



REQUEST FOR BOARD ACTION

Presenter: Jeremy Olsen

Meeting Date Requested: 9/9/2020

Department: Redevelopment Agency

Date Final Action Required: 9/9/2020

Meeting Type: ☐ Work Session ☐ Public Hearing ☒ Business Item ☐ Other Report

Action Requested: ☐ Provide Information ☐ Request Feedback ☒ Decision ☐ Other

Time Requested: Total Time: 7 Minutes

(Presentation Time: 2 Council Discussion: 5)

Signatures:

Submitter: _____

Dept. Head: *Darryce Steed*

Reviewed as to Form: *Adam S. Long*
Adam S. Long (Sep 4, 2020 16:02 MDT)

Executive: *Korban Lee*
Korban Lee (Sep 4, 2020 16:18 MDT)

Council Office: *Adam R. Hall*

AGENDA SUBJECT:

Aligned Energy - Estoppel Certificate

PURPOSE FOR COUNCIL TIME:

Approval of Estoppel Certificate

SUMMARY:

An Estoppel Certificate is a legal document used in real estate transactions to document specific details associated with the subject property and are typically requested by the financial institution underwriting the debt used to acquire (or refinance) the property.

In this instance, Aligned Energy has requested an Estoppel Certificate to verify the Municipal Energy Tax increment rebate agreement for the data center located at 3333 W 9000 South, and will provide the certificate to a financial institution seeking confirmation of the agreement.

TIME SENSITIVITY / URGENCY:

There are no deadlines to the Agency associated with the request.

BUDGET IMPACT:

No Budgetary Impact

STAFF RECOMMENDATION:

Staff recommends approval of the Estoppel Certificate

Planning Commission Recommendation:

N/A

MOTION RECOMMENDED:

"I move to approve the Estoppel Certificate describing the Municipal Energy Tax agreement between the Redevelopment Agency of West Jordan and Aligned Energy, and hereby authorize the Agency's Executive Director to execute the document."

EXECUTIVE DIRECTOR'S RECOMMENDATION:

The Executive Director recommends approval of the Estoppel Certificate.

PACKET ATTACHMENT(S):

1. Resolution No. 224
2. Aligned Estoppel Agreement
3. Participation Agreement

THE REDEVELOPMENT AGENCY OF
WEST JORDAN CITY

RESOLUTION NO. 224

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN
ESTOPPEL CERTIFICATE FOR ALIGNED ENERGY DATA
CENTERS (SLC) LLC.**

WHEREAS, the Agency exists and operates under the provisions of the Utah Limited Purpose Local Government Entities - Community Reinvestment Agency Act (the “**Act**”); and

WHEREAS, the Agency entered into a participation agreement with Aligned Energy Data Centers (SLC), LLC (“**Participant**”) for development within the Fairchild Economic Development Project Area (EDA #4) on March 5, 2018 (the “**Participation Agreement**”); and

WHEREAS, the Participation Agreement requires consent from the Agency prior to any transfer of property by Participant; and

WHEREAS, as part of the refinancing of the development that is the subject of the Participation Agreement, Participant desires to execute a deed of trust in favor of the lender and to provide an executed estoppel certificate to the lender; and

WHEREAS, the execution of a deed of trust requires the consent of the Agency under the Participation Agreement; and

WHEREAS, the Agency has executed similar estoppel certificates for Participant in connection with previous financings; and

WHEREAS, the estoppel certificate (“**Estoppel Certificate**”) has been reviewed and approved by Agency staff and legal counsel; and; and

WHEREAS, the Agency now desires to authorize the execution of the Estoppel Certificate.

**NOW, THEREFORE, IT IS RESOLVED BY THE BOARD OF DIRECTORS OF THE
REDEVELOPMENT AGENCY OF WEST JORDAN CITY:**

1. The Agency finds that execution of the Estoppel Certificate as necessary to allow for refinancing by Participant will further the Agency’s goal of encouraging and promoting desirable development within West Jordan City.

2. The Estoppel Certificate is approved, substantially in the form attached hereto as **Exhibit A** and with such changes as may be deemed advisable or necessary by the Agency Executive Director and legal counsel.

3. The Agency Executive Director is authorized to execute the Estoppel Certificate on behalf of the Agency.

4. This resolution shall be effective upon adoption.

Adopted by the Board of Directors of the Redevelopment Agency of West Jordan City this 9th day of September, 2020.

REDEVELOPMENT AGENCY OF WEST
JORDAN CITY

CHRISTOPHER MCCONNEHEY
Agency Board Chair

ATTEST:

DIRK BURTON
Executive Director

Voting by the Agency Board:

Name	“YES”	“NO”	ABSENT	ABSTAIN
Kelvin Green	_____	_____	_____	_____
Zach Jacob	_____	_____	_____	_____
Chad Lamb	_____	_____	_____	_____
Chris McConnehey	_____	_____	_____	_____
David Pack	_____	_____	_____	_____
Kayleen Whitelock	_____	_____	_____	_____
Melissa Worthen	_____	_____	_____	_____

EXHIBIT A

Estoppel Certificate

ESTOPPEL CERTIFICATE
PARTICIPATION AGREEMENT

Aligned Energy Data Centers (SLC), LLC, a Delaware limited liability company ("Borrower")
c/o Aligned Energy
2800 Summit Avenue
Plano, Texas 75074

TORONTO DOMINION (TEXAS) LLC
E&Y Tower, 222 Bay Street, 15th Floor
Toronto, ON M5K 1A2, Canada (together with its designees, co-lenders, participants, and/or other similar holders of a direct or indirect interest in the loan and their respective successors and/or assigns, collectively, "Lender")

Re: Property (the "Property", as more particularly described on Exhibit A attached hereto and incorporated herein), currently owned by Borrower

The undersigned Agency (as defined in Exhibit A attached hereto) has certain rights and obligations set forth in the Participation Agreement, dated March 5, 2018 (the "Participation Agreement"), attached hereto as Exhibit B, by and between the Agency and the Borrower.

The undersigned, with respect to the Participation Agreement, does hereby certify to Borrower and Lender and their respective successors and assigns as follows:

1. A portion of the Property is subject to the provisions of the Participation Agreement and is entitled to the rights, privileges and benefits thereunder.
2. The undersigned has the power under the Participation Agreement to confirm the status of compliance by Borrower with the Participation Agreement.
3. The undersigned is party to the Interlocal Agreement, dated as of March 5, 2018 (the "Interlocal Agreement"), by and between Agency and the City of West Jordan (the "City").
4. The Participation Agreement is in full force and effect, and no amendments, modifications or supplements to the Participation Agreement exist.
5. The Interlocal Agreement is in full force and effect, and no amendments, modification or supplements to the Interlocal Agreement exist.
6. To the best of the undersigned's knowledge, Borrower is not in breach of or violation of the Participation Agreement.
7. To the best of the undersigned's knowledge, the Agency is not in breach of or violation of the Interlocal Agreement.

8. To the best of the undersigned's knowledge, there exists no condition or event which with the giving of notice, the passage of time, or both would constitute a default by Borrower under the Participation Agreement.

9. To the best of the undersigned's knowledge, there exists no condition or event which with the giving of notice, the passage of time, or both would constitute a default by Agency under the Interlocal Agreement.

10. Subject to compliance with the Participation Agreement by borrower, the undersigned expects to receive the next MET Rebate payment from the City during the first half of 2021 for MET (as defined in the Participation Agreement) paid by Borrower during the 2020 calendar year.

11. The undersigned hereby consents to the recordation of a deed of trust from Borrower for the benefit of Lender securing a first lien mortgage against a portion of the Property and agrees that the execution and recordation of such deed of trust shall not be a violation the provisions of Section 1.9 of the Participation Agreement. The Agency's consent to the recordation of such deed of trust shall not be a consent to any assignment of the Participation Agreement or any other transfer of the Property, in whole or in part (including a transfer of any portion of the Property to Lender as part of any foreclosure, deed in lieu of foreclosure, or similar exercise of Lender's rights against Borrower).

12. This Estoppel Certificate may be recorded on the applicable land records.

13. This Estoppel Certificate shall be binding upon the undersigned and shall inure to the benefit of Borrower, Lender and their respective heirs, successors, assigns and related parties.

IN WITNESS WHEREOF, the undersigned has caused this statement to be duly executed as of the _____ day of _____, 2020.

**REDEVELOPMENT AGENCY OF
THE CITY OF WEST JORDAN:**

By: _____
Dirk Burton, Executive Director

EXHIBIT A

Property	3333 W 9000 S, West Jordan, Utah 84088
Agency	Redevelopment Agency of the City of West Jordan (the " <u>Agency</u> "), a political subdivision of the State of Utah operating under the Utah Community Reinvestment Agency Act; § 17C-1-101 <i>et seq.</i> , or its predecessor statutes
Address of Agency	Redevelopment Agency of West Jordan Attn: Executive Director 8000 S. Redwood Rd. West Jordan, Utah 84088

EXHIBIT B

Participation Agreement

**PARTICIPATION AGREEMENT by and between the
REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN and
ALIGNED ENERGY DATA CENTERS (SLC), LLC for the
FAIRCHILD ECONOMIC DEVELOPMENT PROJECT AREA (EDA #4)**

This Participation Agreement (the “**Agreement**”) is made and entered into this 5th day of March, 2018 (the “**Effective Date**”), by and among the REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN (the “**Agency**”), a political subdivision of the State of Utah operating under the Utah Community Reinvestment Agency Act (the “**Act**”; § 17C-1-101 *et seq.*, or its predecessor statutes), and a political subdivision of the state of Utah, and ALIGNED ENERGY DATA CENTERS (SLC), LLC, a Delaware limited liability company qualified to do business in Utah (“**Participant**”). Participant and the Agency may from time to time hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**.”

1. SUBJECT OF AGREEMENT

1.1. Purpose of the Agreement

The purpose of this Participation Agreement (the “**Agreement**”) is to carry out in part the Project Area Plan (the “**Plan**”) for the Fairchild Economic Development Project Area (EDA #4) (the “**Project Area**”) by providing for incentives to entice the Participant to acquire real and personal property and develop a datacenter facility in the Project Area and to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in bringing about such development, including funds the Agency will provide to assist in the development and operation of the facility and other areas which will benefit the Project Area.

1.2. Agreement in the Best Interests of the City and Residents

This Agreement is in the vital and best interests of the City of West Jordan, Utah (the “**City**”), and the health, safety and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Act.

1.3. The Project Area

The Project Area is located within the boundaries of the City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

1.4. The Project Area Plan

This Agreement is subject to the provisions of the Plan, as adopted and ordained on April 14, 2010, by the Agency and the West Jordan City Council (the “**Council**”) in accordance with the Act and is incorporated herein by this reference.

1.5. The Interlocal Agreement

Pursuant to the interlocal agreement with the City (the “**Interlocal Agreement**”), the Agency is entitled to receive, for a period of up to 10 years, amounts equal to certain percentages of the Municipal Energy Tax (“**MET**”) paid on electricity used within the Site, as defined below (the “**MET Rebate**”). The Interlocal Agreement was approved by the City on December 20, 2017 and by the Agency on that same date. The Interlocal Agreement is attached hereto as **Exhibit A**.

1.6. Description of the Site

The site of the datacenter facility shall be located within the Project Area in the existing building on a portion of the Project Area consisting of approximately 16.2 acres (the “**Site**”) that is owned or will be acquired by Participant. The Site is shown in detail on the site map, attached hereto as **Exhibit B**.

1.7. Description of the Facility

Pursuant to the terms of this Agreement, the Participant shall develop and construct upon the Site a datacenter facility with at least 75,000 square feet of datacenter space (the “**Facility**”).

1.8. Parties to the Agreement

1.8.1. The Agency

The address of the Agency for purposes of this Agreement is:

Redevelopment Agency of West Jordan
Attn: Executive Director
8000 S. Redwood Rd.
West Jordan, UT 84088

With a copy to:

Adam S. Long
Smith Hartvigsen, PLLC
257 East 200 South, Suite 500
Salt Lake City, UT 84111

1.8.2. The Participant

Participant's address for purposes of this Agreement is:

Aligned Energy Data Centers (SLC), LLC
c/o Aligned Energy
2800 Summit Avenue
Plano, TX 75074
Attn: Chief Financial Officer

With a copy to:

Ray Quinney & Nebeker
36 South State Street, Suite 1400
Salt Lake City, UT 84111
Attn: Blake Bauman

1.9. Prohibition against Certain Changes

1.9.1. Acknowledgement by Participant

Participant acknowledges the importance of the development of the Project Area to the general welfare of the community, the public assistance set forth in this Agreement that has been made available by law and by the Agency for the purpose of making the development of the Site within the Project Area possible, that a significant change in the identity of Participant, as prohibited by this Section 1.9 below, may be considered, for practical purposes, a transfer or disposition of the Project, the qualifications and identity of Participant are of particular concern to the Agency, and that it is because of such qualifications and identity that the Agency is entering into this Agreement with Participant.

1.9.2. Representation as to Development Intent

Participant represents and agrees that its acquisition and use of the Site, and the Participant's other undertakings reflected in this Agreement are and shall only be for the purpose of development of the Site and not for speculation in land holding.

1.9.3. Transfers of Property Prohibited

The Participant represents and agrees for itself and its successors and assigns that, as of the date of this Agreement, and during the term of this Agreement and except as set forth in the following sentence or as permitted herein, the Participant has not made or created and will not make any sale, conveyance, deed, transfer, assignment, or lease of the Site or the Facility, or any portion thereof, during the term of this Agreement except as explicitly allowed herein or as agreed to in a writing signed by the Parties.

The foregoing notwithstanding, (i) Participant may transfer its ownership of the Site and Facility and its rights and obligations under this Agreement to any of its subsidiaries or affiliates without the Agency's prior written approval during the term of this Agreement and (ii) Participant may lease all or portions of the Facility to its customers for the purpose of providing datacenter space or services.

Nothing in this Agreement shall prevent Participant from selling or transferring property within the Project Area other than the Site.

For purposes of this Section 1.9.3. and Section 1.9.4., (i) the term "subsidiaries" shall mean those companies or entities in which Participant both holds an ownership stake of more than 50 percent and over which Participant is able to exert control and (ii) the term "affiliates" shall mean those companies in which the owner(s) of Participant both holds an ownership stake of more than 50 percent and over which the owner(s) of Participant is able to exert control.

1.9.4. Assignment or Transfer of Agreement

Participant represents and agrees for itself and its successors and assigns that, during the term of this Agreement and except as set forth in the following sentence, Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, during the term of this Agreement except as explicitly allowed herein or as agreed to in a writing signed by the Parties.

The foregoing notwithstanding, Participant may transfer its rights and obligations under this Agreement to any of its subsidiaries or affiliates without the Agency's prior written approval during the term of this Agreement.

The attempted or actual assignment or delegation of this Agreement in violation of the above provisions is a material Default that shall be subject to the provisions of Article 5 of this Agreement.

1.9.5. Transfer to Tax-Exempt Organization

Notwithstanding anything in this Agreement to the contrary, any attempt by the Participant or its successor(s) in interest to transfer any of the real or personal property within the Site to a tax-exempt organization or otherwise to exempt any of the real or personal property within the Project Area from *ad valorem* property taxation without the prior written consent of the Agency will entitle the Agency, at its sole discretion, to immediately and without prior notice terminate this Agreement and cease further payments under this Agreement to the Participant or its successors or assigns.

1.9.6. Continuing Obligations

In the absence of a specific written agreement by the Agency, no assignment or transfer of this Agreement, in whole or in part, or approval of an assignment of this Agreement by the Agency, relieves the Participant from any obligation under this Agreement. Except as otherwise provided

herein, all of the terms, covenants, and conditions of this Agreement are and will remain binding upon the Participant and its successors and assigns until the expiration or termination of this Agreement.

2. OBLIGATIONS OF THE PARTIES

2.1. Payment of Incentive

2.1.1. Payment Obligation

So long as Participant fulfills all of its obligations under this Agreement, the Agency will pay to Participant as an incentive (the “**Incentive**”) the full amount of the MET Rebate attributable to the Site received by the Agency pursuant to the Interlocal Agreement. The Agency expects to receive the MET Rebate from the City during the first quarter of each calendar year following the calendar year during which the MET was paid (e.g., the Agency will receive the MET Rebate during the first quarter of 2020 for MET paid by Participant during 2019). After the end of the tax year for which the Agency is collecting the MET Rebate, the contemplated payment of the Incentive shall be made by the Agency within thirty (30) days after the date on which all of the conditions precedent as set forth in Section 2.3 have been met.

2.1.2. Triggering of MET Rebate Payments

The Agency shall have sole authority to begin, or “trigger,” collection of MET Rebate from the City pursuant to the Interlocal Agreement. Unless requested otherwise by the Participant, the Agency agrees to take actions necessary under the Interlocal Agreement to receive the MET Rebate beginning on July 1, 2018.

2.2. Sole Source of Funding for the Incentive

The entirety of the Participant’s Incentive contemplated in this Agreement will be funded solely by the MET Rebate payment received by the Agency pursuant to the Interlocal Agreement. The Participant is not, and shall not be, entitled to any other funds collected by the Agency for the Project Area, including Tax Increment (as defined in the Act) collected under the currently-effective Project Area Budget, any amendments to the Project Area Budget, or any future interlocal agreements with the taxing entities within the Project Area. Any termination of the Interlocal Agreement while this Agreement is in force is subject to Participant’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

2.3. Conditions Precedent to the Payment of the Incentive to Participant

In addition to other provisions in this Agreement, the Agency has no obligation to remit to Participant the Incentive unless and until all the following conditions precedent, as detailed in the following subsections, are satisfied:

2.3.1. Agency is Entitled to Receive the Incentive Payment

The Agency is not obligated to pay to Participant the Incentive unless the Agency is legally entitled to receive the Incentive pursuant to the Interlocal Agreement.

2.3.2. Agency has Actually Received the Incentive Payment

The Agency is obligated to pay to Participant the Incentive only to the extent the Agency has actually received the Incentive funds from the City.

2.3.3. Continued Operation of the Facility

The Agency is not obligated to pay to Participant the Incentive unless Participant, together with its tenants, has continuously operated the Facility as described in Section 2.15 for the entire year for which payment of the Incentive is being sought or, in the case of the first year of such operation, for the portion of the year after the date of the initial start of operations of the Facility.

2.3.4. Reporting Energy Usage

The Agency is not obligated to pay to Participant the Incentive unless the Participant has reported to the Agency the amount the MET paid on energy used on the Site (the “**MET Report**”). This report shall be made to the Agency by March 31st of the year following the calendar year for which the MET was paid and shall be accompanied by copies of all billing statements showing the actual amount of MET paid. The Agency shall share this report with the City pursuant to the requirements of the Interlocal Agreement and this City will use this information to calculate the total amount of the MET Rebate due to the Agency. Participant shall ensure that electrical equipment and meters installed in the Project Area allow the Agency and the City to distinguish electricity used within the Site from electricity used in other portions of the Project Area.

2.3.5. Job Creation

The Agency is only obligated to pay to Participant the Incentive to the extent the Participant has met the job creation requirements, including the submission of the annual New Jobs report to the Agency, as required by Section 2.6 – Job Creation.

2.3.6. Development of Remainder of Project Area

The Participant owns the entirety of the Project Area, which includes real property in addition to the Site, the development of which is of significant concern to the Agency. As such, the Agency is not obligated to pay the Incentive to Participant if any portion of the Project Area is developed for residential use, which shall include any requested change to the zoning of the Project Area sought by the owner of the real property within the Project Area that would allow residential development of any sort, including multi-family residential or a mixed-use development. For the sake of clarity, if Participant sells or transfers a portion of the Project Area to another person or entity and that person or entity takes steps to allow residential development in that portion of the

Project Area, then the Agency will not pay the Incentive to Participant regardless of the operational status of the Facility.

2.3.7. Payment of Taxes

Participant shall not receive any payments from the Agency for any period until the Agency has received documentation from Participant that all real and personal property taxes applicable to the Site and the Facility have been paid by Participant.

2.3.8. Request for Payment by Participant

The Agency is not obligated to pay the Incentive to Participant unless Participant has made a Request for Payment pursuant to Section 2.7 for the year for which payment of the Incentive is being sought.

2.4. Effect of Failure to Meet Conditions Precedent to Payment of Incentive

In the event that the conditions precedent as described in Section 2.3 are not met for any given year during the term of this Agreement, and the Participant is thus not entitled to receive the Incentive attributable to that year, but is otherwise not in default under this Agreement, such failure shall not be a breach of this Agreement. Such failure shall result in the forfeiture by Participant of the Incentive for that particular year. Notwithstanding anything to the contrary or otherwise stated herein, in no event will the Participant be subject to a clawback or repayment of any portion of the Incentive that has already been paid to the Participant, unless such repayment is necessary to correct for an administrative or clerical error that resulted in an overpayment to the Participant.

2.5. Limitations on Incentive

The Incentive shall not be paid for a period of greater than 10 years from the date for which the Participant first receives the Incentive (the “**Incentive Term**”).

Participant further acknowledges that the Incentive paid by the Agency to the Participant under this Agreement is limited by the Incentive Term and the amounts actually received by the Agency under the Interlocal Agreement. Participant further acknowledges that the Agency does not guarantee that the Participant will receive a minimum dollar amount in any given year or during the entire Incentive Term.

2.6. Job Creation

During the Incentive Term, payment of the Incentive shall be conditioned on and subject to the Participant's, its tenants, or a permitted successor, creating at least 20 New Jobs (as defined below) at the Site or Facility as provided herein. For purposes of this Agreement, New Jobs shall be defined and measured as of the 31st day of December of each year as more fully described below:

(a) The number of New Jobs will be measured by the Agency through reports from the Participant, which may be audited by the Agency.

(b) The Parties agree that in order to evaluate the creation of New Jobs and determine whether and to what extent the Participant is entitled to receive all or a portion of the Incentive payment, the Parties have agreed for the need to have: (i) a definition of the term “New Jobs”; (ii) a method of measurement for determining whether or not the Participant has created the required New Jobs; and (iii) a method of resolving any disputes regarding the number of New Jobs.

(c) For purposes of determining the number of New Jobs, the Parties agree as follows:

(1) The definition of the term “**New Jobs**” means year-round full-time employment positions, with full benefits as described below, within the Site or Facility that did not exist at the Site or Facility prior to the development thereof, measured as of the 31st day of December of each year, the average annual wages for which are not less than \$65,000.00 (“**Minimum Average Wage**”). To qualify as a New Job, the Participant or permitted successor must provide full benefits to the employee, which benefits must also at a minimum include access to health insurance, paid holidays, and paid time off. The term “New Jobs” shall not include those employed in the construction of the Facility or third-party contract workers hired to perform services at the Facility such as janitorial or security, but New Jobs shall include employees of Participant’s tenant(s) employed full-time at the Facility and third-party contract workers employed in datacenter operations or similar technical roles. As used herein, “**full-time employment position**” means an employee scheduled on average of at least 30 hours of service per week, or 130 hours of service per month.

(2) The Parties agree that the method of measurement for determining whether or not the Participant has provided the required New Jobs will be determined by an annual report provided by the Participant to the Agency that is due on March 31st of the year following the year that is the subject of the Annual Jobs Report (all of which are referred to herein as “**Annual Jobs Report[s]**”). Each Annual Jobs Report shall contain at least the following information for the prior calendar year:

- | | |
|-----------|--|
| Column 1: | Reference number or other identification number, each of which corresponds to an individual employed by Participant at the Facility. |
| Column 2: | Job title or department name for the particular employee, but this information may be presented in a generalized manner by Participant to avoid disclosing information that may be clearly traced to an individual employee. |
| Column 3: | Total wages paid to the particular employee for the year, which shall be annualized if the particular employee was employed for less than the full year so long as such fact is noted on the Annual Jobs Report. |

Beginning with the first Annual Jobs Report and for each Annual Jobs Report thereafter, only full-time positions with benefits shall be listed in Column 1 of the Annual Jobs Report. The total

number of New Jobs for any given year is the total of all positions specified in Column 1 as shown in the Annual Jobs Report for such year, the average annual wage for which is at least equal to the Minimum Average Wage. Upon request, the Agency will provide Participant with the appropriate form to be used for Participant's Annual Jobs Report.

(d) The Agency shall have the right to audit Annual Jobs Reports upon providing Participant with fourteen (14) days prior written notice (which notice period shall be calculated from the date of Participant's actual receipt thereof). In the event that the Agency timely notifies Participant in writing that it wishes to audit an Annual Jobs Report, then Participant shall make available such additional detailed information as reasonably necessary to support the information and numbers in the Annual Jobs Report and to show how the numbers were calculated.

(e) In the event there is a dispute between the Parties as to whether Participant has met the New Jobs requirement for any given year, the Parties will use their best efforts to resolve the dispute consensually before instituting any court action.

(f) The Agency acknowledges that Participant considers all of the information provided to the Agency in connection with this Agreement (including, without limitation, information submitted respecting New Jobs, the Annual Jobs Reports (and any audits thereof), any Request for Payment (defined below), etc.) to be protected under the Utah Governmental Records Access and Management Act, § 63-2-101 *et seq.* ("GRAMA") under a claim of "business confidentiality" so long as Participant complies with the applicable requirements in making a claim of business confidentiality under § 63G-2-309(1)(a)(i)(A) & (B). In addition, the Agency agrees to classify all of such information as either "protected" or "private" to the extent allowed under GRAMA.

(g) For each year the minimum requirement for New Jobs as set forth herein is not met, the Agency may proportionally reduce the amount of Incentive paid during the following year. For example, if the February 28, 2019 Jobs Report shows a total of 10 New Jobs in 2018 against a requirement of 20 New Jobs, the Incentive paid the following year (2018 Incentive paid in 2019) will be correspondingly reduced by 50 percent.

2.7. Request for Incentive

The Annual Jobs Report described in Section 2.6, above, and the MET Report described in Section 2.3.4, shall, upon the submission of both reports to the Agency, be deemed a request for payment of the Incentive so long as proof of payment of all real property and *ad valorem* taxes subject to and as described in Section 2.8 is included therewith (the "**Request for Payment**"). Unless the Agency sends written notice to Participant of deficiency in the Request for Payment within thirty (30) days of receipt of a Request for Payment, such Request for Payment shall be deemed complete. Participant shall have a reasonable time not to exceed thirty (30) days in which to rectify any deficiencies specified in a notice, and the Request for Payment shall be deemed timely delivered in the event any such deficiencies are rectified within that period.

2.8. Payment of Real Property and *Ad Valorem* Taxes

During the term of this Agreement, Participant and any of its successors-in-interest in the ownership of any portion of the Site agree to pay, prior to delinquency, all undisputed real property and other *ad valorem* taxes and assessments assessed against any portion of the Site or improvements thereon or any other taxable property, including personal property, located within the Site to the extent owned by Participant or any of its successors-in-interest; provided, however, that Participant expressly retains any and all rights to: (a) challenge, object to, or appeal any real property or personal property and other *ad valorem* taxes and assessments; and (b) petition for the reduction thereof as set forth in Section 2.3.6 of this Agreement.

2.9. Reduction or Elimination of Incentive

The Parties agree that Participant assumes and accepts the risk of possible alteration of Federal or State statute, regulation, or adjudication rendering unlawful or impractical the collection, receipt, disbursement, or application of the Incentive to the Agency as contemplated in and by this Agreement. If the provisions of Utah law which govern the payment of the Incentive to the Agency are changed or amended so as to reduce or eliminate the amount paid to the Agency under the Interlocal Agreement, the Agency's obligation to pay Participant annually the Incentive, as applicable, will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. Notwithstanding any change in law, Participant specifically reserves and does not waive any right it may have to challenge, at Participant's cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the payment of Incentive to the Agency and/or Participant and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Incentive to the Agency and/or Participant. Participant acknowledges, understands, and agrees that the Agency is under no obligation to challenge the validity, enforceability, or constitutionality of a change in law that reduces or eliminates the payment of Incentive to the Agency and/or Participant, or to otherwise indemnify or reimburse Participant for its actions to independently do so.

2.10. Declaration of Invalidity

In the event any legal action is filed in a court of competent jurisdiction that seeks to invalidate the Project Area or this Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Incentive to the Agency, the Agency shall provide written notice of such legal action to the Participant. In the event such an action is filed, the Agency shall have no obligation to challenge that action or defend itself against such action. If requested by the Participant, the Agency may, at its sole discretion, take such actions as may be reasonably required to defend such legal action and to address the grounds for any causes of action that could result in the reduction or elimination of the payment of the Incentive to the Agency. Participant specifically reserves and does not waive any right it may have to intervene, at Participant's cost and expense, in any such legal action and challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Incentive to the Agency and/or Participant, and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Incentive to the Agency and/or Participant. In the

event that the court declares that the Agency cannot receive the Incentive, invalidates the Project Area or this Agreement, or takes any other action which eliminates or reduces the amount of Incentive paid to the Agency, and the grounds for the legal determination cannot reasonably be addressed by the Agency, the Agency's obligation to annually pay to Participant the Incentive in accordance with this Agreement will be reduced or eliminated to the extent that the Incentive is not received by the Agency.

2.11. Dispute over Receipt of Payment of the Incentive

If not due to the act, error or omission of the Agency, in the event a dispute arises as to the person or entity entitled to receive the Incentive under this Agreement due to a transfer of any portion of the Project Area, a claimed assignment or claimed successor-in-interest to the Incentive or to this Agreement, or otherwise, the Agency may withhold payment of the Incentive and may refrain from taking any other action required of it by this Agreement until the dispute is resolved either by agreement or by a court of competent jurisdiction and sufficient evidence of such resolution is provided to the Agency. The Agency shall be entitled to deduct from its payment of the Incentive any costs or expenses, including reasonable attorney fees, incurred by the Agency due to the dispute, except in the instance that the dispute arises due to the act, error or omission of the Agency, in which case the Agency shall be responsible for all costs and expenses including reasonable and actual attorney fees.

2.12. Nature of Participant's Obligations and Limitation

To qualify to receive the Incentive as set forth herein, Participant shall fulfill all of its obligations as set forth in this Agreement. The failure of Participant to fulfill its obligations may result in a failure to qualify to receive the Incentive, but shall not give rise to any other right or remedy in favor of the Agency.

2.13. Construction of the Facility

After and subject to the Participant's purchase of the Site, Participant shall use commercially reasonable efforts to construct the Facility at its own expense.

2.14. Operation of the Facility

Participant, or its tenant(s), shall operate and maintain the Facility and the Site in a commercially reasonable manner and in accordance with industry standards. For purposes of this Agreement, operation of the Facility shall be deemed to have commenced when the first lease of the Facility to a major tenant has commenced. For purposes of this section, Participant shall be deemed to have continuously operated the Facility if the foregoing standards are substantially met or exceeded, notwithstanding temporary cessation of operations for inspection, maintenance, repair, replacement, line down-time, and/or events of *force majeure* or destruction.

2.15. Commencement of Operations

Such operations as described in Section 2.14 shall begin no later than September 1, 2019. For purposes of this section, the Facility shall be deemed to be in operation if the standards in Section 2.14 are met. Participant's failure to comply with the requirements of this section shall constitute a Default subject to the provisions of Article 5.

2.16. Continuing Operations

Such operations as described in Section 2.14 shall be commenced as described in Section 2.15 and shall continue throughout the term of this Agreement as set forth in Article 4. For purposes of this section, the Facility shall be considered to be in operation if the Facility is operating as described in Section 2.14 of this Agreement. If Participant ceases to operate the Facility for a continuous period of more than one year for any reason other than events of *force majeure* or destruction, such cessation shall be a Default subject to the provisions of Article 5.

2.17. Funding Responsibility

The Parties understand and agree that funding for the construction upon the Site of the Facility and related improvements comes entirely from Participant's internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

2.18. Potential Shortfall

The Participant agrees and acknowledges that the only funds available to the Agency for compensation or incentives to the Participant are those funds received by the Agency under the Interlocal Agreement generated by payment of Municipal Energy Tax on energy used on the Site. The Parties understand that if the actual amount of energy used and Municipal Energy Tax paid is less than expected, the total amount of the Incentive may be less than the amounts projected by the Parties at the time of this Agreement.

3. ADDITIONAL TERMS

3.1. Development of the Facility

Participant will at all times be responsible for all development and operation of the Facility. Recognizing the level of capital investment by the Participant in the development of the Facility, the Agency has determined that it is in the best interests of the residents of the City to provide the Incentive to the Participant as an incentive to undertake the development and continued operation of the Facility as contemplated in this Agreement, the Plan, and the Development Agreement.

3.2. Responsibility for Development Plans and Permits

Participant shall prepare all plans and secure all permits for the development of the Facility. All plans must be in accordance with all applicable federal, state, and local laws and regulations,

subject to any legally obtained concessions, special permits, and/or variances. Before commencing construction of the Facility, the Participant shall work in good faith with the City and Agency to secure or cause to be secured all zoning or land-use approvals and permits required in order to proceed with the construction of the Facility.

3.3. Other Terms

3.3.1. City Land Use Authority

Participant acknowledges that nothing in this Agreement shall be deemed to supersede, waive, or replace the City's authority over land use, zoning, and permitting within the City.

3.3.2. Restriction Against Parcel Splitting

During the term of this Agreement, the Participant shall not, without the prior written approval of the Agency, (a) convey the Site or any portion thereof or any other real property acquired by the Participant in the Project Area in such a way that a parcel of real property would extend outside the Project Area, or (b) construct or install, or allow to be constructed or installed, any building or structure within the Project Area in such a way that any portion of the Facility or structure would extend outside of the Project Area. The Participant understands and acknowledges that these requirements are intended to avoid the joining of any parcels of real property inside of the Project Area with parcel(s) outside of the Project Area in such a way that Salt Lake County could no longer identify the periphery of the Project Area by distinct parcels. For the avoidance of doubt, the Participant may join, aggregate, or subdivide parcels of real property that are entirely within the Project Area without the prior written approval of the Agency.

3.3.3. Deannexation

The Participant agrees that it will not cooperate with any person, group, or municipality in any effort to remove, deannex, disconnect, or disincorporate the Project Area or any portion thereof from the City during the Incentive Term. In the event that the Project Area or a portion thereof is disconnected, deannexed, disincorporated, or otherwise removed from the municipal boundaries of the City, the Agency's obligations to pay the Incentive for that portion of the Project Area outside of the City shall immediately cease.

3.3.4. Indemnification

The Participant agrees to and shall indemnify, defend, and hold the Agency and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorney fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of the Participant or its directors, officers, agents, employees, consultants, and contractors on the Facility or the Site except for willful misconduct or negligent acts or omissions of the Agency, the City, or their respective directors, officers, agents, employees, contractors, and consultants. Likewise, the Agency agrees to and shall

indemnify, defend, and hold the Participant and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorney fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of the Agency, the City, or their respective directors, officers, agents, employees, contractors and consultants except for willful misconduct or negligent acts or omissions of the Participant or its directors, officers, agents, employees, consultants, and contractors.

3.3.5. Limits on Liability

In no event shall one Party be liable to the other(s) for consequential, special, incidental, indirect, exemplary, or punitive damages of any kind (including, but not limited to, loss of profits, loss of reputation, or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship or dealings between the Participant and the Agency, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), willful misconduct, strict liability or otherwise, and regardless of whether the parties have been advised of the possibility of such damages at the time of contracting or otherwise.

3.3.6. Local, State, and Federal Laws

The Participant shall construct and operate the Facility in conformity with all applicable laws; provided, however, that unless otherwise addressed elsewhere in this Agreement, nothing herein shall limit the right of the Participant to properly challenge any such law or the applicability of such law.

3.3.7. Rights of Access

Representatives of the Agency shall have the right of reasonable access to the Site and any and all improvements thereon, including the Facility, for purposes of inspection, with reasonable and prior written notice, and without charges or fees, during normal business hours or as otherwise agreed to in writing by Participant. Such representatives of the Agency and other visitors to the Site shall execute Participant's non-disclosure agreement and observe any reasonable rules adopted by the Participant for purposes of maintaining safety and security on the Site, including requirements that such representatives or visitors be escorted by the plant director or other designated agent of the Participant at all times. Such representatives of the Agency shall be those who are so identified in writing by the Agency. The Agency agrees to and shall indemnify and hold the Participant harmless from and against all liability, loss, damage, costs, or expenses arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person which shall occur as a result of or arising from the Agency's or the City's, or their respective directors, officers, agents, employees, contractors and consultants, entry upon or activities on the Site or in the Facility, except that this indemnity shall not apply to the sole negligence or willful misconduct of the Participant.

3.3.8. Responsibility of the Agency

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Except as expressly provided for in this Agreement, nothing herein shall be construed as requiring the Agency to pre-approve or prejudge any matter, or as otherwise binding the Agency's discretion or judgment on any issue prior to an appropriate hearing (if required), review, or compliance with any other requirement.

3.3.9. Non-waiver of Governmental Immunity

Nothing in this Agreement shall be construed as a waiver of any immunity, protection, or rights granted to the Agency under the Governmental Immunity Act of Utah, Utah Code 63G-7-101, *et seq.*

3.3.10. Consent to Recording

The Parties hereby consent that an abstract or memorandum of this Agreement may be recorded against the Site.

4. EFFECT AND DURATION OF COVENANTS; TERM OF AGREEMENT

The covenants, including but not limited to conformance with federal, local, and state laws, established in this Agreement shall, without regard to technical classification and designation, be binding on the Parties and any successors-in-interest for the benefit of each of the respective Parties, their successors and assigns during the term of this Agreement, which shall terminate upon the later of: (a) the final payment of the Incentive during or upon the expiration of the Incentive Term (i.e., year 1 through year 10) as set forth in Article 2 of this Agreement; or (b) upon the written agreement signed by the Parties hereto.

5. DEFAULTS, REMEDIES, AND TERMINATION

5.1. Default

If either the Agency or the Participant fails to perform or delays performance of any material obligation of this Agreement and fails to cure as provided for in this Article 5, such conduct constitutes a default of this Agreement ("**Default**"). The Party in default must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy within the periods provided in Section 5.3 hereof.

5.2. Notice

If a Default under this Agreement occurs, the non-defaulting Party shall give written notice (a "**Default Notice**") of the Default to the defaulting Party, specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either Party in

asserting any of its rights and remedies shall not deprive the other Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

5.3. Cure Period

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot be cured within such thirty (30) day period, the defaulting Party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. If the Default is not cured, or commenced to be cured if such default is of a nature which cannot be cured within thirty (30) days, by such Party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be an Event of Default, and Participant, at its option, may institute an action for specific performances of the terms of this Agreement or pursue such other rights and remedies as it may have. In the event of an Event of Default by Participant, past all applicable cure periods, Agency's sole remedy shall be to terminate this Agreement.

5.3.1. Legal Actions

5.3.1.1. Venue

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Third District Court for the State of Utah located in Salt Lake County, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah.

5.3.1.2. Service of Process

Service of process on the Agency shall be made by personal service upon the Chairman or Executive Director of the Agency or in such other manner as may be provided by law. Service of process on the Participant shall be by personal service upon its Registered Agents, or in such other manner as may be provided by law, whether made within or without the State of Utah.

5.3.1.3. Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

6. GENERAL PROVISIONS

6.1. Authority

Each Party hereby represents and warrants to the other that the following statements are true, complete, and not misleading as regards to the representing and warranting party: (a) such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder; (b)

those executing this Agreement on behalf of each Party do so with the full authority of the Party each represents; (c) this Agreement constitutes a legal, valid, and binding obligation of each Party, enforceable in accordance with its terms.

6.2. Notices, Demands, and Communications between the Parties

Formal notices, demands, and communications between the Agency and the Participant shall be sufficiently given if emailed and: (1) personally delivered; or (2) if dispatched by registered or certified mail, postage prepaid, return-receipt requested, to the principal offices of the Agency and the Participant, as designated in Sections 1.6.1 and 1.6.2 hereof. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon mailing or making physical delivery of the writing containing the notice.

6.3. Severability

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant, or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

6.4. Nonliability of Officials and Employees

No director, officer, agent, employee, representative, contractor, attorney, or consultant of the Parties hereto shall be personally liable to any other Party hereto, or any successor-in-interest thereof, in the event of any default or breach by a Party hereto or for any amount which may become due to a Party hereto or to its successor, or on any obligations under the terms of this Agreement.

6.5. Enforced Delay; Extension of Time and Performance

In addition to the specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, epidemics, quarantine restrictions, freight embargoes, lack of transportation, unusually severe weather, or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent, whether on the part of the Agency's Executive Director or its governing board or on the part of the Participant, to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Time of performance under this Agreement may also be extended in writing by the Agency and the Participant by mutual agreement.

6.6. Approvals

Whenever the consent or approval is required of any Party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

6.7. Time of the Essence

Time shall be of the essence in the performance of this Agreement.

6.8. Attorney Fees

In the event of any litigation arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing party all reasonable costs and attorney fees related to such litigation.

6.9. Interpretation

The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either Party hereunder, shall be construed as creating the relationship of principal and agent, or a partnership, or a joint venture, or an enterprise between the Parties hereto.

6.10. No Third-Party Beneficiaries

It is understood and agreed that this Agreement shall not create for either Party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

6.11. Mediation

In the event a dispute arises between the parties with respect to the terms of this Agreement or the performance of any contractual obligation by one or both of the parties, the parties agree to submit the matter to formal and confidential non-binding mediation before any judicial action may be initiated, unless an immediate court order is needed or a statute of limitations period will run before mediation can be reasonably completed. A mediator will be selected by mutual agreement of the parties. The parties must mediate in good faith to resolve the dispute in a timely manner. Each party will be responsible for its own costs and one-half of the cost of the mediator. The place of mediation shall be West Jordan, Utah.

6.12. Headings

Article and Section titles, headings or captions are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

6.13. Contra Proferentum

This is an arm's-length Agreement: The Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and the risks involved and having had the opportunity to obtain legal counsel of their choice. Consequently, no provision of this Agreement shall be strictly construed against either Party.

6.14. Further Assurances

The Parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.

6.15. Incorporation of Recitals and Exhibits

All recitals and exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS

7.1. Duplicate Originals

This Agreement may be executed in duplicate originals, each of which shall be deemed an original. Electronic pdf signatures shall be considered original signatures.

7.2. Integration

This Agreement (including its exhibits) constitutes the entire understanding and agreement of the Parties regarding the subject matter thereof. When executed by the Parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter thereof.

7.3. Waivers and Amendments

All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement between the Participant and the Agency.

[Remainder of page intentionally left blank; signature pages to follow]

By: David Brickey
David Brickey, Executive Director

Attest: _____
By: Melanie Briggs
Melanie Briggs, Secretary

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

Melanie S Briggs
Notary signature and seal



ALIGNED ENERGY DATA CENTERS
(SLC), LLC

By: A. Raj
Name: Anubhav Raj
Title: CFO

Attest:
By: Elizabeth J. Heilman
Name: Elizabeth J. Heilman
Title: Executive Assistant

STATE OF Texas)
COUNTY OF Denton) : ss.

In the County of Denton, State of Texas, on this 28th day of February, 2018, before me, the undersigned notary, personally appeared Anubhav Raj, the CFO of Aligned Energy Data Centers (SLC), LLC, a Delaware limited liability company, who is personally known to me or who proved to me his/her identity through documentary evidence to be the person who signed the preceding document in my presence and who swore or affirmed to me that his/her signature is voluntary and on behalf of said entity by authority of its Bylaws or a Resolution of its Board of Directors.

Elizabeth J. Heilman
Notary signature and seal

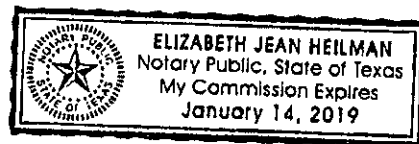


Exhibit A
To Aligned Energy Participation Agreement
Interlocal Agreement

FAIRCHILD ECONOMIC DEVELOPMENT PROJECT AREA (EDA #4)

**INTERLOCAL AGREEMENT by and between the REDEVELOPMENT AGENCY OF
THE CITY OF WEST JORDAN and THE CITY OF WEST JORDAN**

THIS INTERLOCAL AGREEMENT is entered into as of this 5th day of March, 2018, by and between the **REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN**, a political subdivision of the State of Utah (the “**Agency**”) and **THE CITY OF WEST JORDAN, UTAH**, a political subdivision of the State of Utah (the “**City**”); the Agency and the City may also be individually referred to as “**Party**” and collectively as “**Parties**”).

A. WHEREAS the City created the Agency pursuant to the provisions of Utah Redevelopment Law and the Agency continues to operate under the Limited Purpose Local Government Entities – Community Reinvestment Agency Act, Title 17C of the Utah Code (the “**Act**”), and is authorized thereunder to conduct urban renewal, economic development, community development, and community reinvestment activities within the City, as contemplated by the Act; and

B. WHEREAS the Agency created the Fairchild Economic Development Project Area, which is also known as EDA#4 (the “**Project Area**”), and adopted a project area plan for the Project Area (the “**Project Area Plan**”) on April 14, 2010, which is incorporated herein by this reference, which includes the legal description and a map of the Project Area, pursuant to which the Agency desires to provide for redevelopment within the Project Area; and

C. WHEREAS the City receives municipal energy tax (“**MET**”) revenue from sales of electricity occurring within its borders and the City and the Agency have determined that it is in the best interests of the residents of the City to provide certain financial assistance through the use of a portion of that MET in connection with the development of the Project Area as set forth in the Project Area Plan; and

D. WHEREAS the Agency anticipates providing a portion of the MET revenue, generated by sales of electricity occurring within the Project Area to assist in the development as contemplated by Project Area Plan; and

E. WHEREAS Utah Code Ann (“**UCA**”) § 11-13-215 authorizes the City to share its tax and other revenues with the Agency; and

F. WHEREAS in order to facilitate development of the Project, the City desires to pay to the Agency a portion of the City’s MET revenue generated within the Project Area in accordance with the terms of this Agreement; and

G. WHEREAS the provisions of applicable Utah state law shall govern this Agreement, including the Act and the Interlocal Cooperation Act, Title 11 Chapter 13 of the UCA, as amended (the “**Cooperation Act**”).

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Municipal Energy Tax.** Sales of electricity occurring within the boundaries of the City are subject to the MET. If changes are made to Utah laws during the term of this Agreement that affect the amount of or calculation of the MET, the MET shall be defined as that tax revenue revenue that is retained by or distributed to the City on the basis of taxable sales of electricity occurring within the boundaries of the City, whether that amount be more or less than the current amount.

2. **City's Consent.** Pursuant to Section 17C-4-201 of the Act and Section 11-13-215 of the Cooperation Act, the City hereby agrees and consents that the Agency shall be paid one hundred percent (100%) for thirty-six (36) consecutive months and fifty percent (50%) for the following eighty-four (84) consecutive months of the MET generated by sales within the area as shown on **Exhibit A** (the "**Collection Area**") to be used to facilitate development within the Project Area (the "**MET Rebate**").

3. **Triggering of MET Rebate.** The Agency shall be paid the MET Rebate for the period beginning on the date requested by the Agency (the "**Trigger Date**"). Notice of the Trigger Date shall be provided to the City at least 30 days in advance of the Trigger Date. The Trigger Date shall be on the first day of the month.

4. **MET Report.** The Agency shall provide to the City a report of all energy used and MET paid within the Collection Area after the end of each calendar year for which the Agency has requested the MET Rebate (the "**MET Report**"). The MET Report shall include copies of actual utility bills showing the total amount of electricity consumed within the Collection Area and the total amount of MET paid on that electricity.

5. **Restrictions on MET Rebate.** The payment of the MET Rebate from the City to the Agency shall be subject to the following provisions:

a. **MET Report.** The MET Rebate shall not be paid to the Agency until the City has received the MET Report.

b. **Time Limit.** The MET Rebate shall not be paid to the Agency for a period of longer than 120 months. The time period for which the MET rebate is paid to the Agency shall be as described in Section 2, above, and shall run continuously.

c. **Cutoff Date.** The MET Rebate shall not be paid to the Agency for any period beyond December 31, 2028.

d. **Maximum Amounts.** The total MET Rebate paid to the Agency under this Agreement shall not exceed \$5,000,000.00.

e. **Timing of Payment.** The City shall pay the MET Rebate to the Agency on an annual basis. Such payment shall be made within thirty (30) days after the later of (1) the date on which the City receives the final payment of the MET from Rocky Mountain Power for the preceding year and (2) the date on which the Agency provides the MET Report to the City as described above.

6. **Use of Tax Increment and other Taxes.** The Agency is entitled to collect a portion of the property tax increment funds generated within the Project Area under the currently-effective Project Area Budget. This Agreement does not modify the Budget nor the Agency's rights and ability to collect and use Tax Increment from this Project Area.

7. **Authorized Uses of MET Rebate.** The Parties agree that the Agency may apply the MET Rebate in any manner authorized by law, including but not limited to the cost and maintenance of public infrastructure and other improvements located within the Project Area, incentives to developers or participants within the project area, administrative, overhead, legal, and other operating expenses of the Agency, and any other purposes deemed appropriate by the Agency.

8. **No Third Party Beneficiary.** Nothing in this Agreement shall create or be read or interpreted to create any rights in or obligations in favor of any person or entity not a party to this Agreement. Except for the parties to this Agreement, no person or entity is an intended third-party beneficiary under this Agreement.

9. **Due Diligence.** Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant law and facts upon which this Agreement is based, including representations of the Agency concerning the Project and the Project's benefits to the community and to the Parties, and each Party relies upon its own understanding of the relevant law and facts, information, and representations, after having completed its own due diligence and investigation.

10. **Interlocal Cooperation Act.** In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:

a. This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Cooperation Act;

b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Cooperation Act;

c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Cooperation Act;

d. The Chair of the Agency is hereby designated the administrator for all purposes of the Cooperation Act, pursuant to Section 11-13-207 of the Cooperation Act;

e. The term of this Agreement shall commence on the publication of the notice required by Section 17C-4-202 of the Act and shall continue through the date on which all of the MET Rebate has been paid to and disbursed by the Agency as provided herein.

f. Following the execution of this Agreement by both Parties, the Parties shall cause a notice regarding this Agreement to be published in accordance with Section 11-13-219 of the Cooperation Act and Section 17C-4-202 of the Act.

11. **Modification and Amendment.** Any modification of or amendment to any provision contained herein shall be effective only if the modification or amendment is in writing and signed by both Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

12. **Further Assurances and Cooperation.** Each of the Parties hereto agrees to cooperate in good faith with the other, to execute and deliver such further documents, to adopt any resolutions, to take any other official action, and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement. Further, in the event of any question regarding the calculation or payment of amounts contemplated hereunder, the Parties shall cooperate in good faith to resolve such issue.

13. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah.

14. **Interpretation.** The terms "include," "includes," "including" when used herein shall be deemed in each case to be followed by the words "without limitation."

15. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby,

- a. such holding or action shall be strictly construed;
- b. such provision shall be fully severable;
- c. this Agreement shall be construed and enforced as if such provision had never comprised a part hereof;
- d. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and

e. in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

16. **Authorization.** Each of the Parties hereto represents and warrants to the other that the warranting Party has taken all steps, including the publication of public notice where necessary, in order to authorize the execution, delivery, and performance of this Agreement by each such Party.

17. **Time of the Essence.** Time shall be of the essence of this Agreement.

18. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated by reference as part of this Agreement.

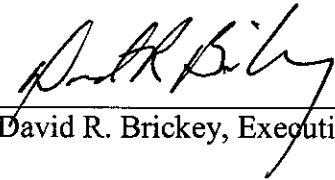
19. **Incorporation of Exhibits.** The exhibits to this Agreement are hereby incorporated by reference as part of this Agreement.

20. **Counterparts.** This Agreement may be executed in duplicate originals, each of which shall be deemed an original.

ENTERED into as of the day and year first above written.

[remainder of page intentionally left blank; signature pages follow]

**REDEVELOPMENT AGENCY OF THE
CITY OF WEST JORDAN**



David R. Brickey, Executive Director

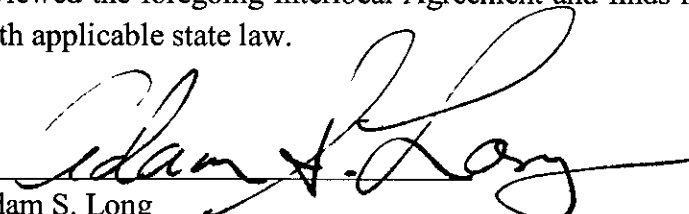
ATTEST:



Melanie Briggs, Secretary

Attorney Review for the Agency:

The undersigned, as counsel for the Redevelopment Agency of the City of West Jordan, has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

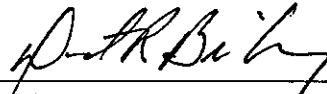


Adam S. Long
Attorney for the Redevelopment Agency of
the City of West Jordan

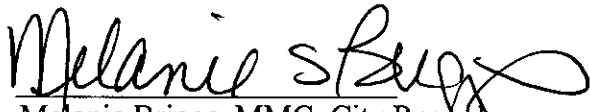
[signatures continue on next page.]

[additional signatures to Interlocal Agreement]

CITY OF WEST JORDAN

By: 
David R. Brickey, Executive Director

ATTEST:


Melanie Briggs, MMC, City Recorder

Attorney Review for the City:

The undersigned, as attorney for the City of West Jordan has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

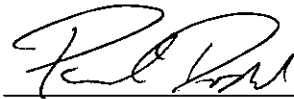
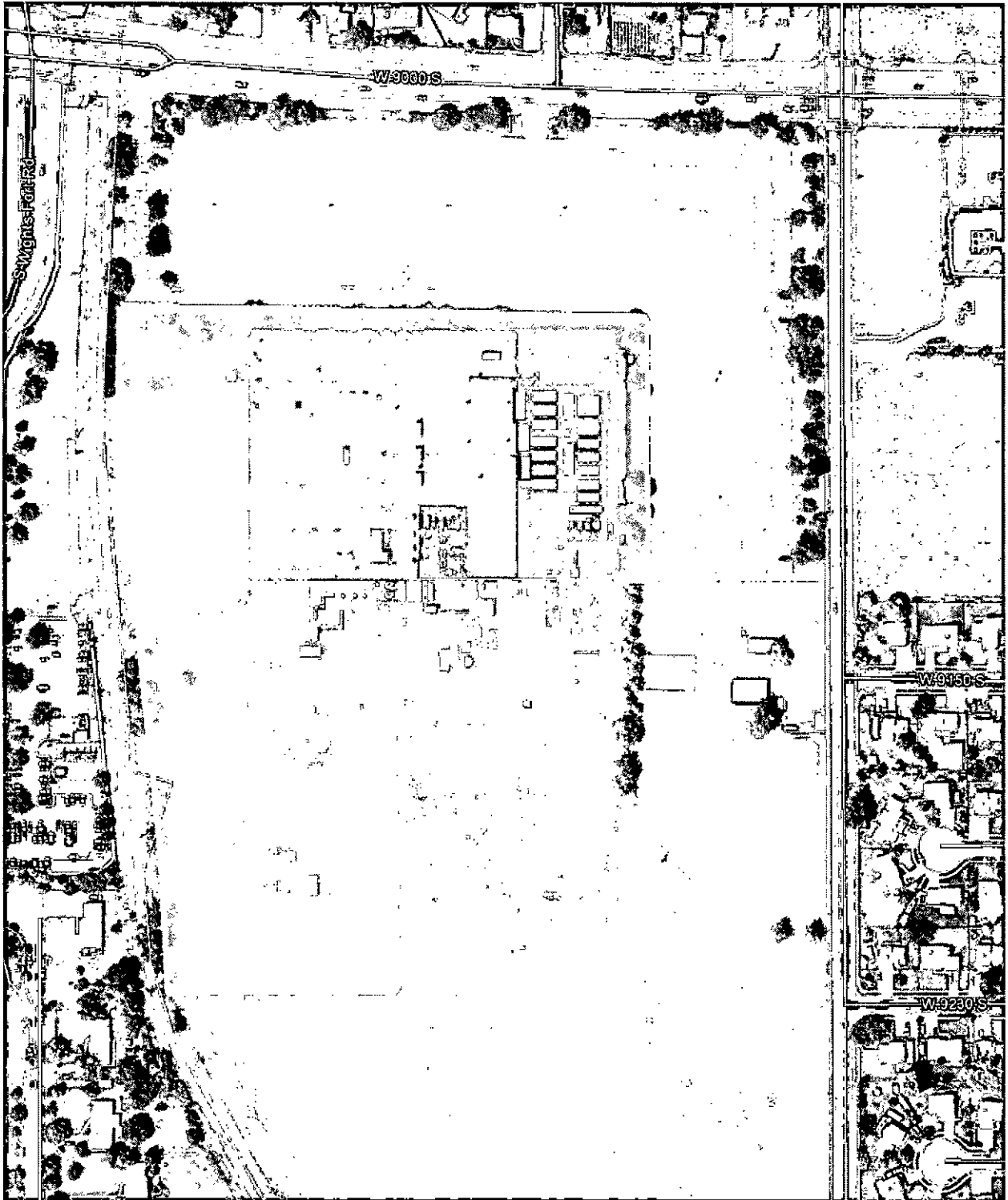

Paul Dodd
Attorney for the City of West Jordan

EXHIBIT A

"Collection Area"



THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. 17-246

A RESOLUTION APPROVING A SALES TAX INTERLOCAL AGREEMENT
BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF WEST
JORDAN AND THE CITY OF WEST JORDAN FOR THE FAIRCHILD
ECONOMIC DEVELOPMENT PROJECT AREA (EDA #4).

WHEREAS pursuant to the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the "Act"), public agencies, including political subdivisions of the State of Utah as therein defined, are authorized to enter into mutually advantageous agreements for joint and cooperative actions, including the sharing of tax and other revenues; and

WHEREAS the Redevelopment Agency of the City of West Jordan (the "Agency") and the City of West Jordan (the "City") are "public agencies" for purposes of the Act; and

WHEREAS after careful analysis and consideration of relevant information, the Agency desires to enter into an interlocal agreement with the City (the "Interlocal Agreement") whereby the City agrees to share with the Agency a portion of the municipal energy tax revenue generated by taxable sales of electricity within the Fairchild Economic Development Project Area, which is also known as EDA#4 (the "Project Area"); and

WHEREAS Section 11-13-202.5 of the Act requires that certain interlocal agreements be approved by resolution of the legislative body of a public agency.

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH, THAT:

1. The Interlocal Agreement, substantially in the form attached hereto as **EXHIBIT A** and with such changes as may be deemed advisable or necessary by the Mayor, is approved and shall be executed by the City.
2. Pursuant to Section 11-13-202.5 of the Act, the Agreement has been submitted, or will be submitted prior to execution, to legal counsel of the City for review and approval as to form and legality.
3. Pursuant to Section 11-13-209 of the Act and upon full execution of the Interlocal Agreement, a duly executed original counterpart thereof shall be filed immediately with the keeper of records of the City.

4. As required by Utah Code § 17C-5-304, the City hereby consents to the Project Area Budget for the Project Area as adopted by the Agency on this same date.

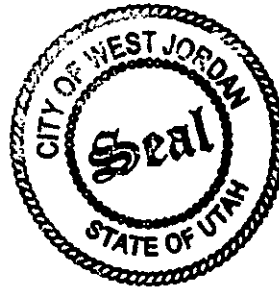
5. This Resolution shall take effect upon adoption.

Adopted by the City Council of West Jordan, Utah this 20th day of December, 2017.



Kim V. Rolfe, Mayor

ATTEST:


Melanie Briggs, MMC, City Clerk

Voting by the City Council

Council Member Chris McConnehey
Council Member Dirk Burton
Council Member Zach Jacob
Council Member Alan Anderson
Council Member David Newton
Council Member Chad Nichols
Mayor Kim Rolfe

"Aye"	"Nay"
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REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN

RESOLUTION NO. 206

DATE: December 20, 2017

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN APPROVING A SALES TAX INTERLOCAL AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN AND THE CITY OF WEST JORDAN FOR THE FAIRCHILD ECONOMIC DEVELOPMENT PROJECT AREA (EDA #4).

WHEREAS pursuant to the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the "Act"), public agencies, including political subdivisions of the State of Utah as therein defined, are authorized to enter into mutually advantageous agreements for joint and cooperative actions, including the sharing of tax and other revenues; and

WHEREAS the Redevelopment Agency of the City of West Jordan (the "Agency") and the City of West Jordan (the "City") are "public agencies" for purposes of the Act; and

WHEREAS after careful analysis and consideration of relevant information, the Agency desires to enter into an interlocal agreement with the City (the "Interlocal Agreement") whereby the City agrees to share with the Agency a portion of the municipal energy tax revenue generated by taxable sales of electricity within the Fairchild Economic Development Project Area, which is also known as EDA#4 (the "Project Area"); and

WHEREAS Section 11-13-202.5 of the Act requires that certain interlocal agreements be approved by resolution of the legislative body of a public agency.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN:

1. The Interlocal Agreement, substantially in the form attached hereto as **EXHIBIT A** and with such changes as may be deemed advisable or necessary by the Agency, is approved and shall be executed by the Agency.
2. Pursuant to Section 11-13-202.5 of the Act, the Agreement has been submitted, or will be submitted prior to execution, to legal counsel of the Agency for review and approval as to form and legality.
3. Pursuant to Section 11-13-209 of the Act and upon full execution of the Interlocal Agreement, a duly executed original counterpart thereof shall be filed immediately with the keeper of records of the Agency.
4. This Resolution shall take effect upon adoption.

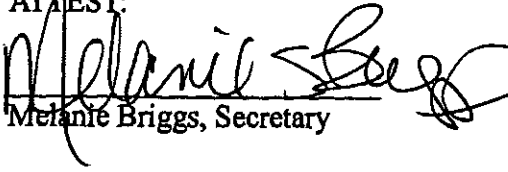
APPROVED AND ADOPTED by the Board of Directors of the Redevelopment Agency of the City of West Jordan this 20th day of December, 2017.

**REDEVELOPMENT AGENCY OF THE
CITY OF WEST JORDAN**



Kim Rolfe, Chairperson

ATTEST:



Melanie Briggs, Secretary



Voting by the Redevelopment Agency Board

Board Member Chris McConnehey

Board Member Dirk Burton

Board Member Zach Jacob

Board Member Alan Anderson

Board Member David Newton

Board Member Chad Nichols

Chair Kim Rolfe

"Aye"

"Nay"

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REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN

RESOLUTION NO. 207

DATE: December 20, 2017

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN APPROVING A PARTICIPATION AGREEMENT FOR THE FAIRCHILD ECONOMIC DEVELOPMENT PROJECT AREA (EDA#4).

WHEREAS, pursuant to the provisions of the Utah Limited Purpose Local Government Entities - Community Reinvestment Agency Act (the "Act"), specifically Utah Code Annotated ("UCA") § 17C-5, the Redevelopment Agency of the City of West Jordan (the "Agency") created the Fairchild Economic Development Project Area, which is also known as EDA#4 ("Project Area"); and

WHEREAS the Agency is authorized to enter into agreements with property owners, governmental entities, private entities and others; and

WHEREAS the Agency finds the proposed Participation Agreement, attached as Exhibit A, in harmony and consistent with the Plan for the Project Area and in the best interests of the Agency and the City of West Jordan.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN:

1. The Participation Agreement, substantially in the form attached hereto as **EXHIBIT A** and with such changes as may be deemed advisable or necessary by the Agency, is approved and shall be executed by the Agency.
2. This Resolution shall take effect upon adoption.

APPROVED AND ADOPTED by the Board of Directors of the Redevelopment Agency of the City of West Jordan this 20th day of December, 2017.

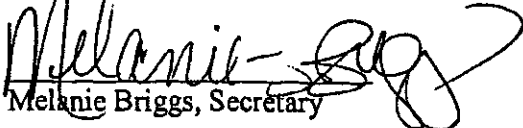


REDEVELOPMENT AGENCY OF THE
CITY OF WEST JORDAN



Kim Rolfe, Chairperson

ATTEST:



Melanie Briggs, Secretary

Voting by the Redevelopment Agency Board

Board Member Chris McConnehey

Board Member Dirk Burton

Board Member Zach Jacob

Board Member Alan Anderson

Board Member David Newton

Board Member Chad Nichols

Chair Kim Rolfe

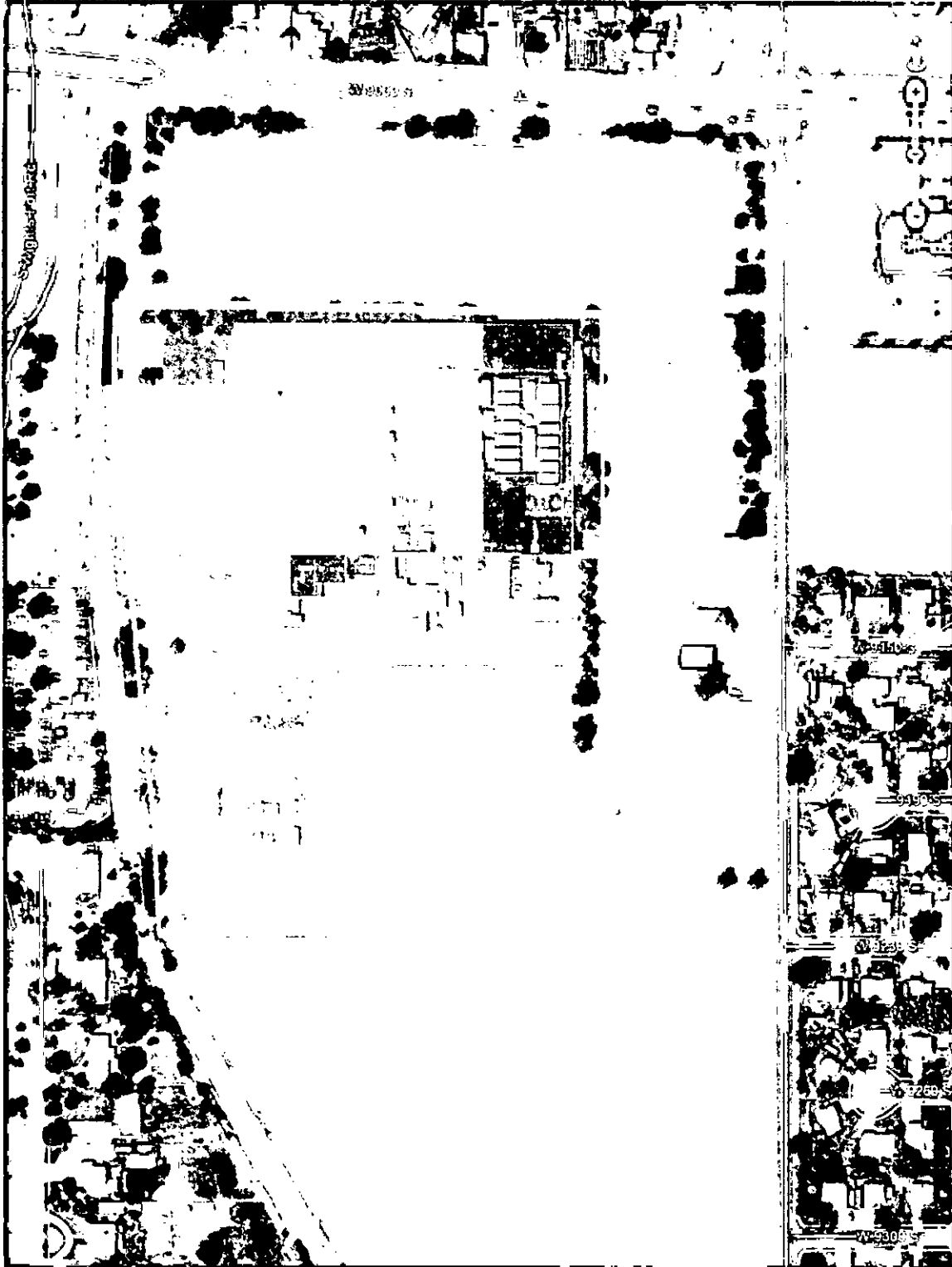
"Aye"

"Nay"

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Res 207

Exhibit B
to Aligned Energy Participation Agreement
Site



2b - Aligned Estoppel Cert - RDA - waiting for Resolution

Final Audit Report

2020-09-04

Created:	2020-09-04
By:	Alan Anderson (alan.anderson@westjordan.utah.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAKw1aOqcSsZSF1NHJwojxFI93tPhG4Bs9

"2b - Aligned Estoppel Cert - RDA - waiting for Resolution" History

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2020-09-04 - 10:35:35 PM GMT