

**RESOLUTION NO. R-13-12-19-G1**

**WHEREAS**, South Education - Texas LLC has indicated an interest in locating an educational facility ("Facility") in the City which will provide jobs and additional tax base; and

**WHEREAS**, DAC TEXAS I, LLC ("DAC") intends to purchase a tract of land and construct a building to be located on the tract ("Property") within the City as described in Exhibit "A"; and

**WHEREAS**, the City Council anticipates creating a Reinvestment Zone on the Property pursuant to Chapter 312, Texas Tax Code; and

**WHEREAS**, in anticipation of the lease of the Property by South Education - Texas LLC and the creation of the Reinvestment Zone, the City Manager has negotiated a proposed Property Tax Abatement Agreement ("Agreement") with DAC; and

**WHEREAS**, subject to the lease of the Property by South Education - Texas LLC and subject to the creation of the Reinvestment Zone on the Property, the Council wishes to authorize the Mayor to execute the Agreement, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That conditioned on and subject to (1) the construction of the Facility by DAC and lease of same by South Education - Texas LLC and (2) the creation of a Reinvestment Zone on the Property, the Mayor is hereby authorized to execute on behalf of the City a Property Tax Abatement Agreement, a copy of which is attached hereto as Exhibit "B" and incorporated herein.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 19th day of December, 2013.



ALAN MCGRAW, Mayor  
City of Round Rock, Texas

ATTEST:



SARA L. WHITE, City Clerk

## PROPERTY TAX ABATEMENT AGREEMENT

This Property Tax Abatement Agreement (this "*Agreement*") is entered into by and between the City of Round Rock, Texas (the "*City*"), a Texas home rule municipal corporation, and DAC Texas I, LLC, a Texas limited liability company ("*DAC*").

### RECITALS

WHEREAS, DAC intends to expend at least \$7,000,000 in the construction of a building and other improvements (the "*Facility*") to be located on a tract of land (the "*Property*"), as described on the attached **Exhibit A**, and

WHEREAS, by entering into this Agreement, DAC confirms its intent to lease the Facility to South Education – Texas LLC, a Texas limited liability company ("*South University*") for the purpose of South University's locating an educational facility in the Facility which will result in at least 55 new full-time jobs over the term of this Agreement, thereby resulting in new economic development in City; and

WHEREAS, on the 19th day of December 2013, the City Council of the City of Round Rock, Texas, adopted Ordinance No. G-13-12-19-F.2 establishing Reinvestment Zone No. 27 (the "*Reinvestment Zone*") City of Round Rock, Texas for commercial/industrial tax abatement, hereinafter referred to as "Ordinance No. G-13-12-19-F.2", as authorized by the Texas Property Redevelopment and Tax Abatement Act, Chapter 312, Tax Code, V.A.T.S. as amended (the "*Tax Abatement Act*"); and

WHEREAS, the Facility will be located on the Property within the Reinvestment Zone; and

WHEREAS, the City has adopted Ordinance No. G-12-11-08-G3, which Ordinance adopted appropriate guidelines and criteria governing reinvestment zones and tax abatement agreements to be entered into by the City as contemplated by the Tax Abatement Act; and

WHEREAS, the City has determined that the construction and contemplated use of the Facility and creation of jobs, as well as the terms of this Agreement are consistent with encouraging development in the Reinvestment Zone in accordance with the purposes for its creation and are in compliance with Ordinance No. G-12-11-08-G3 and the guidelines and criteria adopted by the City and all applicable laws; and

WHEREAS, the construction of the Facility constitutes a major investment within the Reinvestment Zone that will substantially increase the appraised value of the property within the Reinvestment Zone, and will contribute to the retention of primary and secondary employment within the City; and

WHEREAS, the City finds that there will be no substantial adverse effects on the provision of governmental services or on its tax base and that the planned use of the Facility will not constitute a hazard to public safety, health, or welfare, NOW THEREFORE, the parties hereto do mutually agree as follows:

1. **Authorization.** This Agreement is authorized by the Tax Abatement Act, and by Resolution of the City Council of the City of Round Rock, Texas dated December 19, 2013.

2. **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below:

(a) **"Abatement"** means the full or partial exemption from ad valorem taxes of the Property in the Reinvestment Zone as more particularly set forth in **Section 5**.

(b) **"Abatement Period"** means the period of time beginning with the Effective Date of Abatement and continuing until December 31, 2018.

(c) **"Abatement Value"** means the assessed value of the Property as determined annually by the WCAD on behalf of the City less the amount of the Base Year Value.

(d) **"Affiliate of DAC"** means all companies under common control with, controlled by, or controlling DAC. For purposes of this definition, "control" means 51% or more of the ownership determined by either value or vote.

(e) **"Base Year Value"** means the assessed value of the Property on January 1, 2014 (or on January 1 of the year of execution of this Agreement if determined to be otherwise required by applicable law), as such value is determined by the Williamson Central Appraisal District (the "WCAD") on behalf of the City.

(f) **"City Guidelines"** means the Tax Abatement Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones, as set forth in §38-22, Round Rock Code of Ordinances, 2010 Edition.

(g) **"Effective Date of Abatement"** means the period commencing January 1, 2015.

(h) **"Facility"** means the building and other improvements, or portion thereof, constructed by DAC at a cost of at least \$7,000,000 and leased to South University by DAC to be located on the Property.

(i) **"Ineligible Property"** means the Property and any personal property that was located within the Facility at any time before the period covered by this Agreement.

(j) **"Property"** means the tract of real property owned by DAC located in the Reinvestment Zone and described in **Exhibit A**.

(k) **"Recapture Liability"** means the amount of permit fees waived and ad valorem taxes that were abated as result of this Agreement that are subject to recapture by the City from DAC in the event of an DAC default as described in **Section 9**.

(l) **“Reinvestment Zone”** means the reinvestment zone established on the 19th day of December, 2013, in Ordinance No. G-13-12-19-F.2 establishing Reinvestment Zone No. 27.

(m) **“Tax Code”** means the Tax Code of the State of Texas

(p) **“WCAD”** means the Williamson Central Appraisal District of Williamson County, Texas.

3. **Subject Property.** During the Abatement Period, the Facility shall be leased to South University and used consistent with the general purpose of encouraging development or redevelopment within the Reinvestment Zone. The Property is not located in an improvement project financed by tax increment bonds and does not include any property that is owned or leased by a member of the City Council or by a member of the City Planning and Zoning Commission.

4. **Cost of Facility and Waiver of Permit Fees.** DAC agrees to spend at least \$7,000,000 for the construction of the Facility. DAC agrees to provide City with documentation showing that this obligation has been satisfied. City shall have the right to audit DAC’s records to verify that this obligation has been satisfied. City agrees to waive up to \$50,000 of site preparation and construction permit fees for the Facility.

5. **Grant of Abatement.** Subject to DAC’s satisfaction of its obligations to spend \$7,000,000 on the construction of the Facility, and for DAC to lease the Facility to South University, and the terms and conditions contained herein, and subject to the rights of the holders of any outstanding bonds of the City, the City hereby grants the Abatement on the Abatement Value of the Property located within the Facility as follows:

- |     |               |     |
|-----|---------------|-----|
| (a) | Year 1 (2015) | 40% |
| (b) | Year 2 (2016) | 40% |
| (c) | Year 3 (2017) | 40% |
| (d) | Year 4 (2018) | 40% |

5. **Term of Abatement.** DAC shall receive the Abatement commencing on the Effective Date of the Abatement and continuing for Abatement Period.

6. **Taxable Property.** During the Abatement Period, taxes shall be payable on the Property and the Ineligible Property located within the Reinvestment Zone as follows:

(n) The value of the Ineligible Property as defined herein shall be fully taxable; and

(o) The Base Year Value of the Property as determined by the WCAD shall be fully taxable.

7. **DAC's Development Covenants.** In consideration of the City's agreement to enter into this Agreement, DAC represents that it will expend at least \$7,000,000 to construct the Facility and DAC will lease the Facility to South University for an education facility in the City and DAC acknowledges that the City's obligations hereunder are conditioned upon South University's continued operation of said educational facility throughout the term of this Agreement. In the event DAC fails to construct the Facility by February 28, 2015 (subject to delays caused by events of Force Majeure), the City may terminate this Agreement by giving DAC written notice of such termination.

8. **Default.** In the event that DAC (a) allows its ad valorem taxes to the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or (b) violates any of the material terms and conditions of this Agreement, DAC shall be considered in default. In the event that DAC defaults under this Agreement, the City shall give DAC written notice specifying such default. If DAC has not cured the default within thirty (30) days after its receipt of such written notice, the City may pursue any of its remedies for the collection of delinquent property taxes as provided generally in the Tax Code.

9. **Abatement Recapture.** In the event the City terminates this Agreement as a result of DAC's default, the City may recapture and collect from DAC the Recapture Liability. DAC shall pay to the City the Recapture Liability within thirty (30) days after the date of termination, subject to any and all lawful offsets, settlements, deduction, or credits to which DAC may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability shall not exceed an amount equal to all permit fees waived and taxes which were abated pursuant to this Agreement from the Effective Date of Abatement to the date of termination (together with interest thereon to be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). The City shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

10. **Certification and Inspections.** No later than April 15 of each year of the Abatement Period, DAC must certify in writing to the City that DAC is in compliance with each applicable term of this Agreement and the City Guidelines and, if not in compliance, the steps DAC intends to take to be in compliance or a statement from DAC explaining in reasonable detail why compliance cannot be achieved. DAC agrees that the WCAD and the City, their agents and employees, shall, upon reasonable notice, have reasonable right of access to the Facility in order to ensure that the construction of the Facility is in accordance with this Agreement and all applicable state and local laws and regulations or valid waiver thereof. All inspections will be made with one or more representatives of DAC and/or South University and in accordance with DAC's and South University's security and safety requirements. At the time of annual certification, upon the City's written request, DAC shall also provide a calculation of the aggregate amount of economic benefit DAC has previously received pursuant to this Agreement. In order to efficiently administer the Abatement, DAC agrees also to provide annually, no later than April 15, a full asset listing of personal property located on the Property and in

the Facility to the WCAD and such other information as may be reasonably necessary for the Abatement and assessment of the assets for tax purposes, including any information required by the City Guidelines.

Each year the City will endeavor to send DAC a reminder of its obligation under this **Section 10**. However, the failure of the City to do so shall not relieve DAC of its obligations hereunder.

**11. Annual Tax Application.** It shall be the responsibility of DAC, pursuant to V.T.C.A., Tax Code, § 11.43, to file an annual exemption application form with the WCAD. The Chief Appraiser of the WCAD shall annually determine and record both the abated taxable value and the full taxable value of the Property in the appraisal records. The full taxable value figure listed in the appraisal record shall be used to compute the amount of abated taxes that are required to be recaptured and paid in the event this Agreement is terminated in a manner that results in recapture pursuant to **Section 9**. Each year DAC shall furnish the Chief Appraiser with such information outlined in V.T.C.A., Tax Code, Chapter 22, as may be necessary for the administration of the abatement specified herein. DAC shall be entitled to appeal any determination of the Chief Appraiser in accordance with the provisions of the Texas Tax Code.

**12. Assignment.** DAC may assign this Agreement to a new owner of the Property with the written consent of the City Council of the City, which consent shall not be unreasonably withheld, conditioned or delayed. An assignment to an Affiliate of DAC shall not require such written consent. Any assignment shall be in writing, and shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in this Agreement.

**13. Notice.** All notices and other communications hereunder shall be in writing (whether or not a writing is expressly required hereby), and shall be deemed to have been given and become effective (a) if given by either party or its counsel via an express mail service or via courier or via receipted facsimile transmission (but only if duplicate notice is also given via express mail service or via courier or via certified mail), then if and when delivered to and received (or refused) by the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby), or (b) if sent via certified mail by either party or its counsel, then on the third business day following the date on which such communication is deposited in the United States mails, by first class certified mail, return receipt requested, postage prepaid, and addressed to the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby). Any notice provided for under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

If to City: City of Round Rock  
221 E. Main Street  
Round Rock, TX 78664  
Attn: City Manager  
Phone: (512) 218-5400  
Email: [snorwood@roundrocktexas.gov](mailto:snorwood@roundrocktexas.gov)

With a required copy to:

Sheets & Crossfield  
309 E. Main Street  
Round Rock, TX 78664  
Attn: Stephan L. Sheets  
Phone: (512) 255-8877  
Email: [steve@scrrlaw.com](mailto:steve@scrrlaw.com)

If to DAC: DAC Texas 1 LLC  
c/o Douglas Allred Company  
11452 El Camino Real, Suite 200  
San Diego, California 92130  
Email: \_\_\_\_\_

With a required copy to:

Dean J. Formanek, Esq.  
Warner Angle Hallam Jackson & Formanek PLC  
2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Email: [dformanek@warnerangle.com](mailto:dformanek@warnerangle.com)

14. **Applicable Law.** This Agreement is made and shall be construed and interpreted under the laws of the State of Texas and shall be performable in Williamson County, Texas.

15. **No Liability.** It is understood and agreed between the parties that DAC, in performing its obligations hereunder, is acting independently, and the City assumes no responsibility or liability to third parties in connection therewith. It is further understood and agreed among the parties that the City, in performing its obligations hereunder, is acting independently, and DAC assumes no responsibility or liability to third parties in connection therewith.

16. **Estoppel Certificate.** Any party hereto may request an estoppel certificate from another party hereto so long as the certificate is requested in connection with a bona fide business purpose. Each party agrees to promptly execute and deliver any estoppel certificate requested pursuant to this Section 16. The certificate, which will upon request be addressed to DAC, or a lessee, purchaser or assignee of DAC, shall include, but not necessarily be limited to, statements (qualified to the best knowledge of the party



providing the estoppel) that this Agreement is in full force and effect without default (or if a default exists, the nature of such default and any curative action which should be undertaken to cure same), the remaining term of this Agreement, and such other matters reasonably requested by the party(ies) to receive the certificate.

17. **Legal Construction.** In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

18. **Force Majeure.** Whenever a period of time is prescribed for the taking of an action by DAC, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist attacks (including bio-chemical attacks), civil disturbances and other causes beyond the reasonable control of DAC. However, events of Force Majeure shall not extend any period of time for the payment of sums payable by DAC.

19. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified, amended, altered or revoked without written agreement of the parties hereto.

20. **Recordation of Agreement.** A certified copy of this Agreement or a memorandum summarizing this Agreement, in recordable form may be recorded in the Deed of Records of Williamson County, Texas.

21. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

22. **Authority.** The individuals executing this Agreement on behalf of the respective parties hereto represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

23. **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

24. **Time of Essence.** Time is of the essence in this Agreement.

25. **Joint Drafting.** The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

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

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below (the "*Effective Date*").

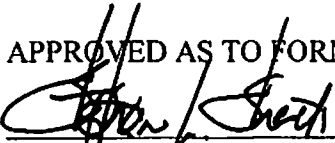
THE CITY OF ROUND ROCK, TEXAS,  
a Texas Home Rule Municipality

By:   
Alan McGraw, Mayor

Date: 12.19.13

Attest:

  
Sara White, City Clerk

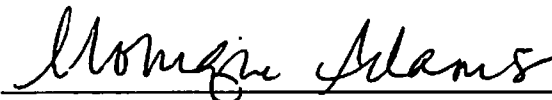
APPROVED AS TO FORM:  
  
Stephan L. Sheets, City Attorney

**Acknowledgment**

State of Texas  
County of Williamson

This instrument was acknowledged before me on this the 19<sup>th</sup> day of Dec., 2013 by Alan McGraw, as Mayor of the City of Round Rock, Texas.



  
Notary Public, State of Texas

DAC TEXAS 1 LLC, a Texas limited liability  
company  
By: Douglas Allred Company, a California  
corporation

Its: Manager

By: Bryan D Putnam  
Name: Bryan D Putnam  
Its: CFO

Acknowledgment

State of California            )  
  ) ss.  
County of San Diego        )

On Jan. 8, 2014, before me, Julie Ann Staner, a Notary Public,  
personally appeared Bryan D. Putnam, who proved to me on the basis of satisfactory  
evidence to be the person whose name is subscribed to the within instrument and acknowledged  
to me that ~~he~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on  
the instrument the person, or the entity upon behalf of which the person acted, executed the  
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Julie Ann Staner

(Seal)



**EXHIBIT A**  
**Legal Description**

**METES AND BOUNDS DESCRIPTION**

FOR A 4.333 ACRE TRACT OF LAND SITUATED IN THE J.M. HARRELL SURVEY, ABSTRACT NO. 284, WILLIAMSON COUNTY, TEXAS, BEING A PART OF THE REMNANT PORTION OF A CALLED 43.50 ACRE TRACT OF LAND CONVEYED TO SV-ONA LAFRONTERA LAND LIMITED PARTNERSHIP RECORDED IN DOCUMENT NO. 2006101706, OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 4.333 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod set with cap marked "Diamond Surveying" on a point in the southerly boundary line of said remnant portion of called 43.50-acre SV-ONA tract, same being on the southwest corner of LOT 1, BLOCK A, FINAL PLAT OF FRONTERA VISTA, a subdivision recorded in Cabinet DD, Slide 288, Plat Records of Williamson County, Texas, same being on a point in the northerly boundary line of a called 12.395 acre tract of land (Tract 1) conveyed to the CITY OF ROUND ROCK recorded in Document No. 2000064087, Official Public Records of Williamson County, Texas, same being on a point in the northerly right-of-way line of S.H. 45 (right-of-way width varies in this area), monumenting the southeast corner and POINT OF BEGINNING hereof, and from which an iron rod found with cap marked "Baker-Aicklen" on the original southeast corner of said called 43.50-acre SV-ONA tract, same being on the southeast corner of said LOT 1, BLOCK A, FINAL PLAT OF FRONTERA VISTA, bears N77°45'53"E for a distance of 791.96 feet;

THENCE with the southerly boundary line of said remnant portion of called 43.50-acre SV-ONA tract, same being with said northerly boundary line of said called 12.395-acre (Tract 1) CITY OF ROUND ROCK tract, same being with said northerly right-of-way line of SH 45, S77°45'45"W for a distance of 321.17 feet to a 1/2" iron rod set with cap marked "Diamond Surveying", monumenting the southwest corner hereof, and from which a TXDOT brass disc found in concrete on the northwest corner of a called 0.377 acre tract of land conveyed to WILLIAMSON COUNTY recorded in Document No. 2002095774, Official Public Records of Williamson County, Texas, bears the following courses and distances S77°45'45"W for a distance of 573.47 feet to a calculated point on the original southwest corner of said called 43.50-acre SV-ONA tract, and S81°57'05"W for a distance of 54.57 feet to said TXDOT brass disc;

THENCE through the interior of said remnant portion of called 43.50-acre SV-ONA tract the following four (4) courses and distances:

1. N12°14'15"W for a distance of 494.57 feet to a 1/2" iron rod set with cap marked "Diamond Surveying" on the beginning of a curve to the right;
2. With said arc of a curve to the right having a delta angle of 9°38'19", an arc length of 94.38 feet, a radius of 561.00 feet, a chord which bears N7°25'05"W for a distance of 94.26 feet, to a 1/2" iron rod set with cap marked "Diamond Surveying", monumenting the northwest corner hereof;


3. N77°45'45"E for a distance of 313.25 feet to a 1/2" iron rod set with cap marked "Diamond Surveying", monumenting the northeast corner hereof;
4. S12°14'15"E for a distance of 104.54 feet to an iron rod found with cap marked "Baker-Aicklen" on the northwest corner of aforementioned LOT 1, BLOCK A, FINAL PLAT OF FRONTERA VISTA, monumenting a point in the easterly boundary line hereof, and from which a 1/2" iron rod found on the northeast corner of said LOT 1, BLOCK A, FINAL PLAT OF FRONTERA VISTA, bears N77°46'09"E for a distance of 762.09 feet;

THENCE with the westerly boundary line of said LOT 1, BLOCK A, FINAL PLAT OF FRONTERA VISTA, S12°14'15"E for a distance of 483.96 feet to the POINT OF BEGINNING hereof and containing 4.333 acres of land more or less.

BEARING BASIS: NAD-83, TEXAS CENTRAL (4203), STATE PLANE SYSTEM. All distances are surface distances. Combined Surface Adjustment Factor used for this survey is 1.00011.

A sketch has been prepared to accompany this metes and bounds description.

◇ DIAMOND SURVEYING, INC.  
116 SKYLINE ROAD, GEORGETOWN, TX 78628  
(512) 931-3100

  
SHANE SHAFER, R.P.L.S. NO. 5281      December 4, 2013      DATE



**EXHIBIT A**  
**Boundary Sketch**

