

**ECONOMIC DEVELOPMENT AGREEMENT
ARISTA DATA CENTERS, L.L.C.
CITY OF PFLUGERVILLE, TEXAS**

THIS ECONOMIC DEVELOPMENT AGREEMENT (Agreement) by and between the City of Pflugerville, Texas, a Texas home rule municipal corporation (City) and Arista Data Centers, L.L.C. or its assigns, a Texas Limited Liability Company (Company), is entered into to be effective the _____ day of _____, 2012 (Effective Date).

WHEREAS, Company desires to construct buildings and related facilities for data centers (Facility) in the corporate limits of the City of Pflugerville, Texas to be located on the real property described on Exhibit A attached to and made a part of this Agreement (Real Property); and

WHEREAS, the City has established policies to adopt reasonable measures, as are permitted by law, to attract and promote the development of new and expanded business enterprises within the City and thereby enhance the economic stability and growth of the City; and

WHEREAS, the City has agreed to provide incentives and financial assistance to Company to encourage and promote job growth and economic development; and

WHEREAS, the City has determined that the construction and operation of the Facility will promote economic development and will stimulate business and commercial activity in the City; and

WHEREAS, under authority of Section 52-a of Article III of the Texas Constitution, the Texas Legislature enacted Chapter 380, Texas Local Government Code (Chapter 380), which provides that the governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, the City has taken all necessary legal action to adopt an economic development program in satisfaction of Chapter 380; and

WHEREAS, the Facility qualifies under the City's economic development program established under Chapter 380, and this Agreement is authorized pursuant to Section 380.001(a), Texas Local Government Code, as amended, and the Grant (as

defined herein) granted to Company in this Agreement complies in all respects with Section 380.001(b), Texas Local Government Code, as amended; and

WHEREAS, Company has agreed, in exchange and as consideration for certain funding by the City to satisfy and comply with certain terms and conditions; and

WHEREAS, the City and Company agree that the provisions of this Agreement substantially advance a legitimate interest of the City; and

WHEREAS, Company may elect to record this Agreement in the Real Property Records of Travis County, Texas.

NOW THEREFORE, for and in consideration of the promises and the agreements set forth herein, and other good and valuable consideration, the sufficiency of which is agreed and acknowledged, the City and Company hereby agree as follows:

**I.
Performance**

1. Within 4 years of the Effective Date Company, subject to the occurrence of an event of Force Majeure, shall complete construction of Phase 1 of the Facility in the Pflugerville, Texas. For the purposes of this Agreement Phase 1 is complete when the outer walls, structure and roof (i.e., hardened outer shell) of the first building on the Real Property is complete. Phase I of the Facility shall have an aggregate ad valorem property tax value of \$35,000,000 or greater (as determined by the Travis Central Appraisal District, hereafter "TCAD"). The term "Facility" includes the Real (land, buildings and structures) and Personal Property, including any improvements and business personal property located on the Real Property; all such business personal property may be owned by Company, its Affiliates or by any of Company's tenants located in the Facility (Tenants). "). "Affiliate" for purposes of this Agreement means any person or entity which directly or indirectly controls, or is under common control with, or is controlled by, Company. Subject to Article III below, Phase 1 of the Facility shall have an aggregate ad valorem (real and personal) property tax value of at least \$60,000,000 (as determined by TCAD) no later than the 4th anniversary of this Agreement. The requirements in this paragraph shall be considered the "Phase 1 Facilities Requirement". If the total taxable value of the Property doesn't in any one year meet or exceed the Value Add and if the construction related to the Value Add is completed over several tax assessment periods (i.e. over more than one year), then the Value Add may be satisfied by the total taxable value of the Property at the expiration of the four year time period specified above plus any depreciation or diminution in value which has been recognized by the

Travis County Appraisal District in its determination of taxable value over the prior years.

2. Within 10 years of the Effective Date Company, subject to the occurrence of an event of Force Majeure, shall complete construction of Phase 2 and 3 of the Facility in the Pflugerville, Texas. Phase 2 is complete when the improvements, business personal property and land comprising the 2nd building on the Real Property have an aggregate ad valorem property tax value of at least \$35,000,000 (as determined by TCAD), and Phase 3 is complete when the improvements, business personal property and land comprising the 3rd building on the Real Property have an aggregate ad valorem property tax value of at least \$35,000,000 (as determined by TCAD). Phase II and III of the Facility (including land, improvements and business personal property, including such business personal property as may be owned by Company, its Affiliates or Tenants) together with all other phases of the Facility shall have an aggregate ad valorem (real and personal) property tax value of \$210,000,000 or greater no later than 10 years after the Effective Date (as determined by TCAD). The requirements in this paragraph shall be considered the “10-Year Facilities Requirement”.
3. Company agrees to use commercially reasonable efforts to cause the Facility to be certified LEED Silver (in accordance with Leadership in Energy and Environmental Design standards developed by the U.S. Green Building Council).
4. Company agrees to use commercially reasonable efforts to cause the Facility to be powered by renewable energy.
5. Company agrees to grant the City a temporary construction easement to drill one or more water wells on its site. The potential well sites will be chosen by mutual agreement of the parties. Once the City has established a well capable of delivering sufficient amounts of water to serve the Company then the Company shall dedicate a 1 acre well site to City and the necessary easements to deliver the water to Arista and the adjacent properties. Company shall use raw well water for its chillers if such water becomes available. If raw well water does not become available Company shall still pay the reduced water rate for potable water as contemplated in Article II. Section 4.

II. Economic Incentives

1. The City and Company agree that this Agreement establishes a program for economic development as required by Chapter 380 of the Texas Local

Government Code and that each portion of the Facility Grant (defined below), the electrical infrastructure improvements, roadway, curb, sidewalk, drainage improvements, water, waste water and reuse water improvements and the Jobs Grant (defined below) will be paid by the City or to the Company as applicable to the Company in the form of an Economic Development Grant pursuant to Chapter 380.

2. Facility Grant. City hereby grants and agrees to pay to Company an amount equal to 75% (“Rate”) of the ad valorem real property and personal property taxes actually paid (Taxes Paid) by the Company, Affiliates and Tenants for the Facility for the ad valorem value in excess of \$100,000,000 created by the Company after March 1, 2012 according to the Travis Central Appraisal District (Facility Grant). Bonus: If a 2012 Fortune 1000 Company were to become a tenant of the data center development and prominently displays their name or logo on a building, the City grants and agrees to pay to Company a facility grant of 80% (“Rate”) for the entire data center development from the date of occupancy. Company will notify the City annually of all such ad valorem taxes paid for the Facility (Annual Grant Notice). The City will make the Facility Grant to the Company as follows: (a) for the Phase 1 portion of the Facility (Phase 1), the City will pay the Facility Grant to the Company annually for 15 years after completion of Phase 1, as applicable (b) for the Phase 2 portion of the Facility (Phase 2), the City will pay the Facility Grant to the Company annually for 15 years after completion of Phase 2, (c) for the Phase 3 portion of the Facility (Phase 3), the City will pay the Facility Grant to the Company annually for 15 years after completion of Phase 3, (d) for the Phase 4 portion of the Facility (Phase 4), the City will pay the Facility Grant to the Company annually for 15 years after completion of Phase 4, and (e) for the Phase 5 portion of the Facility (Phase 5), the City will pay the Facility Grant to the Company annually for 15 years after completion of Phase 5. Each Facility Grant shall be calculated and determined by using the ad valorem tax invoices/receipts provided by the Travis Central Appraisal District (or its successor taxing authority, hereafter “TCAD”). For purposes of this Agreement, Phase 4 is complete when the improvements, business personal property and land comprising the 4th building on the Real Property have an aggregate ad valorem property tax value of at least \$35,000,000 (as determined by TCAD), and Phase 5 is complete when the improvements, business personal property and land comprising the 5th building on the Real Property have an aggregate ad valorem property tax value of at least \$35,000,000 (as determined by TCAD). Amounts due to the Company under this paragraph will be paid each year by the City on the later of January 15 or 15 days after the City’s receipt of such year’s Annual Grant Notice.
3. Infrastructure Grant. The City agrees to construct Pfluger Farm Lane from its intersection with Pflugerville Parkway to 200 feet north of the southern

most end of Arista's 53 acre property tract as described in Exhibit A. In the Arista event purchases less than 53 acres any additional road, sidewalks and utilities to reach the Arista tract shall be at the sole cost of Arista. The extensions of the roadway shall include all necessary curbs, sidewalks and drainage. The City agrees to extend water and waste water lines to Arista's property line. In addition, the City agrees to pay to extend electrical lines necessary for redundant electrical power to Arista's property line and also build a substation on Arista's property worth up to \$2,000,000

4. **Irrevocable Letter of Credit.** Prior to engineering and constructing the Infrastructure contemplated by this agreement the Company shall provide the City an irrevocable letter of credit (ILOC) in the amount of \$3,000,000 and close on at least a 20 acre site or greater within the Timmermann tract. The ILOC would expire as soon as Phase 1 of the project is completed. The ILOC shall be payable to the City if Company (a) is in default of Article I. Section 1 of the agreement; or the issuer of the ILOC has informed the City that the ILOC will not be renewed or extended and the Company has not met its obligations under Article I. Section 1 of this agreement. In the event the ILOC is cancelled, not renewed or not extended prior to the completion of Phase 1 of the project, the City is entitled to cancel any and all obligations of this agreement within 60 days of notice of the cancellation, non-renewal or non-extension of the ILOC.
5. **Reduced Water.** City agrees to sell potable, raw well or reuse water at a reduced rate of \$2.25 per 1000 gallons for its chillers. The City shall determine in its sole discretion the type of water it shall sell to Arista at the reduced rate for its chillers. The rate will be indexed against the City's 2012 unit costs incurred for the purchase of water, electricity, and chemicals. The rate may be increased on January 1 of each year to account for increases in the above mentioned index. This provision will expire 15 years from the date Phase 1 is complete.
6. **Construction.** City and Company agree that construction on the infrastructure improvement shall begin simultaneously with the construction of the Phase I improvements contemplated by this agreement. For the purposes of this subsection the term construction shall mean the issuance of a building permit by the City of Pflugerville and executed construction contracts for the Phase I hard shell.

III. Penalty; Partial-Performance

Phase 1 Facilities Requirement. No Facility Grant payments will be made to Company until Phase I is complete. If at least \$60,000,000 of the ad

valorem property tax value associated with Phase 1 has not been achieved by the 4th anniversary of the Effective Date, the City may terminate this Agreement and Company shall as a penalty not be entitled to any of the benefits of this Agreement. However, if at least \$60,000,000 of the ad valorem property tax value associated with Phase 1 has not been achieved by the 4th anniversary of the Effective Date, and the Company is actively constructing improvements that have an anticipated total value of \$60,000,000 Company shall be entitled to an additional 2 years to achieve the Phase 1 Facilities Requirement.

10-Year Facilities Requirement. If at least \$210,000,000 of the ad valorem property tax value associated with the Facility has not been achieved by the 10th anniversary of the Effective Date, the Company may incur penalties and the City may terminate this agreement, provided however, if at least \$210,000,000 of the ad valorem property tax value associated with all Phases of construction has not been achieved by the 10th year of the Effective Date, and the Company is actively constructing improvements that have an anticipated total value of \$210,000,000 Company shall be entitled to an additional 2 years to achieve the 10-Year Facilities Requirement (“Extended Completion Date”). If the TCAD invoices/receipts provided with the 10th, 11th, or 12th Annual Grant Notice demonstrate that the aggregate ad valorem property tax value is less than the amount required in Article I above but at least \$210,000,000, the amount of the Facility Grant for such year will be reduced as a penalty in proportion to the amount of ad valorem tax value that is less than the required amount.

If the 10-Year Facilities Requirement is not achieved by the Extended Completion Date, the City may terminate this Agreement. Upon such termination, City shall calculate the Facility Grant that would have been paid to Company between the 6th and 12th years of this Agreement as if the Rate was 50% instead of 75-80% (“12-Year Adjusted Facility Grant”); if the aggregate Facility Grant payments received by the Company from the City between the 6th and 12th years of this Agreement exceed the 12-Year Adjusted Facility Grant, Company shall, as a penalty, immediately reimburse the City any such excess amount.

If the total taxable value of the Property doesn’t in any one year meet or exceed the Value Add and if the construction related to the Value Add is completed over several tax assessment periods (i.e. over more than one year), then the Value Add may be satisfied by the total taxable value of the Property at the expiration of the ten year time period specified above plus any depreciation or diminution in value which has been recognized by the Travis County Appraisal District in its determination of taxable value over the prior years.

In no event will the term of this Agreement exceed 27 years.

IV. Miscellaneous

1. **Successor and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. Except as indicated in the remainder of this paragraph, neither party hereto may assign this Agreement without the prior written consent of the other party hereto. The City hereby consents and grants to Company the right to convey and assign Company's interest in this Agreement (Assignment) to any person or entity who is simultaneously purchasing the Real Property (Assignee). No City consent shall be required for any change in ownership of Company. The City further hereby consents and grants to Company the right to encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument) Company's right, title or interest under this Agreement to any mortgagee as security for the repayment of any indebtedness and/or the performance of any mortgage on the Real Property. If any additional consent is needed, the City shall not unreasonably withhold, condition, or delay its consent to any assignment that is not allowed by the preceding portions of this paragraph. All Assignees will be subject to all of the obligations, covenants and conditions applicable to the Company under this Agreement. Upon Company's assignment of its entire interest under this Agreement, the City shall recognize the Assignee as Company's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Company under and pursuant to this Agreement, and Company shall be relieved of all of its obligations under this Agreement that relate to acts or omissions which occur or accrue following the effective date of such conveyance or assignment.
2. **Severability.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be given the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is

legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

3. **Governing Law.** This Agreement shall be governed, construed, applied, and enforced in accordance with the laws of the State of Texas, and shall be performable with venue in Travis County, Texas.
4. **Closing on Property.** This Agreement is contingent upon the final sale "closing" of a portion of the Timmermann Tract to Company. The Development and Purchase and Sale Agreement between Timmermann and Company shall be attached and incorporated by reference as Exhibit B for all purposes as if written and copied herein. In the event the agreement is voided or expires prior to the sale of at least a 20 acre tract to Company this Economic Development Agreement shall become null and void.
5. **Amendments.** This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.
6. **Time.** Time is of the essence in the performance of this Agreement.
7. **Attorney Fees.** Should any party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay the prevailing party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.
8. **Notices.** All notices hereunder must be in writing and shall be deemed delivered on the day personally delivered or on the third day from the day sent by registered mail or certified mail, return receipt requested with the U.S. Postal Service, or on the day after the day sent by national overnight courier, to the parties at the following addresses, or at such other addresses as shall be specified by notice.

If to the City;

City of Pflugerville
Attention: City Manager
100 East Main Street
P.O. BOX 589
Pflugerville, Texas 78691

With copy to:
City Attorney
P. O. Box 679

Pflugerville, Texas 78691-0679

If to Company:
Arista Data Centers L.L.C.
Attn: Mr. Angelos Angelou

8121 Bee Caves Road, Suite 200
Austin, Texas 78746

With copy to:

9. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.
10. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one Agreement.
11. Representations and Warranties by Company. If Company is a limited partnership or limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Company has been duly authorized to act for and bind Company.
12. Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Company agrees that any payments owing to Company under the Agreement may be applied directly toward any debt or delinquency that Company owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
13. Texas Family Code Child Support Certification. Company certifies that the limited partners or members are not delinquent in child support obligations and therefore is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate and any

such inaccuracy is not rectified within 30 days of written notice specifying such inaccuracy.

- 14.** Eligibility Certification. Company certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate and any such inaccuracy is not rectified within 30 days of written notice specifying such inaccuracy.
- 15.** Notice and Cure Periods. No party may terminate this Agreement unless (i) such party provides written notice by certified mail, return receipt requested (a "Notice") to the other party specifying a material default in the performance of a material covenant or obligations under this Agreement and (ii) such failure is not (x) excused by the occurrence an event of Force Majeure or (y) cured by the other party within ninety (90) days after Notice thereof, or if such failure cannot be cured within such ninety (90)-day period, the other party has commenced remedial action to cure such failure (and continued to diligently and timely pursue the completion of such remedial action); provided, however, that (A) if such failure arises from a violation of law, then such default shall not give rise to the termination of this Agreement so long as the defaulting party acts in accordance with a plan of action to cure such default, which plan of action is approved by a governmental entity within one hundred and eighty (180) days after receipt by the defaulting party of such Notice; provided, however, that the defaulting party shall endeavor to cause such plan to provide for cure of such default within one hundred and eighty (180) days; or (B) if such default arises from a violation of law resulting from a change in law, or a change in the interpretation or enforcement of law, by a governmental entity, then such default shall not give rise to the termination of this Agreement so long as the defaulting party acts in accordance with a commercially reasonable plan of action to cure such default prepared by such defaulting party and delivered to the other party.
- 16.** Force Majeure. For purposes of this Agreement, the term "Force Majeure" includes events not reasonably within the control of the party whose performance is sought to be excused thereby, including the following causes and events (to the extent such causes and events are not reasonably within the control of the party claiming suspension): acts of God and the public enemy, strikes, lockouts or other industrial disturbances, inability to obtain pipe or other material or equipment or labor, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water washouts, inclement weather, arrests and restraint of rulers and people, interruptions by government or court orders, present or future orders of any regulatory body, civil disturbances, explosions, breakage or accident

to machinery or lines of pipe, freezing of wells or pipelines, inability to obtain or delays in obtaining additional necessary rights-of-way or permits (provided Company has used reasonable efforts to obtain such rights-of-way or permits), any laws, rules, orders, acts or restraint of government or governmental body or court, or the partial or entire failure of gas supply or any other event that is beyond the reasonable control of the party claiming Force Majeure. Notwithstanding any other provision of this Agreement to the contrary, in the event a party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement (other than any obligation to make payment of any amount when due and payable hereunder), the obligation of such party, so far as it is affected by such Force Majeure, shall be suspended during the continuance of any condition or event of Force Majeure, but for no longer period, and such condition or event shall so far as possible be remedied with all reasonable dispatch, provided that the party claiming Force Majeure shall not be relieved of liability in the event and to the extent there is a finding of gross negligence or willful misconduct on the part of such party with respect to such matter. The party prevented or hindered from performing shall give prompt (but in no event later than five business days after the occurrence of such event) notice and reasonably full particulars of such event to the other party and shall take all reasonable actions within its power to remove the basis for nonperformance (including securing alternative supply sources) and after doing so shall resume performance as soon as possible. The settlement of strikes or lockouts or resolution of differences with workers shall be entirely within the discretion of the affected party, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or differences by acceding to the demands of the opposing party in such strike, lockout or difference when such course is inadvisable in the reasonably exercised discretion of the affected party.

17. Mutual Assistance. The City and Company will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this Agreement.

[remainder of this page intentionally blank – signatures on next page]

Arista Data Centers, L.L.C.
A Texas Limited Liability Company

By: _____
Name: _____
Title: _____

Attested to: _____

City of Pflugerville
A Texas Home Rule Municipal Corporation

By: _____
Name: Brandon Wade
Title: City Manager

Attested to: _____
City Secretary

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of Arista Data Centers, LLC, Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and sworn and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of the limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2012.

Notary Public in and for
The State of Texas

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared Brandon Wade, City Manager of the City of Pflugerville, Texas, a Texas Home Rule Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and swore and acknowledged to me that he executed the same for the purpose and consideration therein expressed, and in the capacity therein stated and as the act and deed of the City of Pflugerville, Texas.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2012.

Notary Public in and for
The State of Texas