhibit "B") for such calendar year of noncompliance, then for each such calendar year of noncompliance, the tax abatement shall be reduced in the following tax year by the same percentage as the deficiency in the required number of Full-Time Jobs at the Property. *For example*, if OPERATOR hires and retains ninety percent (90%) of the required Full-Time Jobs at the Property in a given year, OPERATOR shall be entitled to ninety percent (90%) of its ad valorem real and personal property tax abatement for the Property for the following year.

However, should OPERATOR fail to hire and retain at least fifty percent (50%) of the required number of Full-Time Jobs at the Property in a given year during the Abatement

Term then, at the option of CITY, this failure may be grounds for termination of this Agreement. Said termination shall be effective for the calendar year during which the Operator fails to maintain 50% of the required number of Full-Time Jobs at the Property as stated herein has not been met as required.

Upon termination for OPERATOR's failure to maintain 50% of the required number of Full-Time Jobs, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY from OPERATOR and CITY shall be entitled to the payment of such recaptured taxes, calculated pursuant to Section 7(G) within sixty (60) calendar days from the date it notifies OPERATOR in writing of termination of this Agreement.

E. During the Term, CITY may declare a default if OPERATOR fails to comply with any of the terms of this Agreement. Should CITY determine OPERATOR is in default under any of the terms of this Agreement; CITY will notify OPERATOR in writing at the address below in Article 9. If said default is not cured within sixty (60) calendar days from the date of such notice (hereinafter the "Cure Period"), then CITY shall have the right to terminate this Agreement. In the event that a default by OPERATOR cannot be cured within sixty (60) days after the date on which OPERATOR has received notice of such default, then the CITY shall not have the ability to terminate this agreement based on such default so long as OPERATOR has commenced to cure such default within the sixty (60) day cure period and the Parties agree that such cure is being diligently pursued to its completion.

F. Other Remedies Available. Unless otherwise stated herein, CITY shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and/or recapture, if OPERATOR defaults under the terms of this Agreement. However, such termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which OPERATOR may be entitled. The termination and/or recapture of taxes provided in this Article 7 are not applicable to situations involving minor changes to the description of the Property, or changes in ownership or in management thereof, so long as OPERATOR, a Related Organization or its CITY-approved successor or assignee continues conducting Business Activities or other authorized activities at the Property as provided hereinabove.

G. Calculation of Taxes Subject to Recapture. If OPERATOR fails to comply with any of the terms of Article 7, (B)-(D) of this Agreement, then the CITY shall have the right, but not the obligation, to recapture from OPERATOR a percentage of the abated taxes based on the following table:

TERM YEAR	TOTAL TAX PREVIOUSLY ABATED SHALL BE MULTIPLIED BY:
During the Abatement Term	100%
First year after expiration of Abatement Term	100%
Second year after expiration of Abatement Term	75%

Third year after expiration of Abatement Term	50%
Fourth year after expiration of Abatement Term	25%

FORMULA: The recapture formula shall be:

Total Taxes Abated	X	Applicable Percentage	=	Amount to be
		from above Schedule		Recaptured

CITY shall recalculate the amount of recapture pertaining to each tax year utilizing the above formula. A bill for each year will then be sent to OPERATOR.

8. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)

For purposes of this section, “Force Majeure” is defined as an act of God or a natural disaster. It also includes explosion, fires, floods, or other casualty or accident which is not the result of an intentional act or misconduct on the part of OPERATOR. In addition to relief expressly granted in this Agreement, CITY may grant relief from performance of this Agreement if OPERATOR is prevented from compliance and performance by an event of Force Majeure. The burden of proof for the need for such relief shall rest upon OPERATOR. To obtain release based upon this Article 8, OPERATOR must file a written request with the CITY’S Economic Development Department for processing to City Council for a decision, authorized by a duly approved Ordinance.

9. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective upon its deposit into the custody of the United States Postal Service or such nationally recognized delivery service as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO OPERATOR:

- (Whether personally delivered or mailed):

Ernst & Young U.S. LLP

Attn: Win Williamson
201 N. Franklin Street, Ste. 2400
Tampa, Florida 33602

With a copy to:

Ernst & Young U.S. LLP
Attn: Lease Administration
950 Main Avenue
Cleveland, OH 44113

And, for copies of any notices of default or requests for estoppel certificates, to:

Ernst & Young U.S. LLP
Attn: General Counsel's Office
5 Times Square
New York, NY 10036

TO LANDLORD:

- (Whether personally delivered or mailed)
Farinon Building Two, LLC
Attn: Robert L. Worth, Jr.
7373 Broadway – Suite 201
San Antonio, TX 78209

TO CITY:

- If mailed:

Economic Development Department
Attn: Director
P.O. Box 839966
San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

Economic Development Department
Attn: Director
Frost Bank Tower
100 W. Houston St., 19th Floor
San Antonio, Texas 78205

10. **CONDITION**

This Agreement is conditioned entirely upon the approval of the San Antonio City Council, as evidenced by duly approved Ordinance Number 2017-11-__-____, dated _____, 2017.

11. **ASSIGNMENT**

Except as otherwise expressly provided herein, this Agreement may be assigned or otherwise transferred only with City Council's prior approval (which approval shall not be unreasonably withheld), as reflected in a duly adopted ordinance. OPERATOR must submit a written request to CITY for approval of the proposed assignment or other transfer at least thirty (30) days prior to the effective date of the assignment or transfer of any part of its leasehold interest in the Leased Premises in the Property; however, no City Council consent is required for an assignment or transfer to a parent of OPERATOR, a subsidiary of OPERATOR, an affiliate entity of OPERATOR, or to any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of OPERATOR or a related organization. However, OPERATOR shall give CITY prior written notice of all assignments or other transfers that do not require City Council consent, as required under Article 5, Paragraph I. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement.

12. **GENERAL PROVISIONS**

- A. None of the property improvements described in this Agreement are financed by tax increment bonds.
- B. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the CITY related to this project. No bonds for which the CITY is liable have been used to finance this project.
- C. No amendment, modification, or alteration of the terms hereof shall be binding unless in writing dated subsequent to the date of this Agreement and duly authorized by the parties. OPERATOR acknowledges that City Council approval is required for any and all of these actions.

13. **SEVERABILITY**

In the event any section, subsection, paragraph, subparagraph, sentence, phrase or work herein is held invalid, illegal or unenforceable, 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, subparagraph, sentence, phrase or word. In such event there shall be substituted for such deleted provisions a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal and enforceable. This Agreement constitutes the entire Agreement between the parties hereto relating to the subject matter contained herein and

supersedes all prior, oral or written agreements, commitments or understandings with respect to the matters provided for herein.

14. ESTOPPEL CERTIFICATE

Any party hereto may request an estoppel certificate related to this project (hereafter referred to as "Certificate") from another 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 OPERATOR or other party designated by OPERATOR which shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default, if such is the case, the remaining Term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party(ies) to receive the Certificate.

15. OWNER STANDING

OPERATOR and CITY, each 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 OPERATOR shall be entitled to intervene in said litigation.

16. APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Texas and is performable in Bexar County, Texas, the location of the Reinvestment ZONE.

17. CONFLICTS OF INTEREST.

OPERATOR warrants and undertakes that, to its actual knowledge, without independent investigation, no director, employee or agent of OPERATOR will give to any director, employee, official or agent of CITY any commission, fee, rebate, or any gift or entertainment of significant cost or value in connection with this Agreement except as expressly provided for in the Agreement. OPERATOR shall promptly notify CITY any breach of this Section and any consideration received as a result of such breach shall be paid over or credited to OPERATOR, without prejudice to the right of OPERATOR to seek compensation or claim damages or any other rights that OPERATOR may have under applicable law.

18. TRIPLICATE ORIGINALS

This Agreement shall be executed in triplicate originals, with a fully executed original going to each party and a third to be filed with the Office of the City Clerk of CITY.

19. INDEPENDENCE

Because the OPERATOR is a public accounting firm, it is subject to strict regulation of its independence as it relates to its audit clients. To comply with these regulations, the OPERATOR must identify and evaluate all of its direct and indirect business relationships with its audit clients. To assist the OPERATOR with its compliance efforts, the CITY hereby represents and warrants, on and as of the date hereof, that (a) offering the abatement of taxes is consistent with abatements provided under the Tax Abatement Guidelines to other eligible businesses for eligible projects, and (b) the Agreement does not contain terms and conditions that are, in the aggregate, more favorable than those being offered by the CITY to similarly eligible companies for similarly eligible projects.

Signatures appear on next page.

EXECUTED and **AGREED** to as of the ____ day of _____, 2017 (the “Effective Date”).

CITY:
CITY OF SAN ANTONIO,
a Texas Municipal Corporation

OPERATOR:
ERNST & YOUNG U.S. LLP
a Delaware limited liability company

Sheryl L. Sculley
CITY MANAGER

ATTEST:

Leticia Vacek
CITY CLERK

LANDLORD:
FARINON BUILDING TWO,
LLC

Name: Robert L. Worth, Jr.
Title:

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A: Property Description

EXHIBIT B: Monitoring Form

EXHIBIT A: PROPERTY DESCRIPTION

Lot 18 and 3.421 acres out Lots 17 and 25, Block 3, N.C.B. 17161, in the Subdivision REPLAT OF TECHNOLOGY PARK UNIT 13A, an addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded at Volume 9654, Page 135 of the Official Public Records of Records of Bexar County, Texas.

Operator shall have a leasehold interest in the Property for the entire second floor of the building located thereon (the "Leased Premises").

DRAFT

EXHIBIT B: NUMBER OF JOBS AND WAGE INFORMATION FORM



**City of San Antonio
Economic Development Department
Incentive Reporting Form**

Company Name: _____

Reporting Period: _____

Name/Phone/Email of Person Preparing Report: _____

Real Property: expenditures associated with real property improvements during reporting period (Verification may include AIA forms, receipts, invoices, request for payment from contractor, etc.)	
1. Real Property improvements reported last reporting period	\$
2. Real Property improvements made since last reporting period	\$
3. Total cumulative Real Property improvements made (<i>Attach supporting documents.</i>)	\$
Personal Property: expenditures associated with personal property improvements during reporting period (Verification may include receipts, invoices, requests for payment, etc.)	
4. Personal Property improvements reported last reporting period	\$
5. Personal Property improvements made since last reporting period	\$
6. Total cumulative Personal Property improvements made (<i>Attach supporting documents.</i>)	\$
Inventory/Supplies: (Verification may include receipts, invoices, requests for payment, etc.)	
7. Inventory and Supplies improvements reported last reporting period	\$
8. Inventory and Supplies improvements made since last reporting period	\$
9. Total cumulative investment on Inventory and Supplies made (<i>Attach supporting documents.</i>)	\$
Jobs: full-time (2,080 straight-time paid hours) jobs created during reporting period (Verification: payroll registers with total number of employees, dates of hire, hourly wages, etc.)	
10. Total number of jobs reported at the facility last reporting period (<i>For supporting documents, see above.</i>)	
11. Jobs created during reporting period	
12. Total number of jobs reported at the facility this reporting period	
13. What is the minimum hourly wage paid at the facility (<i>For supporting documents, see above.</i>)	
14. Percent of workforce receiving premium wages. (<i>Refers to percentage of workforce earning the all-industry wage</i>)	
Additional Contractual Obligations (As applicable per your Agreement)	
15. Percent of workforce that is local.	
16. Percent of workforce that is economically disadvantaged (<i>attach information regarding company's good-faith efforts.</i>)	
17. Regarding employee benefits, please attach separate sheet demonstrating compliance with your agreement.	
Certification:	
<i>I certify, under penalty of perjury, that the information provided in this report and the attached documents is correct, and that the company has complied with all terms and conditions of its agreement with the City of San Antonio.</i>	

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Mail original signed form, with supporting documents, to: Economic Development Department, Operations & Monitoring, City of San Antonio, P. O. Box 839966, San Antonio, Texas 78283-3966. For questions regarding this report, please contact the Economic Development Department, at 210/207- 0150 or e-mail: monitoringandops@sanantonio.gov.
Rev. 11/28/2016