

STATE OF TEXAS §

COUNTY OF BRAZOS §

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
BETWEEN
THE CITY OF BRYAN
AND
RELLIS CAMPUS DATA AND RESEARCH CENTER, LLC**

This Chapter 380 Economic Development Program Agreement (the “Agreement”) is entered by and between the City of Bryan, a home-rule municipal corporation organized under the laws of the State of Texas (hereinafter referred to as “CITY”), and RELLIS Campus Data and Research Center, LLC (hereinafter referred to as “RCDRC”). CITY and RCDRC may also be referred to collectively as the “Parties” or individually as a “Party.

WHEREAS, RCDRC has entered into a ground lease with the Board of Regents of the Texas A&M University System (hereinafter referred to as “TAMUS”) to lease approximately 25 acres of land, more or less (the “Land”) located on the Texas A&M University System RELLIS Campus (the “RELLIS Campus”) in the City of Bryan (hereinafter the “Ground Lease”), with plans to develop and operate an approximately 225,000 sq. ft. data center with offices and classroom facilities (the “Project”); and

WHEREAS, the City Council finds the construction and operation of a data center by RCDRC will provide a valuable catalyst for economic development in the CITY through the creation and retention of jobs, and an increase in ad valorem taxes to the CITY; and

WHEREAS, the additional taxable value of the Real Property and Tangible Personal Property will achieve the public purpose of promoting economic development and diversity, increasing employment, reducing unemployment and underemployment, expanding commerce and stimulating business and commercial activity in the CITY; and

WHEREAS, to make the Project viable, the Parties desire for CITY to provide an economic development grant to RCDRC in the form of annual payments in an amount equal to one-half of the CITY's portion of ad valorem taxes collected on the Real Property and the Tangible Personal Property, excluding Inventory and Supplies, owned or leased by RCDRC or a tenant of RCDRC and located on the Premises, based upon RCDRC's satisfaction of certain obligations incident to the construction and operation of the data center, and tied to the increase in valuation of the Real Property and Tangible Personal Property attributable to such construction and operation; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, CITY is

authorized to grant and loan funds to promote economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, the City Council has determined that a Chapter 380 Economic Development Grant to RCDRC will serve the public purpose of promoting local economic development and enhancing business and commercial activity in the CITY; and

WHEREAS, the City Council hereby establishes a Chapter 380 economic development program ("Program") whereby, subject to the terms and conditions of the Agreement, CITY will provide economic development incentives to RCDRC in the form of a Chapter 380 Economic Development Grant and take other specified actions as more fully set forth in the Agreement, and in accordance with the terms and subject to the conditions outlined in the Agreement; and

WHEREAS, the City Council has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the Program contain controls likely to ensure that public purpose is accomplished,

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows.

ARTICLE I DEFINITIONS

1.01 Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Ad Valorem Tax Revenues" means the amount of ad valorem taxes, excluding taxes, if any on Inventory and Supplies, collected by CITY on the Property, a portion of which will be repaid to RCDRC in the form of Chapter 380 Payments.

"Affiliate" means any person or entity which directly or indirectly controls, is controlled by, or is under common control with RCDRC, during the term of such control. A person or entity will be deemed to be controlled by any other person or entity if such other person or entity (a) possesses, directly or indirectly, the power to direct or cause the direction of the management of such person or entity whether by contract or otherwise, (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity or (c) has direct or indirect ownership of at least 50% of the equity interests in the entity.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of a receiver for any portion of the Property owned by RCDRC or a material part of a Party’s property, and such appointment is not terminated within ninety (90) days after such appointment is initially made, and general assignment for the benefit of creditors, the filing of a voluntary petition for bankruptcy protection by a Party, or the commencement of an involuntary bankruptcy proceeding against such Party, and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Base Year Taxable Value” shall mean the Taxable Value of the Property as of the 1st day of April, 2023, or on the Completion of Construction, whichever is the latter, from which all increases in the Taxable Value of the Property shall be measured.

“Chapter 380 Payment(s)” shall mean the amount(s) paid by CITY to RCDRC as an economic development grant under Texas Local Government Code, Chapter 380, equal to fifty percent (50%) of the ad valorem taxes collected by CITY for the Property attributable to the Incremental Taxable Value in the calendar year immediately preceding the year in which a Chapter 380 Payment is requested. Such amount(s) shall be calculated based upon the Incremental Taxable Value for each year of the Agreement, except as otherwise provided herein.

“City of Bryan” or “CITY” means the governing home-rule municipal corporation, and the area that is within the city limits of the City of Bryan, in Brazos County, Texas.

“Commencement of Construction” means that: (i) the plans have been prepared and all approvals thereof required by applicable Governmental Authorities have been obtained for the construction of the Project or the applicable phase of the Project; and (ii) all necessary permits for the construction of the Project or the applicable phase of the Project, pursuant to the respective plans therefor have been issued by all applicable Governmental Authorities; and (iii) clearing and/or grading of the Land has commenced, as evidenced by written notification to CITY from the RCDRC’s general contractor.

“Completion of Construction” or “Complete Construction” shall mean that: (i) substantial completion of the Project has occurred; and (ii) the Applicable Governmental Authority has issued a final certificate of occupancy for the Improvements.

“Completion of Construction Date” shall mean the date of Completion of Construction.

“Effective Date” shall mean the date this Agreement has been signed by both CITY and RCDRC.

“First-Year of Cash Incentive(s)” shall mean the first calendar year following the calendar year in which the Incremental Taxable Value of the Property is assessed by the Brazos

Central Appraisal District.

“Force Majeure” means any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Agreement or delays such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party's fault or negligence and (d) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money. Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) delays in obtaining necessary goods or services essential for Project completion caused by an epidemic or pandemic; (vi) fires; (vii) actions or omissions of a Governmental Authority that were not voluntarily induced or promoted by the affected Party or brought about by the breach of its obligations under this Agreement or any Applicable Law; and (viii) failure of the other Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof, provided, however, that under no circumstances shall Force Majeure include any of the following events: (A) RCDRC's financial inability to perform as a result of economic hardship or changes in market conditions; or (B) any strike or labor dispute involving the employees of RCDRC or any Affiliate of RCDRC, other than industry or nationwide strikes or labor disputes.

“Governmental Authority(ies)” means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local government corporation, and the Texas A&M University System Office of Facilities Planning and Construction.

“Ground Lease” means the Ground Lease dated June 1, 2020, between RCDRC and the Board of Regents of the Texas A&M University System with respect to the lease of the Land to RCDRC.

“Improvements” shall mean construction of a new, approximately 225,000 square ft. data center, with offices and classroom facilities, and other ancillary facilities such as required parking and landscaping, and as more fully described in the submittals to be filed with CITY.

“Incremental Taxable Value” means the Taxable Value for the Property as of January 1st of a given year less the Base Year Taxable Value.

“Inventory” means only those items of Tangible Personal Property, consisting of items commonly referred to as wares, goods, and merchandise, which are held for sale or lease to

customers in the ordinary course of business.

“Land” means the approximately 25 acres of land located on the RELLIS Campus the subject of a Ground Lease between RCDRC, as tenant, and the Board of Regents of the Texas A&M University System, as landlord, as further described and depicted in the attached **Exhibit “A”**.

“Maximum Payment Amount” means the cumulative total, not to exceed amount of Chapter 380 Payments which may be paid to RCDRC by CITY during the term of this Agreement, which amount shall in no event, exceed Fifteen Million, Seven Hundred Forty-Seven Thousand, Five Hundred Dollars (\$15,747,500).

“Payment Request” means a written request from RCDRC to CITY for the Chapter 380 Payment, in the form attached hereto as **Exhibit “C”**, and accompanied by a report of all property ID numbers associated with the Project, and other supporting documentation.

“Project” is RCDRC’s planned approximately 225,000 sq. ft. data center with office and classroom facilities to be located at Texas A&M University Systems RELLIS Campus in Bryan, Texas.

“Property” shall mean the Real Property and Tangible Personal Property, excluding Inventory and Supplies.

“RCDRC” shall mean RELLIS Campus Data and Research Center, LLC, and its successors and permitted assigns.

“Real Property” shall have the meaning ascribed to it in Section 1.04 of the Texas Tax Code, as amended, and shall include the Land, as described and depicted in **Exhibit “A”**, and the Improvements.

“Real Property Taxes” means CITY’s share of the ad valorem taxes assessed and collected by the Brazos County Tax Assessor-Collector on the value of the Real Property, which shall include the Land and Improvements taxed by the CITY, and shall exclude ad valorem taxes received by CITY on Tangible Personal Property.

“RELLIS Campus” shall mean the Texas A&M University System RELLIS Campus located in the City of Bryan, Brazos County, Texas.

“Supplies” are consumable items of Tangible Personal Property that are used to aid in the operation of a business or profession, but are not for sale or lease, are called supplies. Supplies include such items as paper, toner cartridges, writing instruments and other office supplies, janitorial supplies, and maintenance supplies.

“Tangible Personal Property” shall mean tangible personal property as defined in

Section 1.04 of the Texas Tax Code, as amended, excluding Inventory and Supplies, which are owned or leased by RCDRC or a tenant/customer of RCDRC, and installed or located on the Real Property subsequent to the execution of this Agreement.

“Tangible Personal Property Taxes” means CITY’s share of the ad valorem taxes assessed and collected by the Brazos County Tax Assessor-Collector on the Taxable Value of the Tangible Personal Property, excluding Inventory and Supplies, taxed by CITY, and shall exclude Real Property Taxes.

“Taxable Value” means the appraised value as certified by the Brazos Central Appraisal District as of January 1st of a given year.

ARTICLE II.

TERM

2.01 This Agreement shall commence on the Effective Date and shall continue for a period of ten (10) years after the first Chapter 380 Payment is received, unless terminated sooner. In recognition of the fact that Chapter 380 Payments are, by necessity, calculated and paid after taxes have been levied by and paid to the CITY and, therefore, will always be paid in arrears, the Term of this Agreement will be deemed extended until any Chapter 380 Payments relating to Ad Valorem Tax Revenues attributable to the specified Term of this Agreement have been paid by CITY to RCDRC.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF RCDRC AND CITY

3.01 In order to induce CITY to enter into this Agreement, RCDRC represents and warrants as follows:

- (a) RCDRC is a duly organized and validly existing limited liability company under the laws of the State of Texas.
- (b) RCDRC has the power and authority to execute, deliver, and carry out the terms and provisions of this Agreement and all other instruments to be executed and delivered by RCDRC in connection with its obligations hereunder. The execution, delivery, and performance by RCDRC of this Agreement have been duly authorized by all requisite action by RCDRC, and this Agreement is a valid and binding obligation of the RCDRC enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors’ rights generally.
- (c) RCDRC is not in default in the performance, observance, or fulfillment of any of

the obligations, covenants or conditions contained in any material agreement or instrument to which RCDRC is a party or by which RCDRC or any of its property is bound that would have any material adverse effect on its ability to perform under this Agreement.

(d) To its best knowledge, RCDRC is not a party to or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule, or regulation which could reasonably be expected to materially and adversely affect RCDRC's ability to perform its obligations under this Agreement. RCDRC fully intends, subject to the conditions set forth in this Agreement, to commence and complete the Project.

3.02 In order to induce RCDRC to enter into this Agreement, CITY represents and warrants as follows:

(a) CITY is a home rule municipal corporation operating under the laws of the State of Texas and is authorized and empowered to enter into this Agreement.

(b) The CITY has the authority to levy, assess, and collect ad valorem taxes on the Premises and to use the taxes collected by it from property within the CITY, including the Premises, as provided in this Agreement.

ARTICLE IV. RCDRC OBLIGATIONS

4.01 In consideration of CITY entering into this Agreement providing for the payment of funds constituting a Grant to RCDRC under the authority of Chapter 380, and as an express condition of CITY'S obligation to provide the Chapter 380 Payments to RCDRC, RCDRC agrees to:

(a) Commence Construction of the Project shall commence no later than November 1, 2021, and shall Substantially Complete Construction of the Project within eighteen (18) months of the Commencement of Construction Date.

(b) Construct the Improvements in accordance with all applicable federal, state, and local laws, CITY codes, ordinances, rules, and regulations.

(c) File a copy of construction plans for the Project Improvements with CITY, which shall be deemed to be incorporated by reference herein and made a part hereof.

(d) Maintain the Improvements owned by it during the Term of this Agreement in

accordance with all applicable federal, state, and local laws, CITY codes, ordinances, rules, and regulations.

(e) Make timely payment of ad valorem taxes during the Term of this Agreement. RCDRC shall not allow the ad valorem taxes owed to CITY on the Property by RCDRC, or any other Property owned by RCDRC and located within the City of Bryan, to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal, during the Term of this Agreement. Nor shall RCDRC fail to render for taxation any property owned by RCDRC and located within the City of Bryan.

(f) During the Term of this Agreement, RCDRC shall not default on the Ground Lease.

(g) During the Term of this Agreement, RCDRC shall not assign the Ground Lease to a third party, other than to an Affiliate, without the prior written consent of CITY, which consent shall not be unreasonably withheld, conditioned or delayed. It is understood and agreed by the Parties that RCDRC, in the normal course of its business, will be subletting space in the RELLIS Data Center, as well as office and classrooms for various sub lessees, which subleases do not require the approval of the CITY, and shall not constitute an assignment of the Ground Lease. RCDRC agrees to aggressively seek commercial/industrial tenants, which are not tax-exempt, for the RELLIS Data Center to add value to the Property and create new jobs.

(h) During the Term of this Agreement, RCDRC shall not convey all or part of the Improvements to the Texas A&M University System or other third party without the prior written consent of CITY, which written consent not to be unreasonably withheld conditioned or delayed, with the exception that RCDRC may convey the Improvements to an RCDRC Affiliate.

(i) Comply with all terms and conditions of this Agreement.

ARTICLE V. PERFORMANCE REQUIREMENTS

5.01 CITY's obligation to make the annual Chapter 380 Payment to RCDRC as set forth herein is further contingent and conditioned upon the satisfaction of the following performance requirements:

(a) The Property must achieve a minimum combined Real Property and Tangible

Personal Property Taxable Value of ONE HUNDRED MILLION DOLLARS (\$100,000,000) within thirty-six (36) months of the Completion of Construction Date; and

- (b) The Property must achieve a combined Real Property and Tangible Personal Property Taxable Value of TWO HUNDRED MILLION (\$200,000,000) within sixty (60) months of the Completion of Construction Date.

**ARTICLE VI
CHAPTER 380 PAYMENTS**

6.01 Subject to RCDRC's compliance with the conditions and performance requirements set forth in Sections 4.01 and 5.01 above, CITY agrees to pay annually to RCDRC a Chapter 380 Payment in an amount equal to fifty percent (50%) of the Ad Valorem Tax Revenues collected by CITY for the Property attributable to the Incremental Taxable Value for the preceding calendar year, provided that, in no event shall the annual Chapter 380 Payment paid in connection with a tax year exceed fifty percent (50%) of the amount of ad valorem taxes actually collected by the CITY on the Property by July I for such tax year. The total, cumulative amount of Chapter 380 Payments paid by the CITY under this Agreement shall in no event exceed the Maximum Payment Amount, at which time CJTY's obligation to make the Chapter 380 Payments to RCDRC ends.

6.02 CITY will remit the first Chapter 380 Payment to RCDRC no later than thirty (30) calendar days after receipt by the City Manager of a proper Payment Request, in the form attached hereto as **Exhibit C**, and including all required supporting documentation evidencing proof of payment and compliance with the terms and conditions of this Agreement. Beginning with the first year of Chapter 380 Payments, RCDRC may submit a Payment Request during the period commencing July 1 and ending on December 31 of any given year, after the full or split option payment of the ad valorem taxes. CITY shall have no obligation to request RCDRC submit the Payment Request or the required supporting documentation, and will not issue the Chapter 380 Grant Payment without same. The total amount of Chapter 380 Payments paid by the City under this Agreement shall in no event exceed FIFTEEN MILLION, SEVEN HUNDRED FORTY SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$15,747,500.00), at which time City's obligation to make the Chapter 380 Payments to Developer ends.

6.03 During the term of this Agreement, RCDRC shall be subject to all taxation, including but not limited to, sales tax and ad valorem taxation; provided, this Agreement does not prohibit RCDRC from claiming any exemptions from tax provided by applicable law.

**ARTICLE VII
DEFAULT, TERMINATION AND RECAPTURE**

7.01 This Agreement shall terminate upon any one or more of the following, and CITY shall have no further obligations to make any further Chapter 380 Payments, except as provided in Section 2.01 of this Agreement.

- (a) By mutual agreement of the Parties;
- (b) Expiration Date;
- (c) By CITY, if RCDRC suffers an event of Bankruptcy or Insolvency;
- (d) By CITY or RCDRC in the event, the other Party breaches any of the terms or conditions of the Agreement and any such breach is not cured within sixty (60) days after written notice by the non-breaching Party.

7.02 Event of Default by RCDRC and Recapture. With the exclusion of Section 4.01(a) and Section 5.01 "Performance Requirements", should RCDRC fail to timely comply with any of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, and RCDRC remains in default after written notice and opportunity to cure, CITY shall upon termination of the Agreement have the right to recapture all Chapter 380 Payments paid to RCDRC by CITY during the Term of this Agreement. RCDRC shall repay to CITY any recaptured amounts to CITY within thirty (30) days of Termination. CITY shall have such other remedies as are available in law and in equity.

7.02.1 The foregoing provisions regarding termination of the Agreement and the recapturing of previously paid Chapter 380 Payments shall also apply should the RCDRC fail to pay sales or property taxes owed to the CITY and fails to properly follow legal procedures for protest or contest of such taxes, but only to the extent of the sales or property taxes owed to the CITY and which RCDRC has failed to pay.

7.02.2 RCDRC's obligation to repay any recapture amounts to the CITY under Section 7.04, and the CITY's right and authority to pursue any default and to recover all of the Chapter 380 Payments made to RCDRC under this Agreement shall survive the termination of this Agreement.

7.03 Event of Default by CITY. Should CITY fail to timely comply with any of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failures shall be an Event of Default by CITY and CITY shall have sixty (60) days to cure and remove the

Default, upon receipt of written notice to do so from RCDRC. CITY shall only be liable to RCDRC for the amount of the money grants it is required to convey to RCDRC and shall not be liable to RCDRC for any alleged or actual consequential damages.

**ARTICLE VIII
EVENTS OF FORCE MAJEURE**

8.01 It is expressly understood and agreed by the Parties to this Agreement that if the performance by either Party of any obligation hereunder is delayed by reason of an event of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same for the time and to the extent necessary to allow the affected Party to overcome the event of Force Majeure and resume performance thereof. The Party claiming delay of performance as a result of an event of Force Majeure shall deliver written notice of the commencement of such delay to the other Party as soon as reasonably practicable after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of delay caused by a Force Majeure Event, the claiming Party shall not be entitled to extend the time for performance as provided herein.

**ARTICLE IX
INDEMNIFICATION**

9.01 RCDRC does hereby agree to waive all claims, release, indemnify, defend and hold harmless the City, and all of their officials, officers, agents, and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of RCDRC, its officers, agents, or employees arising out of or in connection with the performance of this Agreement and RCDRC will at its own cost and expense defend and protect the CITY from any and all such claims and demands. The indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the RCDRC or any contractor or subcontractor under workman's compensation or other employee benefit acts.

9.02 RCDRC's indemnification obligations under Section 9.01 shall survive the expiration or early termination of this Agreement.

**ARTICLE X.
RIGHT TO INSPECT**

10.01 City, its agents, and employees shall have the right of access to the Real Property during construction by RCDRC to inspect the Improvements at reasonable times and with reasonable notice to RCDRC, and in accordance with visitor access and security policies of RCDRC and RCDRC's tenants, in order to ensure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

ARTICLE XI REPORTING AND AUDITING

11.01 **Annual Compliance Certification.** RCDRC shall, before December 31 of each calendar year that the Agreement is in effect, certify in writing to CITY that it is in compliance with each term of the Agreement, using the compliance certification form attached hereto as **Exhibit "B"**. The submission of these compliance certification reports shall be the responsibility of RCDRC, and shall be signed by an officer of RCDRC.

11.02 **Access to Records / Right to Audit.** RCDRC shall allow CITY reasonable access, during normal business hours, to review and audit its books and records, and all other relevant records related to the Agreement upon five (5) business days' prior written notice to the RCDRC. RCDRC shall maintain all books and records related to the RCDRC's performance of its obligations under this Agreement for a period of four (4) years from the expiration or early termination of this Agreement. RCDRC's obligation under this Section 11.02 shall survive the expiration or earlier termination of this Agreement.

ARTICLE XII MISCELLANEOUS

12.01 **Incorporation of Recitals.** The determinations recited and declared in the preambles to this Agreement are true and correct and are hereby incorporated herein as part of this Agreement.

12.02 **Entire Agreement.** This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

12.03 **Exhibits, Titles of Articles, Sections, and Subsections.** The exhibits attached to this Agreement, if any, are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

12.04 **Amendments.** This Agreement may only be amended, altered, or terminated by a written instrument signed by both parties.

12.05 **Assignment.** The Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and permitted assigns. RCDRC may not assign this Agreement, except to an Affiliate, without the prior written consent of the City Manager.

12.06 **No Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part thereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

12.07 **Notices.** Any notices required to be provided pursuant to this Agreement are deemed provided within three (3) days after being sent via U.S. Certified Mail, Return Receipt Requested, or when hand delivered to the address provided herein; subject to the right of either Party to designate a different address by notice given in the manner just described. CITY and RCDRC hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

CITY:

City of Bryan, Texas
Attn: City Manager
P.O. Box 1000
Bryan, Texas 77805-1000
300 S. Texas Ave.
Bryan, Texas 77803
Telephone: (979) 209-5100

RELLIS Campus Data and Research Center, LLC:

Attn: Sam Tenorio III
President
833 RELIS Parkway
Bryan, TX 77807
Telephone: (512) 650-6228

12.08 **Applicable Law and Venue.** This Agreement is made and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in State courts located in Brazos County, Texas. The venue for any matters in federal court will be in the United States District Court for the Southern District of Texas, Houston Division.

12.09 **Severability.** In the event, any provision of this Agreement is illegal, invalid, or

unenforceable under the applicable present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision to be illegal, invalid or unenforceable.

12.10 Third Parties. CITY and RCDRC intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the CITY and RCDRC or permitted assignees of the CITY and RCDRC, except that the indemnification and hold harmless obligations by RCDRC provided for in this Agreement shall inure to the benefit of the indemnitees named herein.

12.11 No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

12.12 Employment of Undocumented Workers. During the term of this Agreement, RCDRC agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), RCDRC shall repay to CITY all Chapter 380 Payments received under this Agreement as of the date of such violation within 120 days after the date RCDRC is notified by CITY of such violation, plus interest at the rate of 6% simple interest from the date of RCDRC's receipt of the Chapter 380 Payments until repaid.

12.13 2 HB 1295 Compliance. Section 2252.908 of the Texas Government Code requires that for certain types of contracts, you must fill out a conflict of interest form ("Disclosure of Interested Parties") at the time you submit your signed contract. For further information please go to the Texas Ethics Commission website via the following link, https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

12.14 Boycotts and Foreign Business Engagements. The RCDRC represents and warrants, for purposes of Chapter 2270 of the Texas Government Code, that at the time of execution and delivery of this Agreement, neither the RCDRC, nor any wholly-owned subsidiary, majority-owned subsidiary, parent RCDRC, or affiliate of the RCDRC, boycotts Israel. The RCDRC agrees that, except to the extent otherwise required by applicable federal law, including, without limitation, 50 U.S.C. Section 4607, neither the RCDRC, nor any Affiliate of RCDRC, will boycott Israel during the Term of this Agreement. The terms "boycotts Israel" and "boycottIsrael"

as used in this clause (A) has the meaning assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code. RCDRC represents and warrants, for purposes of Subchapter F of Chapter 2252 of the Texas Government Code, that at the time of execution and delivery of this Agreement neither the RCDRC, nor any Affiliate of RCDRC (i) engages in business with Iran, Sudan or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is an RCDRC listed by the Texas Comptroller under Sections 806.051, 807.051 or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" as used in this clause (B) has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

12.15 No Personal Liability. No elected official of the CITY, officer or employee of CITY shall be personally liable to RCDRC or any successor in interest of RCDRC, in the event of any default or breach by the CITY, or for any amount which may become due to RCDRC or to its successor in interest, or for breach of any obligation under the terms of this Agreement.

12.16 Right of Offset. CITY may deduct from any Chapter 380 payments, as an offset, any delinquent and unpaid utility charges, or other unpaid fees, charges, or taxes assessed and other sums of money owed to, or for the benefit of, the CITY by RCDRC; provided that, before offsetting such sums, CITY must provide RCDRC with (a) advance notice of such offset, (b) sixty (60) days to take action to remedy the situation giving rise to the offset, and/or (c) reasonable opportunity, at its own expense, to contest such offset.

12.17 Independent Contractor. RCDRC shall at all times during the Term of this Agreement remain an independent contractor.

12.18 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

12.19 Current Revenues. The Chapter 380 Payments made hereunder shall be paid solely from current revenues, lawfully available. Notwithstanding anything to the contrary contained herein, the CITY's obligation to make the Chapter 380 Payment(s) under this Agreement is subject to annual appropriation by the Bryan City Council. Under no circumstances shall CITY's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

12.20 Exhibits. Each of the following exhibits is attached hereto and incorporated herein by this reference:

Exhibit "A" Land.

Exhibit "B" Compliance Certification Form

Exhibit "C" Payment Request Form

[Signature Page To Follow]

CITY OF BRYAN, TEXAS:

RELLIS Campus Data and Research Center, LLC

Andrew Nelson

Sam Tenorio

Andrew Nelson, Mayor

Sam Tenorio, III, President

Date: 3/12/2021

Date: 3-5-2021

ATTEST:

Mary L. Stratta

Mary Lynne Stratta, City Secretary



APPROVED AS TO FORM:

Janis K. Hampton

Janis K. Hampton, City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS }

}

COUNTY OF BRAZOS }

This instrument was acknowledged before me on the 5th day of March, 2021 by Sam Tenorio, III, the President of RELLIS Campus Data and Research Center, LLC, a Texas limited liability company, on behalf of said limited liability company.

[Signature]

Notary Public, State of Texas

My Commission expires: August 3, 2024

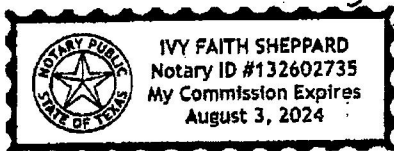


Exhibit "A"

Legal Description and Depiction of Land.

September 28, 2020
Page 1 of 1
Project No. 20-1092



EXHIBIT "A"

BEING A 25.00-ACRE TRACT SITUATED IN THE JAMES F. CURTIS JR. SURVEY, ABSTRACT NO. 12, BRYAN, BRAZOS COUNTY, TEXAS AND BEING OUT OF A 42.343-ACRE TRACT AS DEPICTED ON A SURVEY PLAT PREPARED BY GESSNER ENGINEERING ON AUGUST 22, 2018 (PROJECT NO. 18-0515). SAID 42.343-ACRE TRACT BEING OUT OF A CALLED 1,991.39-ACRE TRACT DESCRIBED IN A DEED WITHOUT WARRANTY TO THE BOARD OF DIRECTORS OF THE AGRICULTURAL AND MECHANICAL COLLEGE OF TEXAS RECORDED IN VOLUME 219, PAGE 210, DEED RECORDS OF BRAZOS COUNTY, TEXAS (D.R.B.C.T). SAID 25.00-ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½-inch iron rod with a yellow plastic cap stamped "GESSNER" (hereinafter referred to as "with cap") found for the northwest corner of the herein described tract, same being the northeast corner of a 11.499-acre tract as depicted on a survey plat prepared by Gessner Engineering on September 16, 2020 (Project No. 20-1034) and being located in the existing south right-of-way (ROW) line of West State Highway 21 (SH-21) (width varies);

THENCE, North 75° 48' 57" East (North 75° 48' 57" East) with the northwest line of said 42.343-acre tract, same being the existing south ROW line of said SH-21, a distance of 1552.67 feet to a ½-inch iron rod with cap set for the northeast corner of the herein described tract;

THENCE, South 13° 31' 21" East departing from said SH-21, a distance of 540.46 feet to a ½-inch iron rod with cap set for the southeast corner of the herein described tract and being located in the southeast line of said 42.343-acre tract and in a curve to the left;

THENCE, in a southwesterly direction with the southeast line of said 43.343-acre tract and with said curve to the left having a radius of 1,108.11 feet, through a central angle of 04° 50' 18", an arc distance of 93.57 feet (chord bears South 78° 54' 37" West, a distance of 93.54 feet to a ½-inch iron rod with cap found for a corner of the herein described tract;

THENCE, South 76° 15' 08" West (South 76° 15' 08" West), a distance of 173.94 (173.94) feet to a ½-inch iron rod with cap found for a corner of the herein described tract and for the beginning of a curve to the left;

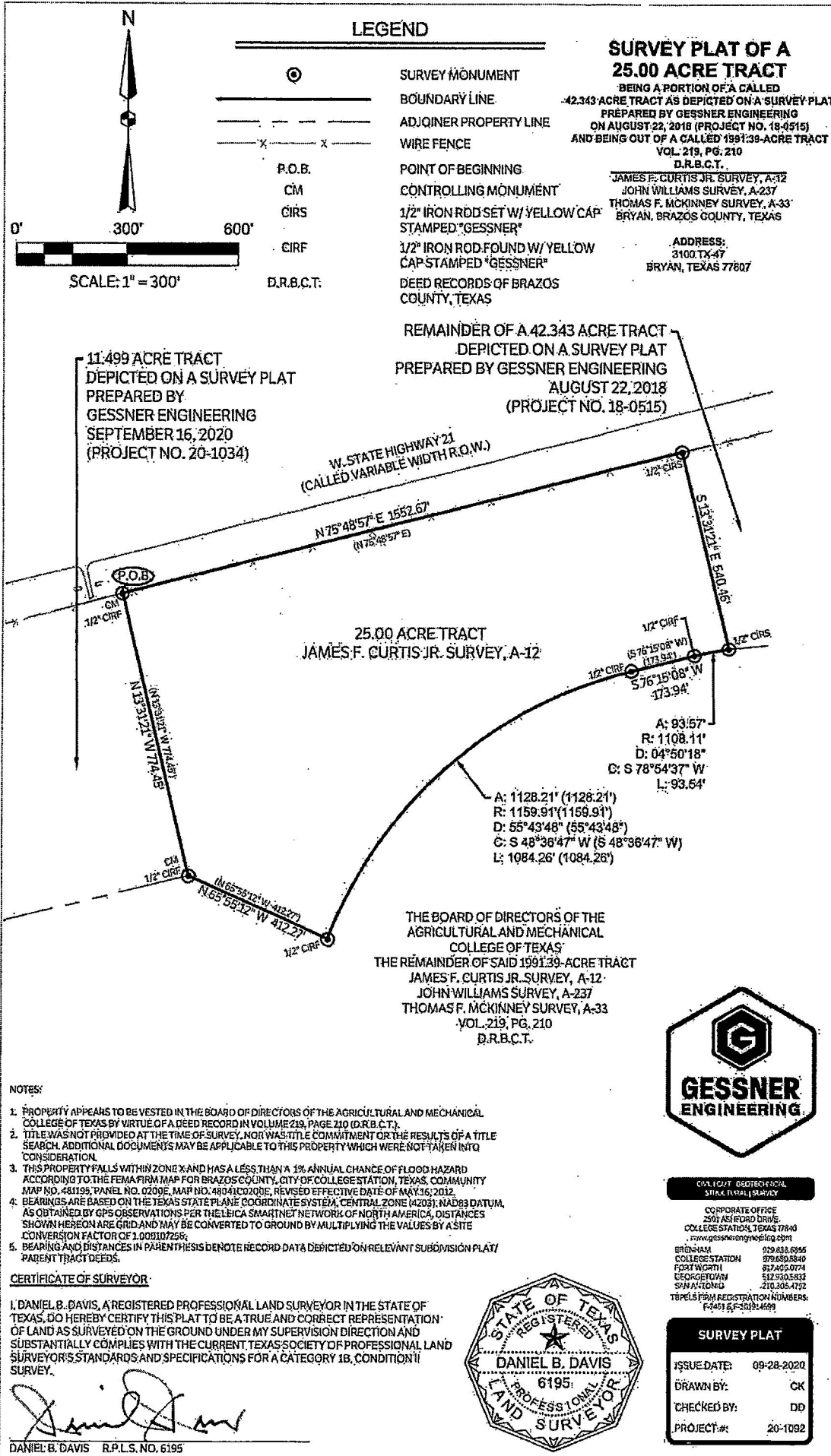
THENCE, in a southwesterly direction with the southeast line of said 42.343-acre tract and with said curve to the left having a radius of 1,159.91 (1,159.91) feet, through a central angle of 55° 43' 48" (55° 43' 48"), an arc distance of 1,128.21 (1,128.21) feet (chord bears South 48° 36' 47" West (South 48° 36' 47" West), a distance of 1,084.26 (1,084.26) feet to a ½-inch iron rod with cap found for the south corner of the herein described tract;

THENCE, North 65° 55' 12" West (North 65° 55' 12" West), a distance of 412.27 (412.27) feet to a ½-inch iron rod with cap found for the southwest corner of the herein described tract and or the southeast corner of said 11.499-acre tract;

THENCE, North 13° 31' 21" West (North 13° 31' 21" West) with the east line of said 11.499-acre tract, a distance of 774.45 (774.45) feet to the **POINT OF BEGINNING** and containing 25.00 acres of land.

Daniel B. Davis, RPLS No. 6195





LEGEND

- SURVEY MONUMENT
- BOUNDARY LINE
- ADJINER PROPERTY LINE
- WIRE FENCE
- P.O.B.
- CONTROLLING MONUMENT
- 1/2" IRON ROD SET W/ YELLOW CAP STAMPED "GESSNER"
- 1/2" IRON ROD FOUND W/ YELLOW CAP STAMPED "GESSNER"
- DEED RECORDS OF BRAZOS COUNTY, TEXAS

SURVEY PLAT OF A 25.00 ACRE TRACT

BEING A PORTION OF A CALLED
 -42.343 ACRE TRACT AS DEPICTED ON A SURVEY PLAT
 PREPARED BY GESSNER ENGINEERING
 ON AUGUST 22, 2018 (PROJECT NO. 18-0515)
 AND BEING OUT OF A CALLED 1991.39-ACRE TRACT
 VOL. 219, PG. 210

D.R.B.C.T.
 JAMES F. CURTIS JR. SURVEY, A-32
 JOHN WILLIAMS SURVEY, A-237
 THOMAS F. MCKINNEY SURVEY, A-33
 BRYAN, BRAZOS COUNTY, TEXAS

ADDRESS:
 3100 TX-47
 BRYAN, TEXAS 77807

REMAINDER OF A 42.343 ACRE TRACT
 DEPICTED ON A SURVEY PLAT
 PREPARED BY GESSNER ENGINEERING
 AUGUST 22, 2018
 (PROJECT NO. 18-0515)

11.499 ACRE TRACT
 DEPICTED ON A SURVEY PLAT
 PREPARED BY
 GESSNER ENGINEERING
 SEPTEMBER 16, 2020
 (PROJECT NO. 20-1034)

W. STATE HIGHWAY 21
 (CALLED VARIABLE WIDTH R.O.W.)

N75°48'57"E 1552.67'
 (N75°48'57"E)

25.00 ACRE TRACT
 JAMES F. CURTIS JR. SURVEY, A-12

1/2" CRS
 576°15'08" W
 173.94'

A: 93°57'
 R: 1108.11'
 D: 04°50'18"
 C: S 78°54'37" W
 L: 93.54'

A: 1128.21' (1128.21')
 R: 1159.91' (1159.91')
 D: 55°43'48" (55°43'48")
 C: S 48°36'47" W (S 48°36'47" W)
 L: 1084.26' (1084.26')

THE BOARD OF DIRECTORS OF THE
 AGRICULTURAL AND MECHANICAL
 COLLEGE OF TEXAS
 THE REMAINDER OF SAID 1991.39-ACRE TRACT
 JAMES F. CURTIS JR. SURVEY, A-12
 JOHN WILLIAMS SURVEY, A-237
 THOMAS F. MCKINNEY SURVEY, A-33
 VOL. 219, PG. 210
 D.R.B.C.T.



NOTES:

1. PROPERTY APPEARS TO BE VESTED IN THE BOARD OF DIRECTORS OF THE AGRICULTURAL AND MECHANICAL COLLEGE OF TEXAS BY VIRTUE OF A DEED RECORD IN VOLUME 219, PAGE 210 (D.R.B.C.T.).
2. TITLE WAS NOT PROVIDED AT THE TIME OF SURVEY, NOR WAS TITLE COMMITMENT OR THE RESULTS OF A TITLE SEARCH. ADDITIONAL DOCUMENTS MAY BE APPLICABLE TO THIS PROPERTY WHICH WERE NOT TAKEN INTO CONSIDERATION.
3. THIS PROPERTY FALLS WITHIN ZONE X AND HAS A LESS THAN A 1% ANNUAL CHANCE OF FLOOD HAZARD ACCORDING TO THE FEMA FIRM MAP FOR BRAZOS COUNTY, CITY OF COLLEGE STATION, TEXAS, COMMUNITY MAP NO. 481195, PANEL NO. 0200E, MAP NO. 48041C0200E, REVISED EFFECTIVE DATE OF MAY 16, 2012.
4. BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE (2011), NAD83 DATUM, AS OBTAINED BY GPS OBSERVATIONS PER THE LBCA SMARTNET NETWORK OF NORTH AMERICA. DISTANCES SHOWN HEREON ARE GRID AND MAY BE CONVERTED TO GROUND BY MULTIPLYING THE VALUES BY A SITE CONVERSION FACTOR OF 1.009107256.
5. BEARING AND DISTANCES IN PARENTHESIS DENOTE RECORD DATA DEPICTED ON RELEVANT SUBDIVISION PLAT/ PARENT TRACT DEEDS.

CERTIFICATE OF SURVEYOR:

I, DANIEL B. DAVIS, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, DO HEREBY CERTIFY THIS PLAT TO BE A TRUE AND CORRECT REPRESENTATION OF LAND AS SURVEYED ON THE GROUND UNDER MY SUPERVISION DIRECTION AND SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL LAND SURVEYOR'S STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1B, CONDITION II SURVEY.

Daniel B. Davis
 DANIEL B. DAVIS R.P.L.S. NO. 6195



OVERSIGHT SUPERVISOR
 STARR BLURAL (84744)

CORPORATE OFFICE
 2501 ASH ROAD DRIVE
 COLLEGE STATION, TEXAS 77840
 www.gessnerengineering.com

BIRMINGHAM 929.633.6955
 COLLEGE STATION 979.689.8840
 FORT WORTH 817.405.0774
 GEORGETOWN 512.950.5832
 SAN ANTONIO 210.305.4772

TBPLS FIRM REGISTRATION NUMBERS:
 P-24916 P-310314699

SURVEY PLAT

ISSUE DATE: 09-28-2020
 DRAWN BY: CK
 CHECKED BY: DD
 PROJECT #: 20-1092

EXHIBIT B
Certificate of Compliance

Reporting Year: _____

I, _____, the authorized representative of RELLIS Campus Data and Research Center, LLC, hereby certify that the RELLIS Campus Data and Research Center, LLC has complied fully with the Chapter 380 Economic Development Program Agreement during the reporting year, including but not limited to Sections 4.01, 5.01, 12.12 and 12.14.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT "C"

**City of Bryan
Payment Request Form
380 Economic Development Agreement**

The following payment request is consistent with the Economic Development 380 Agreement between the City of Bryan and the RELIS Campus Data and Research Center, LLC, signed and approved by the city council on March 9, 2021.

Make Payment to: RELIS Campus Data and Research Center, LLC.

Payment # _____ of 10.

1. Total amount of Ad Valorem Tax Revenues collected by the City through July 1st. \$ _____

2. Abatement agreement % per contract: 50%

3. Multiply Line 1 by Line 2. Amount due from the City of Bryan. \$ _____

I agree that the amount above was paid in full and on time to the Brazos County Tax office.

Name

Title

Date