

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement (“*Agreement*”) is entered into this 15 day of December, 2022, by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation (“*City*”), and **Switch, Ltd.**, a Nevada limited liability company (“SWITCH”).

WHEREAS, the City has adopted Resolution No. 2022-415, attached as **Exhibit A** (“*Program Resolution*”), establishing an economic development program and Resolution No. 2022-414, attached hereto as **Exhibit B** (the “*Authorizing Resolution*”), authorizing the Mayor to enter into this Agreement with SWITCH and its affiliates as defined by Section 1.002 Texas Business Organizational Code, in recognition of the positive economic benefits to the City through SWITCH’s development of approximately 118.41 acres of land, as more particularly described on the attached **Exhibit C** (“*Property*”) as a data center containing a minimum of approximately one hundred and fifty thousand (150,000) square feet of climate controlled data center space, the (“*Project*”) (the Program Resolution and the Authorizing Resolution being collectively referred to herein as the “*City Resolutions*”); and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby SWITCH intends to construct, develop, and operate the Project in conformance with the City’s development approvals for the Project, and;

WHEREAS, SWITCH anticipates that it and its customers will expend approximately \$250,000,000.00 in improvements to real property, additions to personal property, and customer equipment acquisitions in the City; and

WHEREAS, SWITCH intends to hire for the Project at least 15 new full-time and/or full-time equivalent employees as defined by Section 2.5 of this Agreement; and

WHEREAS, the City agrees to provide performance based Economic Incentive Payments (as defined below) to SWITCH to defray a portion of the Project’s costs;

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and SWITCH agree as follows:

1. **Authority**. The City’s execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and the City Resolutions, and constitutes a valid and binding obligation of the City in the event SWITCH proceeds with the development of the Project. The City acknowledges that SWITCH is acting in reliance upon the City’s performance of its obligations under this Agreement in making its decision to commit substantial resources and money to develop the Project.

2. **Definitions.**

2.1 “***Business Personal Property***” means fixtures, equipment, computers, artwork, and furniture purchased for the purpose of supporting SWITCH’s business operations and those of its customers at the facility.

2.2 “***Economic Incentive Payment(s)***” (“***EIP’s***”) means all of the payments required to be paid by the City to SWITCH under the Program and this Agreement.

2.3 “***Effective Date***” is the date this Agreement is executed to be effective by the City and SWITCH.

2.4 “***Facility***” means approximately 150,000 square feet of data center and office space in one or more buildings located in Round Rock, Texas.

2.5 “***Full Time Equivalent Employee***” (“***FTE***”) means a combination of employees, each of whom individually is not a full-time employee because they are not employed on average at least 35 hours per week, but who, in combination, are counted as the equivalent of a full-time employee. FTE’s shall include original hires or their replacements over time.

2.6 “***One Cent Sales Tax Revenues***” means that portion of Sales Tax Revenues (defined below) resulting from the imposition of a one percent municipal sales and use tax on purchases arising from the Project, such as that presently in effect pursuant to Texas Tax Code §321.101(a) and §321.103.

2.7 “***Program***” means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolution to promote local economic development and stimulate business and commercial activity within the City.

2.8 “***Project***” means SWITCH’s planned development in Round Rock which shall consist of data center facilities providing redundant electricity, communications, and other utilities necessary for continuous operations of a data center. The Project shall include at least 1 building containing a minimum of one hundred fifty thousand (150,000) square feet of space.

2.9 “***Property***” means approximately 118.41 acres of land and building(s) more particularly described in **Exhibit C**.

2.10 “***Recapture Liability***” means the total amount of all EIP’s that are paid as result of this Agreement that are subject to recapture by the City from SWITCH in the event of a SWITCH default.

2.11 “***Sales Tax Revenues***” means the amount of sales and use tax remitted to the City arising from the Project. The term “Sales Tax Revenues” shall include any taxes authorized by the State in the future that are intended to replace sales or use tax revenues currently available to the City.

2.12 **“Sales Tax Effective Date”** means the first day of the month following the date upon which SWITCH receives a Texas Sales Tax permit for the Project located at the Property.

3. **Intention of Parties.** The City Council of Round Rock has previously determined that one of its priority goals is to encourage economic development within the City. To further these goals, the City is willing to provide EIP’s to assist SWITCH in the development and operation of the facility.

4. **Term.** This Agreement shall become enforceable upon its Effective Date. This Agreement shall terminate on the 31st day of December, 2037.

5. **Rights and Obligations of SWITCH.** In consideration of the City’s compliance with this Agreement, SWITCH agrees as follows:

5.1 **Compliance with Development Regulations and Other Ordinances.** SWITCH shall comply with the City’s development approval processes and shall develop the Project on the Property in compliance with City ordinances, City-approved PUD zoning ordinance for the Property, City-approved development regulations, and other City development requirements.

5.2 **Improvements and Additions to Real and Personal Property.** SWITCH, directly and through computer equipment purchased by its customers, agrees to spend a cumulative total of at least \$80,000,000.00 in improvements to real property and additions to personal property within the City no later than December 31, 2026 and maintain real property, improvements, and business personal property within the City with a historic cost of \$80,000,000.00 during the Term of this Agreement. The failure of SWITCH to spend the aforementioned \$80,000,000 by December 31, 2026 shall be considered an event of default on the part of SWITCH,

5.3 **SWITCH Accounting.** SWITCH shall maintain complete books and records showing its compliance with its obligations under this Agreement, which books and records shall be deemed complete if kept in accordance with generally acceptable accounting principles as applied to Texas corporations. Such books and records shall be available for examination by the duly authorized officers or agents of the City during normal business hours upon request made not less than ten (10) business days prior to the date of such examination. SWITCH shall maintain such books and records throughout the term of this Agreement and for four (4) years thereafter.

5.4 **Sales Tax Confidentiality – Waiver.** SWITCH agrees to provide the City with a Waiver of Sales Tax Confidentiality in a form approved by the Texas Comptroller’s office “Waiver Form”). The Waiver Form will be utilized by the City to obtain reports filed by SWITCH to verify the amount of sales and use tax revenues generated from the Project for the previous calendar quarter. Such reports shall be based upon reports filed by SWITCH with the Texas Comptroller’s office. The City agrees to maintain the confidentiality of the information proved in such reports and to not disclose any of such information unless otherwise required by applicable law. Provided however, the foregoing shall not prohibit or limit in any way the right of the City to disclose the amounts of EIP’s paid by the City to Switch.

5.5 **Submission of Data.** Within thirty (30) days following the end of each calendar quarter, SWITCH shall submit to the City a schedule detailing the Sales and Use Tax Revenues for each month in that quarter year. As backup for the schedule, SWITCH shall submit the following:

- (a) A copy of all Sales and Use Tax reports or returns for the Project, including amended reports, filed by SWITCH for that quarter year showing the sales and use tax collected and paid; and
- (b) Such other data as the parties mutually determine reasonably appropriate to evidence the sales and use tax collected and paid.

5.6 **Clawback.** In the event that SWITCH fails to comply with any of the actions as described in Section 5.1 through 5.5 above (including, without limitation, any failure to comply with the expenditure requirement of \$80,000,000, and such failure continues for a period of one hundred eighty (180) days after SWITCH's receipt of written notice of such failure from the City, SWITCH will pay to the City an amount equal to but not to exceed the Recapture Liability in accordance with Section 6.5.

6 Rights and Obligations of the City. In consideration of SWITCH's compliance with this Agreement, the City agrees as follows:

6.1 Economic Incentive Payments.

6.1.1 EIP's Based on Sales & Use Tax. City shall, pursuant to Chapter 380 of the Texas Local Government Code, but subject to the conditions set out herein, make quarterly EIPs to SWITCH within thirty (30) days after SWITCH submits to the City the sales and use tax returns reflecting the tax generated by the Project and actually remitted to the City as required in **Section 5.5** above.

(a) Calculations will be based upon sales subject to the City's one percent (1%) general sales tax;

(b) The EIPs will be an amount equal to fifty percent (50%) of the One Cent Sales & Use Tax Revenue remitted to the City for the immediately preceding calendar quarter.

6.2 Payments Subject to Future Appropriations. Although certain payments under this Agreement are calculated based on a formula applied to sales and use taxes, this Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to SWITCH. The payments to be made to SWITCH, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that the City does not appropriate funds in any fiscal year for payments due under this Agreement, such failure shall not be considered a default under **Section 7.3**, and the City shall not be liable to SWITCH for such payments otherwise due during such fiscal year; however, the term of this Agreement shall be extended one (1) year for each year the City fails to appropriate funds for payments otherwise due under this Agreement. SWITCH shall also have the right but not the obligation to rescind this Agreement. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

6.3 **City Accounting.** The City shall maintain complete books and records showing sales and use taxes remitted to the City by the State and disbursements of EIPs to SWITCH, which books and records shall be deemed complete if kept in accordance with generally acceptable accounting principles as applied to Texas municipalities. Such books and records shall be available for examination by the duly authorized officers or agents of SWITCH during normal business hours upon request made not less than ten (10) business days prior to the date of such examination. The City shall maintain such books and records throughout the term of this Agreement and for four (4) years thereafter.

6.4 **EIP Recapture.** In the event the City terminates this Agreement as a result of SWITCH's default, the City may recapture and collect from SWITCH the Recapture Liability. SWITCH shall pay to the City the Recapture Liability within thirty (30) days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which SWITCH may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability shall not exceed, in the aggregate, an amount equal to all EIPs that were paid pursuant to this Agreement from the Effective Date 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.

7. Miscellaneous.

7.1 **Mutual Assistance.** The City and SWITCH will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law, or taxes or assessments attributable to the Property.

7.2 **Representations and Warranties.** The City represents and warrants to SWITCH that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. SWITCH represents and warrants to the City that it has the requisite authority to enter into this Agreement.

7.3 **Default.** If either the City or SWITCH should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of sixty (60) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, SWITCH shall have the right to pursue any remedy at law or in equity for the City's breach. If SWITCH remains in default after notice and opportunity to cure, the City's remedy shall initially be limited to suspension of the EIPs that accrue after the date of such default until such default is cured. After any such default is cured, the City shall promptly forward any such suspended payment to SWITCH. If SWITCH's default is not cured within sixty (60) days after SWITCH's receipt of a second notice of default from the City that clearly and conspicuously indicates the City's intention to terminate this Agreement, the City may

terminate this Agreement by giving SWITCH such second written notice of such termination prior to the date SWITCH cures such default. Any EIPs from City to SWITCH which is not timely paid by City (unless due to SWITCH's default) shall accrue interest 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 from the date such EIPs are due until paid. Any funds owed by SWITCH to the City which are not timely paid by SWITCH shall accrue interest 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 from the date such funds are due until paid.

7.4 Attorney's Fees. In the event any legal action or proceeding is commenced between the City and SWITCH to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

7.5 Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and SWITCH.

7.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

7.7 Assignment. SWITCH may assign all or part of its rights and obligations to a third party with the express written consent of the City (which consent shall not be unreasonably withheld, conditioned or denied) and without consent in the event of a merger, acquisition or restructuring. If the proposed assignee is an affiliated entity under the common control of the assignor, no consent is needed if the assignor is in compliance with all terms of this Agreement. A collateral assignment of this Agreement under the terms of a loan shall not be an assignment for purposes of this Section.

7.8 Amendment. This Agreement may be amended by the mutual written agreement of the parties.

7.9 Termination. In the event SWITCH elects not to proceed with the Project as contemplated by this Agreement, SWITCH shall notify the City in writing of such election, and this Agreement and the obligations on the part of both parties shall thereafter be deemed terminated and of no further force or effect. Notwithstanding the above, in the event SWITCH does not substantially complete the construction of the Project and open for the business by December 31, 2026 (subject to delays caused by an event of force majeure), the City may terminate this Agreement by giving SWITCH notice thereof prior to the date the Project is opened for business.

7.10 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City: City of Round Rock
221 E. Main Street
Round Rock, TX 78664
Attn: City Manager
Phone: (512) 218-5400
Email: citymanager@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

If to SWITCH: SWITCH, Ltd.
7135 S. Decature Blvd.
Las Vegas, NV 89118
Phone:
Attention: Office of the General Counsel
Email: legal@switch.com

Either party may designate a different address at any time upon written notice to the other party.

7.11 **Interpretation.** Each of the parties has been represented by counsel of its choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, regarding its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against either party.

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

7.13 **Severability.** In the event any provisions of this Agreement are illegal, invalid, or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

7.14 **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

7.15 **No Third-Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

7.16 **Force Majeure.** Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (an "*event of force majeure*"). An *event of force majeure* for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion; vandalism; storm or similar occurrences; orders or acts of military or civil authority; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*

7.17 **Exhibits.** The following **Exhibits A - E** are attached and incorporated by reference for all purposes:

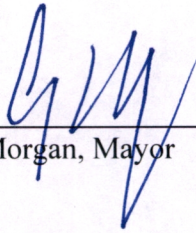
<u>Exhibit A:</u>	City Resolution No. 2022-415
<u>Exhibit B:</u>	City Resolution No.2022-414
<u>Exhibit C:</u>	SWITCH Property Description
<u>Exhibit D:</u>	Certificate of Compliance

6.18 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

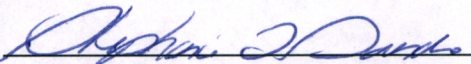
EXECUTED to be effective as of the 15 day of December 2022 (the "*Effective Date*").

(SIGNATURES ON FOLLOWING PAGES)

CITY OF ROUND ROCK, TEXAS,
a home rule city and municipal corporation

By:  _____
Craig Morgan, Mayor

APPROVED as to form:


Stephanie L. Sandre, City Attorney

Switch, Ltd.

a Nevada limited liability company

By: Thomas Morton

Thomas Morton, President and Chief Legal
Officer

Its: President and Chief Legal Officer

Date: December 15, 2022

EXHIBIT A

(The “Program Resolution”)

RESOLUTION NO. R-2022-415

WHEREAS, Switch, Ltd., (“SWITCH”) has expressed to the City of Round Rock (“City”) its desire to locate a world class data center in the City which will provide jobs, sales and use tax revenue and additional tax base to the City, and

WHEREAS, §380.001 Local Government Code provides that a municipality may establish an economic development program (“Program”) to promote local economic development and to stimulate business and commercial activity in the municipality, and

WHEREAS, the City Council has determined that the Program described in Exhibit “A” will meet the goals set forth in said §380.001 and will be of mutual benefit to both parties, Now Therefore

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

That the City offers to SWITCH a §380.001 Program in exchange for SWITCH locating a data center in the City, and

BE IT FURTHER RESOLVED

That the offer of the Program shall be as generally outlined in Exhibit “A” attached hereto and incorporated herein for all purposes.

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 15 day of December, 2022.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

Meagan Spinks, City Clerk

EXHIBIT A (To Program Resolution)
ECONOMIC DEVELOPMENT PROGRAM

The terms of the §380.001 Economic Development Program to be offered to Switch Inc., (“SWITCH”) in exchange for SWITCH’s locating a data center in the City of Round Rock are as generally outlined below:

1. SWITCH’s obligations:
 - 1.1. SWITCH agrees to purchase a tract of land containing approximately 118.41 acres (the “Property”).
 - 1.2. SWITCH agrees to construct a data center with a minimum of approximately 150,000 Square feet of climate-controlled computer space (the “Project”).
 - 1.3. SWITCH agrees to invest at least \$80,000,00 in Project improvements and personal property.
 - 1.4. SWITCH agrees to employ at least 15 full-time equivalent employees in the Facility.
2. City’s obligations:
 - 2.1. City shall, pursuant to Chapter 380 of the Texas Local Government Code, but subject to the conditions set out herein, make quarterly EIPs to SWITCH within thirty (30) days after SWITCH submits to the City the sales and use Tax returns reflecting the tax generated by the Project and actually paid to the City. The EIPs will be an amount equal to 50% of the sales and use tax collected and remitted by SWITCH and actually paid to the City on the city’s local option 1% sales tax rate.
3. The terms and provisions of this Program will be set out in more detail in the Economic Development Program Agreement of even date herewith.

EXHIBIT B

(The “Authorizing Resolution”)

RESOLUTION NO. R-2022-414

WHEREAS, Switch Ltd. (“SWITCH”) plans to construct a data center in the City which will provide jobs and additional tax base (“Project”); and

WHEREAS, the purpose of this Resolution is to approve an economic development agreement as contemplated by Chapter 380 of the Texas Local Government Code whereby SWITCH will expend significant sums to construct and operate the Project in conformance with the City’s development approvals for the Project, Now Therefore

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

That the Mayor is hereby authorized and directed to execute on behalf of the City, an Economic Development Program Agreement with SWITCH, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

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

RESOLVED this 15 day of December, 2022.

CRAIG MORGAN, Mayor

City of Round Rock, Texas

ATTEST:

MEAGAN SPINKS, City Clerk

EXHIBIT C

Property Description

Approximately 118.41 total acres comprised of four (4) different parcels of land, more specifically described as:

- 14.04 acres located at 150 Dell Way, Round Rock TX
- 21.78 acres located at 300 Dell Way, Round Rock, TX
- 32.29 acres bordering Louis Henna Boulevard and immediately east of 4201 Greenlawn Blvd, Round Rock, TX.
- 50.1 acres and buildings located at 2401 Greenlawn Bldg., Round Rock, TX

EXHIBITD

CERTIFICATE OF COMPLIANCE

My name is _____. I am over the age of 21 years and am capable of making this Certificate. The facts stated in this Certificate are within my personal knowledge and are true and correct.

Pursuant to that certain Economic Development Program Agreement (the "Agreement") between Switch, Ltd. "(SWITCH)" and the City of Round Rock, the undersigned hereby certifies to the City that at the time of delivery of this Certificate, SWITCH is in compliance in all material respects with each of its obligations under the Agreement.

Attached to this Certificate as Attachment 1 is the documentation necessary to reflect the statutory activities conducted by SWITCH within the calendar quarter immediately preceding delivery of this Certificate as required by Section 4.7 of the Agreement.

Dated this ____ day of _____, 20__.

By: _____ (Signature)

_____ (Printed Name)

_____ (Title)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS THE ____ DAY OF _____, 20__.

NOTARY PUBLIC, STATE OF TEXAS