



OFFICE of GENERAL COUNSEL
Muskogee County

John Tyler Hammons
General Counsel

330 N 4th Street
Muskogee, OK 74401
918-683-0309

December 12, 2023

Michael Lebow
SVP, Location Strategy & Development
Data Stream C
mlebow@streamdatacenters.com

Dear Mr. Lebow,

This office represents the Muskogee County Board of Commissioners. I am writing to you on behalf of Muskogee County regarding Stream Data Centers proposed capital investment project at Port Muskogee John T. Griffin Industrial Park in Muskogee County, OK.

Stream Data Centers has requested the closure of a specific portion of S 24th St W, a section line road in Muskogee County, extending approximately 1,345 linear feet from Smith Ferry Road to the end of the property you are acquiring east of S 24th St W. We understand this request is essential to the success of Stream Data Centers proposed capital investment project, which holds the promise of substantial economic development within Muskogee County. The decision to consider this road closure aligns with our objectives of attracting new capital investment, promoting economic development, and creating job opportunities in Muskogee County. We believe that accommodating your request will significantly contribute to the overall economic landscape of the county, fostering growth, prosperity, and enhanced opportunities for our community.

It is crucial to note that there has been significant investment in the infrastructure of S 24th St W, amounting to \$777,131.77 within the past 12 months. Given the substantial investment made by our public infrastructure partners, we kindly request equitable financial consideration before taking action to closure the specified portion of S 24th St W and remove the same from the county's road inventory. This proposed action would be discussed and resolved at a regular commissioners meeting held each Monday, with the financial consideration set to match the amount of public investment already made into said portion of S 24th St W.

We look forward to continued collaboration for the benefit of Muskogee County, Port Muskogee John T. Griffin Industrial Park, and the surrounding community.

Respectfully submitted,


JOHN TYLER HAMMONS
General Counsel

CC: Board of County Commissioners
Port Muskogee

OPTION AGREEMENT FOR ROAD VACATION

THIS OPTION AGREEMENT FOR ROAD VACATION (this "Agreement") is made and entered into on this ___ day of _____, 2024 (the "Effective Date"), between the Muskogee County Board of Commissioners (the "County"), and Headwaters Site Development, LLC, a company duly organized and existing under the laws of the State of Texas, having its principal place of business at 2001 Ross Ave, Suite #400, Dallas, Texas 75201, and/or its affiliates or assigns, (the "Company").

RECITALS:

A. The Company desires to develop property in Muskogee County, Oklahoma which is adjacent to S 24th St W, a section line road in Muskogee County (the "Project Site");

B. The Company desires to utilize areas currently devoted to public road access lying within the Project Site, as more particularly depicted in Exhibit "A" (the "Road Closure Area"). The Road Closure Area shall include the portion of the S 24th St W roadway depicted in Exhibit "A" and a portion of the Easement for Public Highway in favor of the County of Muskogee, recorded in Book 4885, Page 466 which crosses the Project Site. The Company intends to submit (or cause to be submitted) to the County, and the County agrees to accept a petition effecting the vacation of the Road Closure Area. Upon proper submission of a petition, the County will forthwith process such petition for vacation, and effect such vacation, of the Road Closure Area as expeditiously as possible, but in no case later than thirty (30) days after written notice is provided to the County of the Company exercising its Option (hereinafter defined). The County understands and acknowledges that the implementation of its obligations related to the Road Closure Area is vitally important to the viability of the Project Site.

C. The County and Company desire to enter into this Agreement to set forth the terms and conditions upon which County shall grant to Company the option to vacate the Road Closure Area.

NOW THEREFORE, in consideration of the premises, the covenants set forth herein, the payment of the Option Payment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County and Company hereby agree as follows:

1. **Grant of Option.** The County hereby grants to Company the option to vacate the Road Closure Area (the "Option"). The County and Company intend that this Agreement creates a covenant in favor of the Company.
2. **Option Period.** The term in which Company may exercise the Option shall begin on the Effective Date and will terminate twelve (12) months after the Effective Date (the "Option Period").
3. **Option Payment.** The Company shall pay to County \$10.00 for the Option (the "Option Payment").

4. **Exercise of Option.** The Company may exercise its option to vacate the Road Closure Area at any time during the Option Period by providing written notice to the County (“Option Exercise Notice”) and making a payment of \$777,131.77 within thirty (30) day of providing its Option Exercise Notice the County. The County shall vacate the Road Closure Area, which includes a portion of the Easement for Public Highway in favor of the County of Muskogee, recorded in Book 4884, Page 466, within thirty (30) days of receiving the Option Exercise Notice.

5. **Representations and Warranties.**

- a. **Authority.** Each party represents that is authorized to bind to the terms of this Agreement and hereby warrants that it has legal authority to enter into this Agreement and that the person signing for each party is authorized and directed to do so.
- b. **No Breach.** The execution, delivery and performance of this Agreement by the County will not (a) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material agreement to which the County is a party or by which the County is bound, (b) conflict with or result in any violation of any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the County or the Road Closure Area contemplated in this Agreement.
- c. **Voting.** The County hereby represents and warrants to the Company that, subject to the terms and conditions of this Agreement, any and all necessary votes required to approve the vacation of the Road Closure Area shall be diligently pursued and obtained at the next regular commissioners meeting following the Effective Date of this Agreement. The County represents and warrants that it shall provide Company proof of said approval within fourteen (14) days of the Effective Date of this Agreement. The County further represents and warrants that it shall take all reasonable and necessary steps, including but not limited to providing notice to all relevant parties, conducting public hearings if required by law, and complying with all applicable statutory and regulatory requirements, to ensure the timely consideration and approval of the vacation of the Road Closure Area. Additionally, the County represents and warrants that it shall act in good faith and use its best efforts to facilitate the approval process, and that it shall promptly inform the Company of any developments or obstacles that may arise during the approval process.

6. Miscellaneous.

- a. **Enforceability.** When signed by both parties to this Agreement, this Agreement is binding on and shall inure to the benefit of the parties and each of their respective successors and assigns.
- b. **Assignment.** This Agreement and all rights and obligations hereunder may be assigned by the Company without the prior written consent of the County.
- c. **Further Assurances.** In connection with this Agreement and the actions contemplated hereby, the parties agree to execute and deliver such additional documents, instruments, conveyances, and assurances and to take such further actions as may be required to carry out the provisions hereof and give effect to the vacation of the Road Closure Area contemplated herein.
- d. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this Agreement or the application thereof to any party or circumstance is prohibited by or invalid under applicable law, such provision shall be effective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or the application of such provision to other parties or circumstances.
- e. **Complete Agreement.** This Agreement contains the entire agreement between the parties hereby regarding the subject matter hereof, and no prior promises, agreements, or representations and warranties, written or oral, shall be of any force or effect unless embodied herein. No modification, termination, or waiver of any provisions set forth herein shall be valid unless in writing and signed by the parties hereto.
- f. **Waiver.** Failure of any party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition unless accompanied by a clear written statement that such term or condition is waived. Any such written statement shall constitute a waiver only as to the specific instance or event in question, and shall have no bearing on future or other events unless an amendment of this Agreement is completed.
- g. **Choice of Law.** This Agreement shall be governed and construed according to the laws of the State of Oklahoma without regard to its choice of law rules.
- h. **Authorization.** Each County and Company represents and warrants that this Agreement constitutes a legal, valid, and binding obligation of such party.

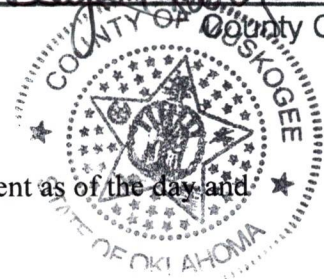
- i. **Counterparts.** This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.
- j. **Headings.** The headings in this Agreement are inserted for convenience or reference only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision of this Agreement.
- k. **Notices.** All notices and communications between the parties shall be in writing and may be directed and mailed to the respective parties hereto at the addresses and to the individual set forth herein:

i. If to County:
General Counsel
400 W Broadway
Muskogee OK 74401

ii. If to Company:
 Headwater Site Development, LLC
 Attn: Michael Lebow
 2001 Ross Ave, Suite #400
 Dallas, Texas 75201

With a Copy to:
 Phillips Murrah P.C.
 Attn: Eric Davis
 101 N. Robinson Ave, Suite 1300
 Oklahoma City, OK 73102
 cedavis@phillipsmurrah.com

11th day of March 2024
 Chairman _____
 Member [Signature]
 Member [Signature]
 Attest [Signature]
 _____ County Clerk



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MUSKOGEE COUNTY:

HEADWATERS SITE DEVELOPMENT, LLC:

[Signature]

 John Tyler Hammons, General Counsel

 Michael Lebow, Manager

EXHIBIT "A"

Description of Road Closure Area

A specific portion of S 24th St W, a section line road in Muskogee County, extending approximately 1,345 linear feet from Smith Ferry Road to the end of the Project Site. The image below depicts the approximate location of the Road Closure Area in red. This description may be supplemented at a later date when additional information is available to Company.



OPTION AGREEMENT FOR ROAD VACATION

THIS OPTION AGREEMENT FOR ROAD VACATION (this "Agreement") is made and entered into on this 19 day of March, 2024 (the "Effective Date"), between the Muskogee County Board of Commissioners (the "County"), and Headwaters Site Development, LLC, a company duly organized and existing under the laws of the State of Texas, having its principal place of business at 2001 Ross Ave, Suite #400, Dallas, Texas 75201, and/or its affiliates or assigns, (the "Company").

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- c. **Voting.** The County hereby represents and warrants to the Company that, subject to the terms and conditions of this Agreement, any and all necessary votes required to approve the vacation of the Road Closure Area shall be diligently pursued and obtained at the next regular commissioners meeting following the Effective Date of this Agreement. The County represents and warrants that it shall provide Company proof of said approval within fourteen (14) days of the Effective Date of this Agreement. The County further represents and warrants that it shall take all reasonable and necessary steps, including but not limited to providing notice to all relevant parties, conducting public hearings if required by law, and complying with all applicable statutory and regulatory requirements, to ensure the timely consideration and approval of the vacation of the Road Closure Area. Additionally, the County represents and warrants that it shall act in good faith and use its best efforts to facilitate the approval process, and that it shall promptly inform the Company of any developments or obstacles that may arise during the approval process.

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- c. **Further Assurances.** In connection with this Agreement and the actions contemplated hereby, the parties agree to execute and deliver such additional documents, instruments, conveyances, and assurances and to take such further actions as may be required to carry out the provisions hereof and give effect to the vacation of the Road Closure Area contemplated herein.
- d. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this Agreement or the application thereof to any party or circumstance is prohibited by or invalid under applicable law, such provision shall be effective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or the application of such provision to other parties or circumstances.
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- f. **Waiver.** Failure of any party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition unless accompanied by a clear written statement that such term or condition is waived. Any such written statement shall constitute a waiver only as to the specific instance or event in question, and shall have no bearing on future or other events unless an amendment of this Agreement is completed.
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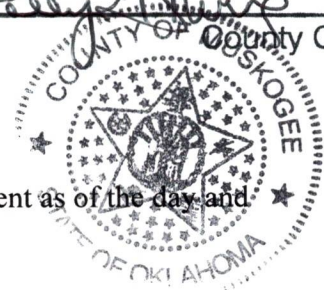
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i. If to County:
General Counsel
400 W Broadway
Muskogee OK 74401

ii. If to Company:
 Headwater Site Development, LLC
 Attn: Michael Lebow
 2001 Ross Ave, Suite #400
 Dallas, Texas 75201

With a Copy to:
 Phillips Murrah P.C.
 Attn: Eric Davis
 101 N. Robinson Ave, Suite 1300
 Oklahoma City, OK 73102
 cedavis@phillipsmurrah.com

11th day of March 2024
 Chairman _____
 Member [Signature]
 Member [Signature]
 Attest [Signature]
 _____ County Clerk



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MUSKOGEE COUNTY:

[Signature]

 John Tyler Hammons, General Counsel

HEADWATERS SITE DEVELOPMENT, LLC:

DocuSigned by:
Michael Lebow

 Michael Lebow, Manager

EXHIBIT "A"

Description of Road Closure Area

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