

RESOLUTION OF THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY (THE AGENCY) AMENDING AN INDUCEMENT RESOLUTION ADOPTED DECEMBER 19, 2013 AND AUTHORIZING AND APPROVING OATH HOLDINGS INC. (SUCCESSOR TO YAHOO! INC. AND OATH INC.) (THE LESSEE) FOR EXPANSION OF ITS FACILITIES AT 5365 CROWN DRIVE, LOCKPORT, NEW YORK (TAX MAP NOS. 108.00-1-34.211/A & 108.00-1-34.211/B) AND CONSTRUCTION OF AN APPROXIMATELY 75,000 SQUARE FOOT EXPANSION THEREON TO BE USED AS DATA CENTER, AND AUTHORIZING THE AMENDMENT OF THE LEASE TO THE AGENCY, LEASEBACK AGREEMENT, AND OTHER PROJECT DOCUMENTS AND EXECUTION OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH.

**WHEREAS**, the Town of Lockport Industrial Development Agency (the Agency) previously approved an application for assistance by Yahoo! Inc., approved and authorized the construction of facilities located at 5365 Crown Drive, Lockport, New York, and executed and delivered various documents including a Lease to Agency, Leaseback Agreement, Equipment Lease Agreement, and other related documents (the 2014 Yahoo! Inc. Project); and

**WHEREAS**, Oath Holdings Inc. (successor to Yahoo! Inc. and Oath Inc.) (the Lessee) has entered into negotiations with the Agency for assistance for the construction of a 75,000 +/- square foot building to serve as an expansion to the 2014 Yahoo! Inc. Project, including installation of equipment therein (the 2019 Expansion) (the 2014 Yahoo! Inc. Project and the 2019 Expansion together are referred to as the "Project") and amendment of the 2014 Yahoo! Inc. Project documents to incorporate the 2019 Expansion into the Lease to Agency, Leaseback Agreement, Equipment Lease Agreement, and other Project documents, with real property tax abatement, mortgage tax abatement (if requested) and sales tax abatement; and

**WHEREAS**, the Lessee has submitted a Supplemental Application for Financial Assistance and other materials and information to the Agency (collectively hereinafter the "Supplemental Application for Incentives") to initiate the accomplishment of the above; and

**WHEREAS**, the Supplemental Application for Financial Assistance sets forth certain information with respect to the Lessee, including the following: the Lessee desires Agency assistance for the 2019 Expansion for use as a data center and related purposes with resultant increase in employment in the Town of Lockport; the Lessee will increase its employment obligations for the Project from the 115 full-time employees agreed to for the 2014 Yahoo! Inc. Project to 125 full-time employees after the 2019 Expansion is fully completed; that but for the availability of financing and/or other assistance by the Agency, the Lessee would not complete the 2019 Expansion and expand its business within the Town of Lockport; that the 2019 Expansion will provide substantial increased employment and

substantial capital investment; if Agency financing or other assistance is disapproved, the Lessee would likely not proceed with the 2019 Expansion; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee to proceed with the 2019 Expansion in the Town of Lockport; and

**WHEREAS**, the Agency has held a Public Hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

**WHEREAS**, the Agency desires to encourage the Lessee with respect to the 2019 Expansion, if by so doing it is able to induce the Lessee to proceed with the 2019 Expansion in the Town of Lockport; and

**WHEREAS**, the Agency has determined that the Project be limited to the parcel located at 5365 Crown Drive, Town of Lockport, New York (Tax Map Nos. 108.00-1-34.211/A & 108.00-1-34.211/B);

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:**

Section 1. The Agency hereby determines that the installation of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Supplemental Application for Incentives and supplemental information furnished by the Lessee as follows: (a) it would not have assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project and the services it offers; (b) but for the availability of Agency assistance for the Project in such area, the Project would not be economically feasible; (c) there will be no substantial adverse disruption of existing employment of facilities of a similar nature in such area; and (d) the Project will preserve and provide substantial employment and substantial capital investment. The Agency further determines, on the basis of the Lessee's Supplemental Application for Incentives that (a) the Project as represented is reasonably necessary to provide the purposes of the Act, and (b) the Project is an integral part of the Lessee's plan to maintain and expand its business in the Town of Lockport.

Section 2. To accomplish the purposes of the Act, the Agency hereby authorizes the Lessee to proceed with the 2019 Expansion as herein described. The Agency is hereby authorized, subject to the provisions of this Resolution to execute such amendments to the 2014 Yahoo! Inc. Project documents, including the Lease to Agency, Leaseback Agreement, Equipment Lease Agreement, and other 2014 Yahoo! Inc. Project documents, and to

execute any additional documents necessary, in order to include the 2019 Expansion into the definition of "Project" and to carry out the purposes of this Resolution. The Chairman, Treasurer, Administrative Director, Secretary, Assistant Secretary, and any member or officer of the Agency, are hereby authorized to execute, acknowledge, and deliver each such amendment and document and the Chairman, Treasurer, Administrative Director, Secretary, Assistant Secretary, and any member or officer of the Agency are hereby authorized to affix the seal of the Agency on each such document, as applicable, and attest the same.

Section 3. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and the 2014 Yahoo! Inc. Project documents, as amended pursuant to this resolution, shall be deemed to be the covenants, stipulations, obligations, and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations, and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations, and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution, and the 2014 Yahoo! Inc. Project documents, as amended by this Resolution, as the case may be, shall be exercised or performed by the Agency or by such members, officers, board, or body as may be required by law to exercise such powers and to perform such duties.

No covenants, stipulation, obligation, or agreement herein contained or contained in the 2014 Yahoo! Inc. Project documents, as amended, or any other agreement or instrument executed and delivered by the Agency in furtherance of this resolution shall be deemed to be a covenant, stipulation, obligation, or agreement of any member, officer, agency, or employee of the Agency in his individual capacity and neither the members of the Agency or any officer executing such shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

Section 4. The Chairman, Treasurer, Administrative Director, Secretary, Assistant Secretary, and any member or officer of the Agency are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver any and all agreements, papers, instruments, opinions, certificates, affidavits, and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution.

Section 5. The provisions of the new Section 875 of the

General Municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it is determined that an agent, project operator, or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators, or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator, or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 6. The Lessee is authorized to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax up to the amounts previously authorized by the Agency in conjunction with the 2014 Yahoo! Inc. Project.

Section 7. Any such action heretofore taken by the Lessee in acquisition of the Project is hereby ratified, confirmed and approved.

Section 8. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee, whether or not the transaction is consummated. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees, and agents and hold the Agency and such persons harmless against claims for losses, damage or injury, or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 9. This resolution is subject to Agency approval of a payment in lieu of taxes agreement for municipal services. Should the Lessee or any of its subtenants vacate the premises prior to the expiration of the arrangement for payment in lieu of taxes, the Lessee shall use its best efforts to obtain new subtenants, so that no application will be necessary for reduction in assessed value, it being the intent of the Agency that payments in lieu of taxes will be maintained at the level called for by this Resolution at all times while it holds a lease to the Project. The PILOT shall be for a period of 15 years with no payment in the first year, then payments in lieu of taxes of 20% of the amount of Taxes in the second and third years, 30% in years four and five; 40% in years six and seven; 50% in years eight and nine; 60% in years ten and eleven; 70% in years twelve and thirteen; and 80% in years fourteen and fifteen. The PILOT

shall apply to the entire Project and shall supersede and replace the PILOT established for the 2014 Yahoo! Inc. Project.

Section 10. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 8 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution, or (b) the Lessee shall continue to take affirmative steps satisfactory to the Agency to complete the transactions contemplated by this Resolution, or (c) the Lessee has commenced construction of the building(s) at the Project location.

Section 11. The Agency hereby determines, based upon information furnished to the Agency by the Lessee, prior approvals and resolutions, and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement or any additional action under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions were included in prior approvals and actions and will not have a significant effect on the environment.

Section 12. The mortgage financing to be issued, if any, shall not be exempt from Federal Income Taxation. Therefore, this resolution is not subject to compliance with the provisions of Section 103 of the Internal Revenue Code of 1954 as amended (the "Code") or to an appropriate allocation under the State law pursuant to the Deficit Reduction Act of 1984.

Section 13. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation, or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs, or the extent to which proceeds derived from the mortgage, if any, will be sufficient to pay the cost of the acquisition, renovation, and installation of the Project. The Lessee is satisfied that the Project is suitable and fit for Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage, or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service, or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service, or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused and the Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.



Section 14. This resolution is subject to compliance with all local building and zoning requirements.

Section 15. Pursuant to General Municipal Law §859-a, the Lessee shall be required to enter into the Agency's uniform agency project agreement (the Project and Agent Agreement) that sets forth terms and conditions under which financial assistance shall be provided. No financial assistance shall be provided in the absence of the execution of such agreement.

Section 16. This resolution shall take effect immediately.

Adopted \_\_\_\_\_, 2019