

AN ORDINANCE      2013 - 09 - 05 - 0609

**APPROVING AND AUTHORIZING THE EXECUTION OF A TAX ABATEMENT AGREEMENT WITH CYRUSONE, INC. TO EXEMPT 50% OF AD VALOREM TAXES FOR A PERIOD OF SIX (6) YEARS ON REAL AND PERSONAL PROPERTY IMPROVEMENTS OF APPROXIMATELY \$120 MILLION.**

\* \* \* \* \*

**WHEREAS**, CyrusOne, Inc. (hereinafter referred to as “CyrusOne”), has identified a site located on Westover Hills Blvd. (the “Property”), as more particularly described in **Exhibit A**, where it intends to undertake an economic development project consisting of the construction and operation of a co-location data center with a real and personal property investment of approximately \$120 million and the creation of fifteen (15) full-time jobs (the “Project”); and

**WHEREAS**, in accordance with the City of San Antonio Tax Phase-In Guidelines (the “Guidelines”) the Project is eligible for a 50% abatement of ad valorem real and personal property taxes for a term of six (6) years; and

**WHEREAS**, the City Council finds that offering CyrusOne a Tax Abatement Agreement for its real and personal property improvements is a reasonable incentive to help induce CyrusOne to undertake the Project; and

**WHEREAS**, the City Council also finds that it is in the best interest of the City to approve a Tax Abatement Agreement with CyrusOne to induce the desired and beneficial economic development in the CyrusOne Reinvestment Zone; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Council approves the terms and conditions of a Tax Abatement Agreement with CyrusOne, Inc. granting a fifty percent (50%), six (6) year abatement of ad valorem real and personal property taxes within the CyrusOne Reinvestment Zone. A copy of the Agreement, in substantially final form, is attached hereto and incorporated herein as **Exhibit “A”**.

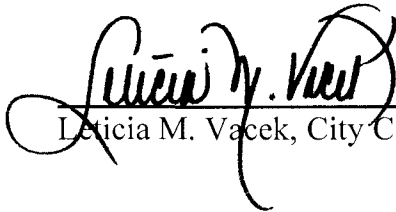
**SECTION 2.** The City Manager or a designated representative is authorized to execute the Tax Abatement Agreement as approved in Section 1 of this Ordinance.

**SECTION 3.** This Ordinance shall be effective on and after the tenth day after passage hereof.

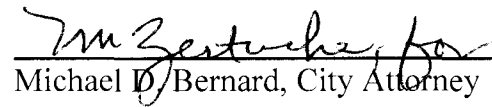
**PASSED AND APPROVED** this 5<sup>th</sup> day of September, 2013.

  
M A Y O R  
Julián Castro

**ATTEST:**

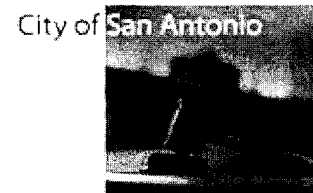
  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
ACTION



## Agenda Voting Results - 26B

| <b>Name:</b>        | 5A, 5B, 8, 9, 10, 11, 12, 13, 14A, 14B, 14C, 15A, 15B, 15C, 15D, 15E, 15F, 15G, 16, 17, 18, 19, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, 21, 22, 23, 24, 25, 26A, 26B, 27A, 27B, 28A, 28B, 28C              |             |     |     |         |        |        |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----|-----|---------|--------|--------|
| <b>Date:</b>        | 09/05/2013                                                                                                                                                                                                                |             |     |     |         |        |        |
| <b>Time:</b>        | 04:12:36 PM                                                                                                                                                                                                               |             |     |     |         |        |        |
| <b>Vote Type:</b>   | Motion to Approve                                                                                                                                                                                                         |             |     |     |         |        |        |
| <b>Description:</b> | An Ordinance approving a 6-year, 50% Tax Abatement Agreement with CyrusOne LLC on its planned investment of approximately \$120 million in real and personal property improvements and the creation of 15 full-time jobs. |             |     |     |         |        |        |
| <b>Result:</b>      | Passed                                                                                                                                                                                                                    |             |     |     |         |        |        |
| Voter               | Group                                                                                                                                                                                                                     | Not Present | Yea | Nay | Abstain | Motion | Second |
| Julián Castro       | Mayor                                                                                                                                                                                                                     |             | x   |     |         |        |        |
| Diego Bernal        | District 1                                                                                                                                                                                                                |             | x   |     |         |        |        |
| Ivy R. Taylor       | District 2                                                                                                                                                                                                                |             | x   |     |         |        |        |
| Rebecca Viagran     | District 3                                                                                                                                                                                                                |             | x   |     |         |        |        |
| Rey Saldaña         | District 4                                                                                                                                                                                                                |             | x   |     |         |        |        |
| Shirley Gonzales    | District 5                                                                                                                                                                                                                |             | x   |     |         |        |        |
| Ray Lopez           | District 6                                                                                                                                                                                                                |             | x   |     |         | x      |        |
| Cris Medina         | District 7                                                                                                                                                                                                                |             | x   |     |         |        | x      |
| Ron Nirenberg       | District 8                                                                                                                                                                                                                |             | x   |     |         |        |        |
| Elisa Chan          | District 9                                                                                                                                                                                                                | x           |     |     |         |        |        |
| Carlton Soules      | District 10                                                                                                                                                                                                               |             | x   |     |         |        |        |

## **EXHIBIT “A”**

STATE OF TEXAS

§  
§  
§  
§

COUNTY OF BEXAR

CITY OF SAN ANTONIO

TAX ABATEMENT AGREEMENT

FOR REAL AND PERSONAL PROPERTY

1. PARTIES

THIS AGREEMENT (the "Agreement") is entered into on this \_\_\_ day of \_\_\_\_\_ 2013 (the "Effective Date") by and between CYRUSONE,LLC, a Delaware limited liability corporation (hereinafter referred to as "CYRUSONE"), who holds a fee-simple interest in the real property described herein and shall own personal property located on said real property, and the CITY of SAN ANTONIO, a municipal corporation, (hereinafter referred to as the "CITY"), acting by and through its City Manager under the authority of its City Council.

2. AUTHORIZATION AND FINDINGS

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

1. The Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312, as amended;
2. CITY COUNCIL RESOLUTION No. 89-07-12, dated the 15th day of February 1989, and most recently revised by Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 2010, together which established the City of San Antonio Guidelines and Criteria for Tax Phase-In and Reinvestment Zones, (hereinafter referred to as the "Guidelines and Criteria");
3. CITY COUNCIL ORDINANCE NO. 2013-\_\_-\_\_-\_\_\_\_ dated \_\_\_\_\_, 2013, which designated the CYRUSONE REINVESTMENT ZONE (the "Reinvestment Zone"); and
4. CITY COUNCIL ORDINANCE NO. 2013-\_\_-\_\_-\_\_\_\_, dated \_\_\_\_\_, 2013, which specifically approved this Agreement and authorized execution hereof.

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

3. **PROPERTY**

A. CYRUSONE shall have a fee-simple interest in real property located off Westover Hills Boulevard between Raba Drive and Portola Boulevard, San Antonio, Texas 782\_\_ (the "Property"), legally described in Exhibit A, attached hereto and incorporated herein prior to the effective date of this Agreement. The Property is located within a qualifying Reinvestment Zone for the purposes of the Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312.

B. CYRUSONE shall own, hold an interest in or otherwise control the Property and shall conduct the business activities of a large-scale, co-location computer data center operator (all of such activities hereinafter collectively referred to as the "Business Activities").

C. CYRUSONE shall make certain real property improvements (the "Real Property Improvements") and certain personal property infrastructure improvements (the "Personal Property Improvement)." Together, the Real Property Improvements and Personal Property Improvements may be referred to as "Infrastructure Improvements." CYRUSONE anticipates that the cost of such Infrastructure Improvements may range from approximately ONE HUNDRED MILLION DOLLARS (\$100,000,000.00) to approximately ONE HUNDRED TWENTY MILLION DOLLARS (\$120,000,000.00). It is anticipated that the expenditures for the Infrastructure Improvements will be incurred over an approximately five (5) year period. No Personal Property Improvements shall be placed on the Property sooner than the Effective Date of this Agreement.

D. CYRUSONE shall establish separate tax accounts with the Bexar Appraisal District for the Real Property Improvements and Personal Property Improvements and provide these tax account numbers and the related entity information to the CITY.

4. **CYRUSONE'S REPRESENTATIONS**

A. CYRUSONE represents that it has no knowledge that any interest in the Property is presently owned, held or leased by a member of the San Antonio City Council, Zoning Commission, Planning Commission, the City's Economic Development Department, or any other City officer or employee. CYRUSONE further represents that it shall not knowingly sell, lease or otherwise convey an interest of any type of kind to a member of the San Antonio City Council, the Zoning Commission, the Planning Commission, the City's Economic Development Department or any other City officer or employee, as long as this Agreement remains in effect.

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

## 5. CYRUSONE'S OBLIGATIONS

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

A. In addition to all other obligations and/or duties imposed on CYRUSONE by any other incentive agreements it has entered into with the State of Texas, Bexar County and/or the City of San Antonio, if any, CYRUSONE will be required to:

- 1) own, hold an interest in or otherwise control the Property, Real Property Improvements and Personal Property Improvements that are the subject of this Agreement; and
- 2) invest, or cause to be invested, approximately ONE HUNDRED TO ONE HUNDRED TWENTY MILLION DOLLARS (\$100,000,000 to \$120,000,000.00) in Infrastructure Improvements prior to the fifth (5<sup>th</sup>) anniversary of the Effective Date of this Agreement; and
- (3) continuously use the Property for the Business Activities during the entire term of this Agreement; and
- (4) employ not less than fifteen (15) Full-time Employees (as defined in Article 5 Section C) at the Property, no later than December 31, 2016; and from and after such date maintain this aggregate minimum staffing level ("Minimum Staffing Level") for the duration of the term of the Agreement; and
- (5) comply with all other applicable terms of this Agreement.

B. CYRUSONE will be required to covenant and agree to pay one hundred percent (100%) of its new, full-time employees performing the Business Activities at the Property the City's effective prevailing "living" wage as determined by the City Council in its Tax Abatement Guidelines, which is eleven dollars and thirty two cents (\$11.32) per hour. Commencing on the first anniversary of the date on which the Infrastructure Improvement have been completed, seventy percent (70%) of all new and existing employees working at the Property must earn at least fourteen dollars and forty cents (\$14.40) per hour. In the event CYRUSONE utilizes contractors in furtherance of the Minimum Staffing Level, it shall require that such contractors be paid wages not less than wages set forth in this Article 5, Section B.

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

D. RESERVED.

E. CYRUSONE will covenant and agree that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees.

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

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

I. Except as provided herein, CYRUSONE will covenant and agree that it shall use the Property only to conduct its Business Activities. Without additional consent or approval by the City Council, a parent, subsidiary or affiliate organization of CYRUSONE or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of CYRUSONE, or any component thereof (hereinafter "Related Organization") may occupy and use the Property for such Related Organization's normal business activities, so long as such business activities are those of a computer data center or comparable to the Business Activities of CYRUSONE at the Property. To be eligible for the tax abatements as provided in this Agreement, such Related Organization must agree in writing to fully comply with all applicable terms of this Agreement. Except as authorized above, CYRUSONE covenants and agrees during the term of this Agreement not to change the principal use of the Property without prior approval by the City Council, as evidenced in a duly approved ordinance.

J. CYRUSONE will covenant and agree that it shall maintain the Property and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the negligence, intentional act or misconduct of CYRUSONE excepted. Compliance with the maintenance obligations imposed herein shall be presumed if CYRUSONE follows its normal and customary maintenance procedures and schedules.

K. CYRUSONE will covenant and agree that, upon five business days prior notice received by it from the CITY, CYRUSONE shall allow designated representatives of the CITY access to the Property during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. This inspection is independent of CITY'S police powers to inspect for purposes of assuring compliance with applicable

City Codes and Ordinances. The CITY's access to CYRUSONE's books and records will be limited to information needed to verify that CYRUSONE is and has been in compliance with the terms of this Agreement including but not limited to: conducting Business Activities on the Property; the number of full-time employees at the Facility; the wages of employees hired under the terms of this Agreement; and the investment in Infrastructure Improvements made by CYRUSONE. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right to require CYRUSONE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of CYRUSONE. CITY representatives may be accompanied by CYRUSONE representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of the Property or the Facility; and (b) comply with CYRUSONE's reasonable security requirements.

L. During the Term of this Agreement, CYRUSONE will covenant and agree to furnish each year, as applicable, the Chief Appraiser of Bexar Appraisal District with information outlined in Chapter 22, V.A.T.S. Tax Code, as amended, as may be necessary for the tax phase-in and for appraisal purposes.

M. Following the Effective Date of this Agreement each January 31, CYRUSONE will covenant and agree to provide the CITY or designated representative with a certification from an officer of CYRUSONE attesting to: 1) the amount of total investment at the Property; 2) the number of Full-Time Jobs maintained at the Property; 3) the wages paid by CYRUSONE to employees at the Property; and 4) the benefits offered to the full-time jobs maintained at the Property. . The information provided shall be on the forms set forth in, or substantially similar to the forms set forth in, Exhibit "C" (attached hereto and incorporated herein), as amended.

N. Reserved.

O. CYRUSONE covenants and agrees to notify CITY in writing at least 30 days prior to any sale, transfer or sub-lease of the Property during the Term. Failure to provide the required notification under this Article 5, Paragraph O shall render CYRUSONE subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph E).

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

Q. If, during the term of this Agreement, CYRUSONE fails to create and retain at least the minimum number of Full-Time Jobs required under Article 5, Paragraph A (5) of this Agreement, or CYRUSONE fails to pay at least the minimum wages required under Article 5, Paragraph B of this Agreement, as determined by City through either by

records requested by City under Section 5(K) through the bi-annual certification under Section 5(M), then CYRUSONE shall be subject to the termination and recapture provisions of Article 7 of this Agreement.

R. If, during this Agreement, CYRUSONE allows its ad valorem taxes due on the land, real and personal property or inventory and supplies to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, then this Agreement may be terminated in the sole discretion of City.

## 6. TAX ABATEMENT

A. Should CYRUSONE perform the Business Activities at the Property and otherwise performs all obligations set forth in Article 5 above, then City shall give CYRUSONE a fifty-percent (50%) tax abatement for the Real Property Improvements and Personal Property Improvements for a period of six (6) years (the "Abatement Term") commencing on the earlier to occur of: (a) substantial completion of the Infrastructure Improvements and commencement of Business Activities or (b) January 1, 2015. The base year for calculating the value of the Real Property Improvements and the Personal Property Improvements existing and located upon the Property prior to the effective date of this Agreement shall be January 1, 2013. The "Base Year Value" of the personal property not covered by this Agreement shall be its assessed value (determined by the Bexar Appraisal District), as of the Base Year. This Agreement only provides for the abatement of taxes on the Infrastructure Improvements brought onto the site after the execution of this Agreement.

B. At the commencement of the abatement, CYRUSONE shall own, have an interest in or otherwise control the Property and shall be conducting its Business Activities on a daily basis and continuously throughout the Term.

C. Provided that CYRUSONE has invested a minimum of TWENTY MILLION DOLLARS (\$20,000,000.00) in Real Property Improvements and ONE HUNDRED MILLION DOLLARS (\$100,000,000.00) in Personal Property Improvements or a total aggregate investment of ONE HUNDRED TWENTY MILLION DOLLARS (\$120,000,000.00) by December 31, 2019, CYRUSONE has hired and retained the number of employees specified in Article 5, Paragraph A (4) of this Agreement, CYRUSONE pays at least the minimum wages required under Article 5, Paragraph B of this Agreement, CYRUSONE uses the Property for its Business Activities, and CYRUSONE is otherwise in compliance with the conditions of this Agreement, then FIFTY-PERCENT (50%) of the ad valorem taxes for the Real Property Improvements and Personal Property Improvements above the Base Year Value, shall be abated for the Abatement Term of this Agreement. There shall be no abatement of taxes for the underlying land value, inventory or supplies.

D. CYRUSONE acknowledges and agrees that the Base Year Value of the Property and the tax levy based on said Base Year Value of the Property in the Zone shall not decrease, but taxes may increase and that the amount of property taxes paid by

CYRUSONE to the CITY attributable to the Property during the Abatement Term shall not be less than the amount of taxes attributable to the Property paid to the CITY for the base year tax year, if any, except in the event of casualty or condemnation of the Property in the Zone.

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

F. The term of this Agreement (herein, the "Term") shall commence on the Effective Date and shall continue in full force and effect unless terminated pursuant to the provisions of Article 7 or until the end of the fifth calendar year after termination of the Abatement Term

## **7. DEFAULT/TERMINATION/RECAPTURE**

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

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

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

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

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

D. If CYRUSONE, a Related Organization or City-approved assignee fails to reach and retain the minimum staffing or investment level at the Property as required in Article 5, Paragraph A and B above, calculated by the averaging of the two most current January 31st Employee Wage Information for Tax Abatement Request Forms, or substantially similar form, (Exhibit "E") for such year of noncompliance, then for each such year of noncompliance after December 31, 2016 until the end of the abatement, the tax abatement shall be reduced in the following tax year by the same percentage as the deficiency in the Minimum staffing or investment level at the Property. For example, if CYRUSONE hires and retains ninety percent (90%) of the Minimum Staffing Level at the Property in a given year, CYRUSONE shall be entitled to ninety percent (90%) of the fifty-percent (50%) ad valorem personal property tax abatement for the Property for that following year.

E. If CYRUSONE, a Related Organization or City-approved assignee fails to reach and retain the minimum staffing or investment level at the Property as required in Article 5, Paragraph A and B above, calculated by the averaging of the two most current January 31st Employee Wage Information for Tax Abatement Request Forms, or substantially similar form, (Exhibit "E") for such year of noncompliance, then for each such year of noncompliance after the fourth year of the agreement all taxes previously abated under this Agreement shall be recaptured by City year by the same percentage as the deficiency in the minimum staffing or investment level at the Property.

However, should CYRUSONE fail to hire and retain at least fifty percent (50%) of the Minimum Staffing Level at the Property in a given year then, at the option of CITY, this failure may be grounds for termination of this Agreement. Said termination shall be effective for the calendar year during which the Minimum Staffing Level at the Property as stated herein has not been met as required.

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

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

terminated as a result of default, all taxes abated shall be due for the tax year during which the termination occurred and shall accrue without further abatements for all tax years thereafter; in addition, CITY shall have the right to recapture from CYRUSONE all previously abated property taxes under this Agreement and said taxes shall be paid by CYRUSONE within sixty (60) calendar days of receiving CITY'S written notification of recapture.

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

H. Calculation of Taxes Subject to Recapture. If CYRUSONE fails to comply with any of the terms of Article 7 of this Agreement, then the City Council shall have the right to recapture from CYRUSONE a percentage of the abated taxes for the Infrastructure Improvements based on the following table:

| TERM YEAR                                       | TOTAL TAX PREVIOUSLY ABATED<br>SHALL BE MULTIPLIED BY: |
|-------------------------------------------------|--------------------------------------------------------|
| During the Abatement Term                       | 100%                                                   |
| First year after termination of Abatement Term  | 100%                                                   |
| Second year after termination of Abatement Term | 80%                                                    |
| Third year after termination of Abatement Term  | 60%                                                    |
| Fourth year after termination of Abatement Term | 40%                                                    |
| Fifth year after termination of Abatement Term  | 20%                                                    |

FORMULA: The recapture formula shall be:

$$\begin{array}{ccccc} & & \text{Applicable Percentage} & & \text{Amount to be} \\ \text{Total Taxes Abated} & \times & & = & \\ & & \text{from above Schedule} & & \text{Recaptured} \end{array}$$

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

**8. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

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

**9. NOTICE**

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

TO CYRUSONE:

- (Whether personally delivered or mailed):

CyressOne, L.L.C.

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TO CITY:

- If mailed:

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

- If by personal or overnight delivery:

Economic Development Department  
Attn: Director  
100 W Houston St.  
San Antonio, Texas 78207

10. **CONDITION**

This Agreement is conditioned entirely upon the approval of the San Antonio City Council, as evidenced by duly approved Ordinance 2013-\_\_-\_\_, dated \_\_\_\_\_, 2013.

11. **ASSIGNMENT**

Except as otherwise expressly provided herein, this Agreement may not be assigned or otherwise transferred without the prior approval of CITY's City Council (which approval shall not be unreasonably withheld), as reflected in a duly adopted ordinance. CYRUSONE must submit a written request to CITY for approval of the proposed assignment or other transfer at least thirty (30) days prior to the effective date of the assignment or transfer of any part of the Property; however, no City Council consent is required for an assignment or transfer to a parent of CYRUSONE, a subsidiary of CYRUSONE, an affiliate entity of CYRUSONE, or to any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of CYRUSONE. However, CYRUSONE shall give CITY prior written notice of all assignments or other transfers that do not require City Council consent, as required under Article 5, Paragraph P. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement.

12. **GENERAL PROVISIONS**

A. None of the property improvements described in this Agreement are financed by tax increment bonds.

B. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the CITY related to this project. No bonds for which the CITY is liable have been used to finance this project.

C. No amendment, modification, or alteration of the terms hereof shall be binding unless in writing dated subsequent to the date of this Agreement and duly authorized by the parties. CYRUSONE acknowledges that City Council approval is required for any and all of these actions.

### **13. SEVERABILITY**

In the event any section, subsection, paragraph, subparagraph, sentence, phrase or work herein is held invalid, illegal or unenforceable, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase or word. In such event there shall be substituted for such deleted provisions a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal and enforceable. This Agreement constitutes the entire Agreement between the parties hereto relating to the subject matter contained herein and supersedes all prior, oral or written agreements, commitments or understandings with respect to the matters provided for herein.

### **14. ESTOPPEL CERTIFICATE**

Any party hereto may request an estoppel certificate related to this project (hereafter referred to as "Certificate") from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate, which if requested, will be addressed to a subsequent purchaser or assignee of CYRUSONE or other party designated by CYRUSONE which shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default, if such is the case, the remaining Term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party(ies) to receive the Certificate.

### **15. OWNER STANDING**

CYRUSONE, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and CYRUSONE shall be entitled to intervene in said litigation.

### **16. APPLICABLE LAW**

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

### **17. CONFLICTS OF INTEREST.**

A. CITY warrants and undertakes that no council member, employee or agent of CITY will receive from or give to any director, employee or agent of CYRUSONE any commission, fee, rebate, or any gift or entertainment of significant cost or value in

connection with this Agreement except as expressly provided for in the Agreement. CITY shall promptly notify CYRUSONE of any breach of this Section and any consideration received as a result of such breach shall be paid over or credited to CYRUSONE, without prejudice to the right of CYRUSONE to seek compensation or claim damages or any other rights that CYRUSONE may have under applicable law.

B. CITY shall maintain and retain complete and accurate records of this transaction for the current calendar year plus the next preceding two (2) calendar years, to enable CYRUSONE to exercise its rights under this Section. CYRUSONE shall have the right, at its expense, upon reasonable prior written notice to CITY, to audit the records of CITY relevant to this Agreement during CITY's normal business hours solely for the purpose of confirming CITY's compliance with this Section, and for no other purpose. For purposes of this Section, "records" shall mean all records relevant to this Agreement and the intent of this Section.

#### 18. **DUPLICATE ORIGINALS**

This Agreement shall be executed in two duplicate originals, with a duplicate original going to each party.

*Signatures appear on next page.*

**EXECUTED** and **AGREED** to as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (the “Effective Date”).

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

**CYRUSONE, LLC.**  
a Delaware limited liability company

\_\_\_\_\_  
Sheryl L. Sculley  
CITY MANAGER

\_\_\_\_\_  
Name  
Title

ATTEST:

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bernard  
CITY ATTORNEY

## EXHIBIT A: PROPERTY DESCRIPTION

## EXHIBIT B: EMPLOYEE BENEFITS

EMPLOYMENT C: NUMBER OF JOBS AND WAGE INFORMATION FORM