

STATE OF TEXAS

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**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

COUNTY OF WILLIAMSON

Retention

This Economic Development Agreement (“Agreement”) is made by and between the City of Georgetown, Texas (“City”) and Citigroup Technology, Inc., a Delaware corporation (“Company”) (City and Company each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

**W I T N E S S E T H:**

**WHEREAS**, Company’s ultimate parent company is Citigroup Inc., which provides financial services enabling growth and economic progress; and

**WHEREAS**, Company owns the real property and improvements located at 201 Blue Ridge Drive, Georgetown, Texas 78626, further described in **Exhibit “A”** (the “Land”), at which Company operates one or more data centers; and

**WHEREAS**, Company has advised City that a contributing factor that would induce Company to maintain its operations in the City would be an agreement by City to provide economic development grants to Company to offset the costs for maintaining operations; and

**WHEREAS**, promoting the location of new business enterprises within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of the City; and

**WHEREAS**, City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by City pursuant to and in accordance with those programs; and

**WHEREAS**, City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in City; and

**WHEREAS**, City has determined that making an economic development grant to Company in accordance with City’s economic development program will (i) further the economic development objectives of City; (ii) benefit City and City’s inhabitants; and (iii) promote local economic development and stimulate business and commercial activity in City; and

**WHEREAS**, City Council does hereby approve this Agreement as a program for making economic development grants to Company for the purpose of stimulating and maintaining its commercial activity within City, and to promote the generation of sales tax, the enhancement of the property tax base, and to maintain and increase the economic vitality of City;

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **Article I Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Affiliate” shall mean, with respect to any Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, the person in question.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of Party’s existence, insolvency, employment of receiver for any part of Party’s property and such appointment is not terminated within one hundred twenty (120) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against a Party and such proceedings are not dismissed within one hundred twenty (120) days after the filing thereof.

“City” shall mean City of Georgetown, Texas.

“Company” shall mean Citigroup Technology, Inc., a Delaware corporation.

“Compliance Certification” shall mean written certification by City that Company has achieved the Retention Eligibility Criteria as of November 1 and/or May 1 of each calendar year during the Eligibility Period.

“Compliance Check” shall mean the review conducted by City on November 1 and May 1 of each calendar year during the Eligibility Period to determine if Company has achieved the Eligibility Criteria.

“Control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, a Person shall be deemed to have “control” of a public corporation if it is the largest shareholder of such corporation and owns or has voting control over not less than twenty-five percent (25%) of all of the then voting stock of such corporation.

“Effective Date” shall mean the last date of execution hereof by the Parties.

“Eligibility Period” means the period beginning with November 1, 2019 and ending November 1, 2024.

“Expansion Agreement” shall mean that certain Economic Development Incentive Agreement-Expansion by and between Company and City of even date.

“Expiration Date” shall mean November 1, 2024.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, volcanic eruption, impact of meteor or extraterrestrial body, tidal or wave event such as a tsunami, meteorological event including but not limited to tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages, plague or other epidemiological event.

“Grant” shall mean the Retention Electric Rate Incentive as referenced in Section 3.3 herein.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within the City.

“Improvements” shall mean the Improvements located at 201 Blue Ridge Drive, Georgetown, Texas 78626.

“Land” shall mean the real property described in **Exhibit “A”**.

“Person” shall mean any natural person or persons, a partnership, a corporation, joint venture, estate, trust, unincorporated association or any other form of business or legal association or entity or a branch of an entity or any federal, state, county or municipal government or any bureau, department or agency thereof.

“Property” shall collectively mean the Real Property and the Tangible Personal Property.

“Real Property” shall collectively mean the Land and Improvements

“Related Agreement” shall mean this Agreement and the Expansion Agreement and any other agreement that directly relates to this Agreement or the Expansion Agreement.

“Retention Electric Rate” shall mean during the Eligibility Period an all-inclusive rate not subject to periodic adjustment of \$0.062675 per kWh for energy used at the Property beginning November 1, 2019, subject to reduction to \$0.053170 per kWh following Compliance Certification May 1, 2020, provided Company has achieved the Retention Eligibility Criteria, and subject to further reduction to \$0.033465 per kWh following Compliance Certification November 1, 2020, provided Company has achieved and maintained the Retention Eligibility Criteria, subject to the penalties provided in Section 3.3 hereof.

“Retention Eligibility Criteria” shall mean a 12-month average of a minimum of (i) 92% load factor for electricity for the Property; (ii) 6,000 kW of demand usage of electricity for the Property; and (iii) and a minimum of 4,000,000 kWhs of usage of electricity for the Property calculated by City for the prior 12-month period prior to each May 1 and November 1 of each calendar year during the Eligibility Period.

“Required Use” shall mean the continuous operation of one or more data centers.

“Special Resolution Event” shall mean any of the following events affecting Company: (i) a bail-in or other compromise of the claims of the creditors of Company; (ii) the appointment of the Federal Deposit Insurance Corporation as receiver of such entity or such equivalent measures or occurrences in the European Union or under the provisions of any federal, state or foreign law of like import; (iii) the invocation of the Orderly Liquidation Authority by the Secretary of the United States Department of the Treasury or such equivalent measures or occurrences in the European Union or under the provisions of any federal, state or foreign law of like import; or (iv) a bankruptcy or insolvency or reorganization or appointment of a receiver or a trustee, a filing or order or an administrative order imposed or permitted by a governmental authority or such equivalent measures or occurrences in the European Union or under the provisions of any federal, state or foreign law of like import; each of the above pursuant to or permitted by the Dodd-Frank Wall Street Reform and Consumer Protection Act or equivalent bank, holding company or investment firm bankruptcy or resolution legislation applicable to Company.

“Special Resolution Recipient” shall mean (i) any Person which is a successor to Company in conjunction with a Special Resolution Event by merger, consolidation, reorganization or action of a governmental or regulatory authority; (ii) any purchaser of all or a substantial part of the assets or a majority of the stock or a majority interest in the distributions of profits and losses of Company in conjunction with a Special Resolution Event; or (iii) any purchaser of all or a substantial part of a business of Company in conjunction with a Special Resolution Event.

## **Article II Term**

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and continue until the Expiration Date, unless sooner terminated as provided herein.

## **Article III Retention Economic Development Grant**

3.1 Compliance Check. City shall on May 1 and November 1 of each calendar year during the Eligibility Period, beginning November 1, 2019, conduct a review and determine whether Company has achieved the Retention Eligibility Criteria.

3.2 Compliance Certification. City shall issue a written certification (“Compliance Certification”) as of May 1 and November 1 of each calendar year during the Eligibility Period for which Company has achieved the Retention Eligibility Criteria following the Compliance Check.

3.3 Retention Electric Rate Incentive. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Company City agrees that during the Eligibility Period beginning November 1, 2019 to charge Company the Retention Electric Rate for electricity usage at the Property; provided, however: (i) if the load factor drops below a monthly average of 92%, a rate of \$0.009505 will be added to the initial all-inclusive rate not subject to periodic adjustment of \$0.062675 per kWh until the next Compliance Check shows an increase above minimum requirements of the Retention Eligibility Criteria; and (ii) if the monthly average demand and kWhs usage of electricity drops below the minimum requirements of the Retention Eligibility Criteria, then the rate for electricity usage for the Property would convert back to the current all-inclusive rate not subject to periodic adjustment of \$0.076920 per kWh until the next Compliance Check shows an increase above the minimum requirements of the Retention Eligibility Criteria.

3.4 Grant Limitations. Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision and this Agreement shall in no way be construed as being secured by ad valorem taxes or financed by debt. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. None of City’s obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.5 Current Revenue. The Grant made hereunder shall be paid solely from lawfully available funds. Consequently, notwithstanding any other provision of this Agreement, City shall have no obligation or liability to pay any Grant except as allowed by law. City shall not be required to pay any Grant if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.6 Audit. Company shall grant reasonable access to all paper and electronic records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement to City or such other persons or entities designated by City for the purposes of inspecting such books and records, provided that City has provided ten (10) business days prior notice, and City or its representatives shall not unduly disrupt Company's operations. All records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement shall be subject to examination or audit by City, or such other persons or entities designated by City in accordance with all applicable state and federal laws, regulations or directives. City (including any such other persons or entities designated by City) shall to the extent allowed by law maintain the confidentiality of the Company's records, documents and correspondence and not make a copy of any such records and shall return within thirty (30) days any records upon written request. City may in its discretion request a Sales Tax Report from the State of Texas. Any such audit shall be conducted via electronic mail, U.S. mail or courier wherever possible, but where this creates an unreasonable burden the audit may be conducted in Georgetown, Texas or other mutually agreed location, during normal business hours and at City expense.

#### **Article IV**

#### **Conditions to the Economic Development Grant**

The obligation of City to provide the Grant shall be conditioned upon the continued compliance with and satisfaction of each of the terms and conditions of this Agreement by Company, and each of the conditions set forth in this Article.

4.1 Good Standing. Company shall not have an uncured breach or default of this Agreement or a Related Agreement, subject to the notice and cure period set forth in Section 5.1.

4.2 Required Use. During the term of this Agreement following the Effective Date and continuing thereafter until the Expiration Date, the Property shall not be used for any purpose, other than the Required Use, and the use and occupancy of the Improvements in conformance with the Required Use shall not cease for more than thirty (30) days except in connection with and to the extent of an event of Force Majeure or renovation of the Improvements.

4.3 Continuous Occupancy. Subject to events of Force Majeure and subject to the rights to assign set forth in Section 6.1, Company shall, beginning on the Effective Date and continuing thereafter until the Expiration Date, continuously own and occupy the Property.

#### **Article V**

#### **Termination**

5.1 Termination. This Agreement shall terminate on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by written agreement of the Parties;

- (b) upon written notice by either Party, if other Party defaults or breaches any of the terms or conditions of this Agreement or a Related Agreement and such default or breach is not cured within ninety (90) days after written notice thereof;
- (c) upon written notice by City, if Company suffers an event of Bankruptcy or Insolvency;
- (d) upon written notice by City, if any Impositions owed to City or the State of Texas by Company shall have become delinquent (provided, however, such Party retains the right to timely and properly protest and contest any such taxes or Impositions) and Company fails to pay such delinquent Impositions within thirty (30) days following receipt of such written notice; and
- (e) upon written notice by a Party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 Offsets. City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether the debt due City has been reduced to judgment by a court.

## **Article VI Miscellaneous**

6.1 Binding Agreement; Assignment. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. This Agreement may not be assigned without the prior written consent of City. Notwithstanding the forgoing Company shall be permitted, without the need to obtain City's consent or approval, to assign Company's interest in the Agreement to an Affiliate of Company, a Special Resolution Recipient and/or a purchaser of the Real Property; provided: (i) Company provides City thirty (30) days prior written notice; and (ii) such assignee assumes all of the obligations and liabilities of Company evidenced by a written document reasonably acceptable to City.

6.2 Limitation on Liability. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. It is understood and agreed among the Parties that Company, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto. City Manager is authorized to execute any instruments related to this Agreement, including any amendments to this Agreement.

6.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, addressed

to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing), or on the day actually received or refused if sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: David Morgan  
City Manager  
City of Georgetown  
113 E. Eighth Street  
Georgetown, Texas 78626

With a copy to:

Charlie McNabb  
City Attorney  
City of Georgetown  
113 E. Eighth Street  
Georgetown, Texas 78626

If intended for Company, to:

Attn: Gerard O'Reilly  
Citigroup Technology Inc.  
388 Greenwich Street  
New York, New York 10013

With a copy to:

Citigroup Inc.  
Corporate Law Department  
388 Greenwich Street, 17th Floor New York,  
New York 10013  
Attn: Associate General Counsel of Real Estate

6.5 Entire Agreement. This Agreement is the entire Agreement among the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement among the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.6 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Williamson County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.7 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.8 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.9 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.



6.10 Recitals. The recitals to this Agreement are incorporated herein.

6.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.13 Employment of Undocumented Workers. During the term of this Agreement Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the amount of the Grant and any other funds received by Company from City as of the date of such violation within 120 days after the date Company is notified by City of such violation, plus interest at the rate of 4% compounded annually from the date of violation until paid. Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts.

6.14 Anti-Bribery, Personal Dealings and Non-Subornation.

(a) Each Party represents, warrants and covenants to the other Party, that in connection with this Agreement neither the representing Party nor any of its personnel has made or offered to make (or will make or offer to make), directly or indirectly, any unlawful payments to or has conferred or offered to confer (or will confer or offer to confer), directly or indirectly, any benefit upon any person, including for the avoidance of doubt (i) in any country or territory, any person who holds a legislative, administrative, judicial, executive or military position of any kind (whether appointed or elected) of any federal, state, provincial or local jurisdiction or exercises a public function for any jurisdiction, public agency or public enterprise (including any officer, official, employee or agent of any government, any government-owned or government-controlled entity or any public international organization or any person acting in an official capacity for or on behalf of any government entity), or (ii) any political party, party official or candidate for public office, in violation of any anti-bribery-related applicable law, including the U.S. Foreign Corrupt Practices Act (FCPA) and the U.K. Bribery Act (UKBA). Each Party further represents, warrants and covenants to the other that neither the representing Party nor any of its personnel has otherwise violated, or will violate, any anti-bribery-related applicable law, including the FCPA and the UKBA, or has made or offered to make (or will make or offer to make), directly or indirectly, any payments to or has conferred or offered to confer (or will confer or offer to confer), directly or indirectly, any benefit upon: (a) any employee, agent or fiduciary of any third party with the intent to influence the conduct of that employee, agent or fiduciary in any manner relating to this Agreement, or (b) any person (1) with the intent to induce (or to reward) the recipient or another person to do or omit to do any act in violation of his or her duties or responsibilities, to reward any conduct or to otherwise improperly influence any person in any manner relating to this Agreement, or (2) if that person's acceptance of a payment or benefit would itself constitute a violation of his or her duties or responsibilities.

(b) Each Party further represents, warrants and covenants to the other that none of its personnel or any of their immediate family members has received or will receive, directly or indirectly, anything of value of any kind from the other Party or its personnel in connection with this Agreement.

(c) Each Party further represents, warrants and covenants to the other that will conduct its business in compliance with this section and with Company's Anti-Bribery and Corruption Program statement provided by Company to City, and any and all other Company anti-bribery and corruption statements, programs, policies and standards that Company has in effect or may put into effect and which have been provided to or otherwise made available to City (including through any Company external website).

6.15 USA Patriot Act. Each Party hereby represents and warrants that:

(a) the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") has not listed such Party or any of such Party's affiliates, or any person that controls, is controlled by, or is under common control with such Party, on its list of Specially Designated Nationals and Blocked Persons; and

(b) it is not acting in this transaction, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order, the United States Treasury Department, or United States Office of Homeland Security as a terrorist, Specially Designated National and Blocked Person, or other banned or blocked person, entity, nation or pursuant to any law, order, rule or regulation that is enforced or administered by the OFAC.

6.16 No Liability. Notwithstanding anything to the contrary in this Agreement, other than as set forth in Article V Company shall have no liability for its failure to meet the conditions and obligations set forth in this Agreement.

*(signature page to follow)*

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF GEORGETOWN, TEXAS**

By: \_\_\_\_\_  
David Morgan, City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Charlie McNabb, City Attorney

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITIGROUP TECHNOLOGY, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT “A”**

### **Description of the Land**

Lot 1, Block A, Project Lonestar Subdivision, a subdivision of the City of Georgetown, Williamson County, Texas, according to the plat thereof recorded in Cabinet CC, Slide 349, Plat Records, Williamson County, Texas.