

RESOLUTION 2020-019

PASSED: MARCH 9, 2020

**AUTHORIZING A PRE-DEVELOPMENT AGREEMENT WITH VENTUS  
TECH SERVICES, LLC.**

**BE IT RESOLVED BY THE COUNCIL** of the City of DeKalb, Illinois:


**SECTION 1:** That the Mayor of the City of DeKalb be authorized and directed to execute a Pre-Development Agreement with Ventus Tech Services, LLC, a copy of which is attached hereto and made a part hereof as Exhibit A.

**SECTION 2:** That the City Clerk or Executive Assistant of the City of DeKalb, Illinois, be authorized and directed to attest the Mayor's Signature and shall be effective thereupon.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 9<sup>th</sup> day of March 2020 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Morris, Finucane, Smith, Perkins, McAdams, Verbic, Faivre, Mayor Smith. Nay: None.

**ATTEST:**

  
\_\_\_\_\_  
RUTH A. SCOTT, Executive Assistant

  
\_\_\_\_\_  
JERRY SMITH, Mayor



## **PRE-DEVELOPMENT AGREEMENT**

This Pre-Development Agreement (this “**Agreement**”) is made and entered into this 9<sup>th</sup> day of March, 2020, by and between the City of DeKalb, an Illinois home rule municipal corporation (the “**City**”), and [Ventus Tech Services, LLC] (the “**Company**” and, together with the City, the “**Parties**”).

### **RECITALS:**

**WHEREAS**, the City is a home rule unit of local government pursuant to Article VII, Section 6(a) of the Illinois Constitution, and, except as limited by that section, has the authority to exercise any power and perform any function pertaining to its local government and affairs.

**WHEREAS**, the Company is the contract purchaser of the property legally described on **Exhibit A** attached to and hereby made a part of this Agreement (the “**Property**”); and

**WHEREAS**, the Property is currently located in unincorporated DeKalb County, Illinois outside of, but contiguous with, the City’s corporate boundaries; and

**WHEREAS**, the Parties desire the City to annex the Property into the corporate boundaries of the City pursuant to Section 7-1-8 of the Illinois Municipal Code, 65 ILCS 5/7-1-8 (the “**Annexation Statute**”) and in accordance with the terms and conditions set forth in this Agreement and to be set forth in the Development Agreement (defined below) to be executed and delivered by the Parties at a later date, as further described below; and

**WHEREAS**, the Parties acknowledge and agree that no electors reside on the Property; and

**WHEREAS**, in connection with the annexation by the City of the Property into the corporate boundaries of the City, the Company desires the City to grant certain approvals related to the Property (collectively, the “**City Approvals**”) that will be necessary for the Company to

construct on the Property: (i) at least two (2) data center buildings totaling approximately 900,000 square feet and associated components, infrastructure, and equipment, as well as certain accessory uses or buildings (collectively, the “**Project**”); and (ii) at the Company’s sole option, without any obligation to construct any improvements other than the Project, potential subsequent developments similar to the Project; and

**WHEREAS**, the City desires to induce the Company to construct the Project, which is generally depicted on the Concept Plan attached to this Agreement as **Exhibit B**, on the Property; and

**WHEREAS**, this Agreement has been reviewed by the City staff and City Attorney; and

**WHEREAS**, the Parties intend to enter into this Agreement and to perform all of their respective undertakings and covenants set forth herein; and

**WHEREAS**, the City, after due and careful consideration, has concluded that the it is in the best interest of the City to enter into this Agreement pursuant to its home rule authority, and that the annexation, zoning, and development of the Property pursuant to the terms and conditions in this Agreement would further the City’s growth, enable the City to control the development of the area, substantially increase the taxable value of the property within the City, reasonably extend the corporate limits and jurisdiction of the City, permit the sound planning and development of the City, and otherwise enhance and promote the general welfare of the City and its residents.

**NOW, THEREFORE**, in consideration of the promises, undertakings and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged by the Parties, and pursuant to the home rule power of the City, the City and Company agree as follows:

**1.0    Recitals:** The foregoing recitals are hereby incorporated into this Agreement as if fully set forth in this section.

## 2.0 City Approvals:

2.1 If the Company acquires fee simple title to the Property, the Company may submit to the City, in accordance with the Annexation Statute and other applicable laws and ordinances, applications and related submittals in connection with the Company's requests for the City Approvals, including, without limitation, the following applications and submittals (collectively, the "**Applications**"): (a) a petition for the City to annex the Property into the corporate boundaries of the City, along with a plat of annexation depicting the Property (collectively, the "**Annexation Petition**"); (b) an application for the City to grant those zoning approvals necessary to construct the Project, which approvals may include, without limitation, a zoning map amendment, a zoning text amendment, and a planned development (collectively, the "**Zoning Application**"); (c) an application for the City to approve a re-subdivision of the Property (the "**Subdivision Application**"); (d) an application for the City to approve connection of the Property to the City's water system and any other City utilities and infrastructure; and (e) an application for the City to approve certain incentives for the benefit of the Property and the Project.

2.2 The Parties acknowledge and agree that due to the size of the Project and the technical complexity of its design, the substance of the specific City Approvals necessary to construct the Project, including, without limitation, any zoning, land use, and subdivision approvals, will not be finally determined until after this Agreement has been executed and delivered and the design of the Project has advanced sufficiently to identify the applicable City Approvals and related matters. The City and the Company shall enter into a Development Agreement in a form mutually agreed upon by the Parties (the "**Development Agreement**") after the City Approvals have been finally determined. The City Council shall consider approval of the Development Agreement at the same meeting as it considers approval of the Applications. The Development Agreement shall, without limitation, address with specificity the substance of the

City Approvals to be granted by the City in order to induce development of the Project by the Company.

2.3 Upon and after receipt of the Applications for the City Approvals, the City shall diligently, continuously, and in good faith review, consider, and approve the City Approvals in accordance with all applicable laws and ordinances. Without limitation of the preceding sentence, the City of DeKalb City Council hereby agrees that it shall, within 60 days after receipt of the Annexation Petition, and subject to the Conditions Precedent set forth in Section 3.0 of this Agreement, adopt an ordinance annexing the Property into the corporate boundaries of the City pursuant to and in accordance with the Annexation Statute (the “**Annexation Ordinance**”). The City shall, as soon as reasonably practicable following the adoption of the Annexation Ordinance, record and file certified copies of the Annexation Ordinance and the corresponding plat of annexation with the DeKalb County Recorder and the DeKalb County Clerk, respectively.

2.4 After the City Council adopts an ordinance or ordinances approving the Zoning Application (collectively, the “**Zoning Ordinance**”), the City Council shall not, except upon request by the Company or its successors or assigns, approve any zoning map amendments, zoning text amendments, variations, planned development amendments, special use permits, subdivision amendments, or any other zoning and land use actions with respect to the Property and the Project that would amend or vary in any way the zoning and land use classifications of, and regulations governing, the Property and the Project, as set forth in the Zoning Ordinance.

3.0 **Conditions Precedent to Adoption of Annexation Ordinance:** The City agrees that that it shall cause the Annexation Ordinance to include provisions stating that the Annexation Ordinance shall not become legally effective unless and until all of the following conditions precedent have occurred (collectively, the “**Conditions Precedent**”):

- a) The Annexation Ordinance has been adopted by the City Council and approved by the Mayor in accordance with applicable law.
- b) The City Council has approved and authorized the execution of the Development Agreement.
- c) The City and the Company, or its successors and assigns, have executed and delivered the Development Agreement, no default has occurred and is continuing under the Development Agreement, and the Development Agreement remains in full force and effect.
- d) The City has, in accordance with applicable law and City ordinances, held all required duly-noticed hearings and adopted the Zoning Ordinance, the provisions of which shall provide that the Zoning Ordinance shall become effective upon the date that the Annexation Ordinance becomes effective.
- e) The City has, in accordance with applicable law and City ordinances, held all required duly-noticed hearings and adopted an ordinance or ordinances approving the Subdivision Application (collectively, the “**Subdivision Ordinance**”), the provisions of which Subdivision Ordinance shall provide that the Subdivision Ordinance shall be effective upon the date that the Annexation Ordinance becomes effective.
- f) The corporate authorities of the City and all other taxing districts with jurisdiction over the Property have each approved resolutions or ordinances approving participation in the DeKalb County Enterprise Zone (the “**Enterprise Zone**”), including, without limitation, the abatement of *ad valorem* real property taxes levied and extended on the Property in accordance with the terms of the Enterprise Zone designating ordinance, as amended, applicable to High Impact ICM

Knowledge-Based Companies (the “**Property Tax Abatement**”), and all other approvals necessary to cause the Property and the Project to receive all applicable incentives and privileges, including, without limitation, the Property Tax Abatement, available within the Enterprise Zone, as it may be amended from time to time. The taxing districts with jurisdiction over the Property include, without limitation, the City, the County of DeKalb, the DeKalb County Forest Preserve District, DeKalb Community Unit School District No. 428, Afton Township, Afton Township Road & Bridge District, Afton-Pierce Multi Township, Kishwaukee Community College District 523, the DeKalb Public Library District, and the Kishwaukee Water Reclamation District (“**KWRD**”).

- g) The City Council has adopted an ordinance or ordinances granting other incentives for the benefit of the Property and the Project, as will be further described in the Development Agreement.
- h) The State of Illinois Department of Commerce and Economic Opportunity has approved certain incentives for which the Project is eligible as a result of its location within the Enterprise Zone.
- i) The City and the Company have executed and delivered a Water Agreement providing for the connection of the Project to the City water system and sale of water by the City to the Company for use in the operation of the Project.
- j) All actions that are required by law to occur for the Property to be annexed into the KWRD have occurred and the Property has been annexed into the KWRD.
- k) The KWRD and the Company have entered into a Waste Water Agreement providing for the connection of the Project to, and the discharge of waste water by the Project into, facilities owned by the KWRD.

- 1) The City has received written notice from the Company stating that: (i) all of the Conditions Precedent have occurred or, to the extent that any of the Conditions Precedent have not occurred, that the Company has waived the Conditions Precedent that have not occurred; and (ii) pursuant to the provisions of the Annexation Ordinance, the Annexation Ordinance is in full force and effect.

#### **4.0 Development Parameters:**

4.1 Except as provided in this Agreement, the Development Agreement, the Zoning Ordinance, and the Subdivision Ordinance, any development of the Property shall conform to the requirements of the City's Unified Development Ordinance (UDO) and other development regulations with appropriate site, engineering, planned development and landscape plan reviews and approvals by City staff, the City's Planning and Zoning Commission, and the City's Corporate Authorities as set forth in the UDO.

4.2 The Zoning Application and the Subdivision Application shall be in compliance with the development parameters of this Agreement and the applicable provisions in the City's UDO.

4.3 Final development plans for the Project shall be reviewed and approved by the City Staff prior to issuance of a permit for construction on the Property and shall be substantially consistent with the Concept Plan.

**5.0 Development Fees:** The City agrees that no new types or classifications of land development, subdivision, impact or building permit fees, donations, requirements, costs, exactions, conditions, or impositions not in existence as of the date of this Agreement will be imposed upon the Property, the Project, or the Company by the City.

#### **6.0 Miscellaneous:**



6.1 The Parties acknowledge and agree that the individuals who are members of the group constituting the Corporate Authorities of the City are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

6.2 (a) This Agreement shall be valid and binding for a term of twenty (20) years after the date first above named, upon the City and upon the Company, its successors and assigns, and is further intended to be binding upon each successive lot owner of any lots of record created by the approval of any Subdivision Ordinance, and shall constitute a covenant running with the land.

(b) The Company may assign this Agreement without City approval, but only: (i) to an entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Company; and (ii) in connection with its conveyance of all or any part of the Property, and upon said assignment and acceptance by an assignee, the Company shall have no further obligations hereunder as to the Property or that portion of the Property conveyed, but shall continue to be bound by this Agreement and shall retain the obligations created thereby with respect to any portion of the Property retained and not conveyed. If the Company or its successors sell a portion of the Property, the seller shall be deemed to have assigned to the purchaser any and all rights and obligations it may have under this Agreement (excluding rights of recapture) which affect the portion of the Property sold or conveyed and thereafter the seller shall have no further obligations under this Agreement as it relates to the portion of the Property so conveyed, but any such seller shall retain any rights and obligations it may have under this Agreement with respect to any part of the Property retained and not conveyed by such seller.

6.3 The failure of either Party to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon the other Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect. No action taken by any Party shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or equity.

6.4 This Agreement may only be amended by the City's adoption of a resolution authorizing the execution of such amendment, and the subsequent execution of such amendment by the City and the Company. The parties stipulate that the Company does not need to execute an amendment to this Agreement if the Company does not own any part of the Property at the time of any such amendment.

6.5 In the event that any pertinent existing or future regulations, resolutions or ordinances of the City are inconsistent with or conflict with the terms or provisions of this Agreement, the terms or provisions of this Agreement shall supersede the regulations, resolutions or ordinances in question to the extent of such inconsistency or conflict; provided, however, that in the event of a conflict between the provisions of this Agreement and the provisions of any of the Development Agreement, the Zoning Ordinance, and the Subdivision Ordinance, the provision or provisions of the Development Agreement, the Zoning Ordinance, and the Subdivision Ordinance shall control over the provisions of this Agreement.

6.6 (a) Upon a breach of this Agreement, subject to Section 6.6(b) of this Agreement, any of the Parties may secure the specific performance of the covenants and agreements herein contained or may exercise any remedies available at law or in equity, including,

without limitation mandamus, via an appropriate action, the sole venue for which shall be in the Circuit Court of DeKalb County, Illinois.

(b) In the event of a material breach of this Agreement, the Parties agree that the Party alleged to be in breach shall have fifteen (15) days after receipt of written notice of said breach to correct the same prior to the non-breaching Party seeking a judicial remedy as provided for herein; provided, however, that said fifteen (15) day period shall be extended if the defaulting Party has commenced to cure said default and is diligently proceeding to cure the same.

(c) If the performance of any covenant to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (including, without limitation, acts of God, war, strikes, inclement weather conditions, inability to secure governmental permits, or similar acts), the time for such performance shall be extended by the length of such delay provided, however, that the Party that seeks the benefit of this provision shall give the other Party written notice of both its intent to rely upon this provision and the specific circumstances that are beyond the reasonable control of the Party and support assertion of this provision.

6.7 This Agreement sets forth all agreements, understandings, and covenants between and among the Parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire Agreement of the Parties.

6.8 If any provision, clause, word, or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any other provision, clause, word, or designation contained herein. Furthermore, if any provision of this Agreement is held invalid, the invalidity thereof shall not cause the City to change any of the City Approvals

that have been adopted by the City pursuant to the provisions of the City's ordinances and the valid provisions of this Agreement.

6.9 The Corporate Authorities agree to aid the Company and to cooperate reasonably with the Company in dealing with any and all applicable governmental bodies and agencies in obtaining utility and other governmental services for the Property. Furthermore, it is understood and agreed by the Parties that the successful consummation of this Agreement requires their continued cooperation. The Company shall not seek to disconnect any portion of the Property from the City during the term of this Agreement.

6.10 This Agreement may be executed in multiple counterparts, all of which when taken together shall constitute one Agreement.

6.11 The headings of the Sections of this Agreement are for convenience and reference only and do not form a part hereof and do not modify, interpret or construe the understandings of the parties hereto.

6.13 Terms used in this Agreement shall be read in the singular or the plural as may be appropriate to the context in which they are used.

6.14 Notices, including Notices to effect a change as to the persons hereinafter designated to receive Notice(s), or other writings which any party is required to or may wish to serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City, or the Corporate Authorities:

City of DeKalb  
Attention: City Manager  
164 E Lincoln Hwy  
DeKalb, Illinois 60115

with a copy to the City Attorney:

John F. Donahue  
Donahue & Rose  
9501 W Devan Ave., Suite 702  
Rosemont, Illinois 60018

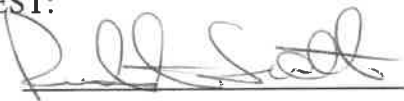
If to the Company:

[Ventus Tech Services LLC]  
c/o Taft Stettinus & Hollister, LLP  
111 E. Wacker Drive, Suite 2800  
Chicago, IL 60601  
Attention: Graham C. Grady  
Anthony R. Licata  
Karl D. Camillucci

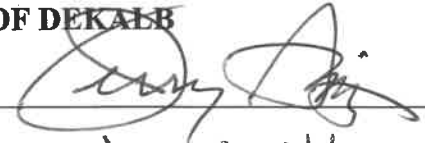
6.15 The Parties each intend that this Agreement shall require the Parties to act in accordance with any and all applicable laws and regulations enacted by any other governmental authority which are applicable to any action or activity undertaken by either Party pursuant to, under, or in furtherance of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute the same, the day and year first above written.

ATTEST:

By:   
Print Name: Ruth A. Scott  
Title: Executive Assistant

**CITY OF DEKALB**

By:   
Print Name: Jerry Smith  
Its: Mayor

**COMPANY**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT B**  
**CONCEPT PLAN**

