

**ATTACHMENT A**

**THIS IS A DRAFT COPY ONLY AND IS NOT THE OFFICIAL COPY OF THE FINAL,  
ADOPTED ORDINANCE**

ORDINANCE S-

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A BINDING  
WAIVER OF ENFORCEMENT FOR THE ALIGNED SITE OF THE  
SPECIAL PERMIT PROVISIONS FOR DATA CENTERS  
PURSUANT TO ORDINANCE G-7396.

---

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as  
follows:

SECTION 1. The Council authorizes the issuance of a binding waiver of enforcement (“**Waiver**”) of the special permit provisions for data centers to Aligned Data Centers (Behrend) Propco, LLC (“Aligned”) for the Aligned Site, pursuant to Section 6 of Ordinance G-7396. The Waiver is attached to this Ordinance as **Exhibit A**. The requirements for data centers under Ordinance G-7396 were enacted to safeguard public health and safety and are incorporated into the conditions of this Waiver to ensure that the proposed data center will adequately address and mitigate potential health and safety impacts on neighboring properties, including fire and public safety threats, hazardous materials, energy use, water use, and noise pollution, among other considerations.

SECTION 2. The Council acknowledges this Waiver issued under A.R.S. § 12-1134 resolves the claims asserting diminution in the fair market value of the property for the proposed Aligned Site located at 3151 W. Behrend Drive, Phoenix, AZ

85027 (APN 206-12-206), 19640 N. 31st Avenue, Phoenix, AZ 85027 (APN 206-12-207), and 3202 W. Behrend Drive, Phoenix, AZ (APN 206-12-208B).

...

PASSED by the City Council of the City of Phoenix this \_\_\_\_ day of \_\_\_\_ 2026.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
Denise Archibald, City Clerk

APPROVED AS TO FORM:  
Julie M. Kriegh, City Attorney

By: \_\_\_\_\_  
\_\_\_\_\_

REVIEWED BY:

\_\_\_\_\_  
Ed Zuercher, City Manager

## EXHIBIT A

WHEN RECORDED RETURN TO:

City of Phoenix  
Department of Law  
ATTN: City Attorney  
200 W. Washington Street, 13th Floor  
Phoenix, AZ 85003

### BINDING WAIVER OF ENFORCEMENT

THIS BINDING WAIVER OF ENFORCEMENT (“Waiver”) is granted by the City of Phoenix (the “City”) as of the date of City Council approval set forth below to Aligned Data Centers (Behrend) Propco, LLC (the “Owner”) as owner of the real property located at 3151 W. Behrend Drive, Phoenix, AZ 85027 (APN 206-12-206), 19640 N. 31st Avenue, Phoenix, AZ 85027 (APN 206-12-207), and 3202 W. Behrend Drive, Phoenix, AZ (APN 206-12-208B) (the “Property”) pursuant to the terms and conditions herein.

#### Recitals:

- A. On July 2, 2025, the Phoenix City Council adopted Ordinance G-7396 (the “Data Center Regulations”) amending the City of Phoenix Zoning Ordinance to establish data centers as a defined use and to allow this use in certain zoning districts within the City, pursuant to a special permit that addresses health and safety impacts common to this land use (the “Special Permit”). The primary purpose of a Special Permit is to protect public health and safety by requiring the proposed data center to address and mitigate potential health and safety impacts on neighboring properties, including, among other things, fire and public safety threats, hazardous materials, energy use, water use, and noise pollution.
- B. Pursuant to A.R.S. § 12-1134 (“Proposition 207”), private property owners may seek compensation if they believe enactment of a land use law results in a diminution in value of the private real property as of the date of its enactment. By its terms, Proposition 207 does not apply to land use laws enacted to protect the public’s health and safety. Proposition 207 allows the City to issue a binding waiver of enforcement of the land use law to avoid any demand for compensation.
- C. On October 13, 2025, Owner submitted a demand for \$75,435,397 of compensation under Proposition 207, for alleged impacts relating to the Data Center Regulations (the “Claim”).
- D. In response to the Claim, the City requested health and safety information from the Owner to evaluate whether the Owner’s proposed use of the Property for a data center included sufficient health and safety mitigation measures to allow for a data center use on the Property without unreasonable impacts to public health and safety.

- E. The Owner desires to foster good relationships with the surrounding neighbors and the City.
- F. In response to the City's request, the Owner has provided the City with health and safety information for evaluation. The Owner acknowledges that, to the best of its knowledge and belief, the health and safety information submitted to the City for review is a true and accurate description and depiction of the future location and operation of the data center on the Property.
- G. The City Manager has reviewed and evaluated the submitted information and has prepared a recommendation to the City Council to issue the Owner this Waiver, subject to the terms and conditions herein, to use the Property for a data center without adhering to the Special Permit requirement in Section 5 of the Data Center Regulations, codified at Section 647.A.2.kk of the Zoning Ordinance of the City of Phoenix (the "Waived Requirements").

Waiver:

NOW, THEREFORE, in consideration of the mutual benefits and covenants herein, the City of Phoenix and Owner agree as follows:

1. Incorporation of Introduction and Recitals. The introduction and recitals set forth above are acknowledged by the City and the Owner to be true and correct and are incorporated herein by this reference.
2. Binding Waiver of Enforcement. Pursuant to its authority under A.R.S. § 12-1134, the City acknowledges and agrees that the Waived Requirements shall not be enforced nor applicable to the Property, subject to the following (the "Health and Safety Requirements"):
  - a. Fire and First Responder Requirements:
    - i. Owner shall provide a plan for fire roads, vertical clearance, and access points, and shall coordinate with the Phoenix Fire Department (the "Department") to create a safe radius and fire response plan to address building collapse potential.
    - ii. Owner shall describe fire sprinkler systems that will be installed, including early detection systems and clean agent suppression systems. If such systems include proprietary information due to the nature of the system, the City (and any other jurisdictions likely to respond to incidents on the Property due to the automatic aid system) will execute the necessary non-disclosure agreements.
    - iii. Owner shall provide the Department with building layouts, plans and drawings and provide and coordinate response training with emergency responders. If such layouts, plans or drawings include proprietary information due to nature of the system, the City (and any other jurisdictions

- likely to respond to incidents on the Property due to the automatic aid system) will execute the necessary non-disclosure agreements.
- iv. Owner shall provide measures to prevent or mitigate thermal run away and off-gas monitoring from battery fires. To include efforts to mitigate the creation of an urban heat island by reducing heat absorption with reflective surfaces and vegetation, increasing shade, and improving energy efficiency in buildings and infrastructure.
  - v. Owner shall describe how smoke and off gases will be managed.
  - vi. Prior to the issuance of a Certificate of Occupancy for any data center use, Owner shall provide site tours for the Department and participate in pre-incident planning to educate the Department regarding access, apparatus positioning, fire protection systems, location of hazardous processes, location of monitoring equipment, building construction and interior configuration, contact information for responsible parties, etc.
  - vii. Provide BESS specifications and locations, comply with local guidelines, and provide updates to the Department as project engineering progresses
  - viii. Provide hazardous materials management plans, the location of all hazardous materials and related safety data sheets and comply with all Community Right to Know requirements. For purposes of this agreement, hazardous materials are as defined in the Fire Code.
  - ix. Data center uses will provide fire department access points, shut-offs for power, fuel, and water, and a digital site plan for use by first responders.
    - x. All uses will comply with the Phoenix Fire Code.
  - xi. No unpermitted installations or modifications will be made to approved fire and life safety systems.
  - xii. Data center uses will integrate regional hazardous materials mitigation and disaster response with local emergency management agencies.

b. Energy Use Requirements:

- i. The Owner has delivered to the City: 1) a letter from Arizona Public Service Company that demonstrates its capacity to serve a data center development on the Property; 2) a load service study by Arizona Public Service Company that reflects several load level options for the Property; and 3) a Memorandum of Agreement between the Owner and Arizona Public Service Company for the development of an electric substation and power distribution infrastructure. Prior to Final Site Plan approval for any data center use, the Owner will provide the City, a copy of a final agreement with Arizona Public Service Company that confirms its capacity and commitment to serve the data center.
- ii. Nuclear power generation shall never be permitted on the Property.
- iii. Permanent power generation shall not be permitted on the Property, except for emergency backup generators. Owner may only operate emergency backup generators in the event of a utility outage or for periodic testing and maintenance.

- iv. All on-site power generation shall meet or exceed emissions standards for non-attainment zones and shall comply with the Noise Mitigation Requirements.
  - c. Water Use Requirements:
    - i. Water use on the Property shall not degrade or compromise the adequacy of the water supply for fire suppression efforts.
    - ii. If applicable, the Property shall comply with Ordinance G-7237, which provides that developments that use an average of 250,000 gallons of water or more per day are required to provide a Water Conservation Plan and that developments that use an average of 500,000 gallons of water or more per day are required to demonstrate a minimum of 30% water reuse in the Water Conservation Plan. If applicable, the Water Conservation Plan must be reviewed and approved by the Water Services Department (WSD) prior to preliminary site plan approval.
  - d. Noise Mitigation Requirements:
    - i. Data center uses will not generate noise in excess of 55 dB(A) between 7:00 AM and 10:00 PM or 45 dB(A) between 10:00 PM and 7:00 AM when measured from the property line of the nearest residentially-zoned property.
    - ii. The project will utilize industry-standard noise mitigation strategies, acoustical designs, and materials to reduce overall noise levels to meet City standards. Specific methods to mitigate noise and ensure compliance with the noise limits set forth above require staff approval and shall be stipulated as a condition of Final Site Plan approval.
    - iii. If supported by an updated noise study, the noise limits set forth above may be adjusted to a level that does not exceed the level of existing background noise.
    - iv. Backup generators, chillers, HVAC units, and other noise-generating equipment that will generate noise in excess of 55 dB(A) will be screened, placed between buildings, or located and oriented away from residential uses whenever possible. If such equipment is roof-mounted, it shall be screened for sound mitigation.
3. Waiver Subject to Health and Safety Requirements. This Waiver is subject to the Owner's continuing obligations as follows:
- a. Owner shall not cause or allow any installations or material modifications to the Property that: (i) are inconsistent with, adversely impact, or undermine the Fire and First Responder Requirements, the Energy Use Requirements, the Water Use Requirements, or the Noise Mitigation Requirements; (ii) reduce established standards and efficiencies of life safety systems; (iii) lead to system failures that endanger life safety; or (iv) are not at all times in compliance with the City of Phoenix Fire Code.

- b. Owner shall not cause or allow any material changes to the Energy Use Requirements, including but not limited to the method of providing on-site power for backup purposes, or the method of power delivery from designated energy utility providers, with no less than 120 days' notice to the City.
  - c. Owner shall not introduce potentially hazardous conditions without proper notice, review and permitting. For example, Owner shall not allow or undertake the installation of unpermitted battery energy storage systems or the degradation of water supplies that compromise fire suppression efforts.
  - d. Owner shall obtain and maintain throughout the term, a CSA STAR Level 2 assurance (either STAR Certification or STAR Attestation) based on the then-current version of the Cloud Controls Matrix (CCM). Evidence of current STAR Level 2 status (certificate or most-recent attestation report) shall be provided to City prior to issuance of a certificate of occupancy for any Data Center use.
  - e. Identify a qualified point of contact (e.g., a designated Chief Information Security Officer or equivalent with at least five years of relevant experience), including contact information, responsibilities for maintenance of CSA STAR certification, and a commitment to updates submitted to the City upon material changes.
  - f. Pursuant to Phoenix Zoning Ordinance § 703(A)(5), Owner shall screen power and other critical infrastructure, as defined by Phoenix Zoning Ordinance § 202.
  - g. Owner shall only use power from existing power infrastructure in the immediate vicinity. Owner shall not seek the installation of new transmission infrastructure to bring additional power outside of the immediate vicinity to the site.
4. Recordation. This Waiver shall be adopted by Resolution of the City of Phoenix City Council and recorded by the City in its entirety in the Official Records of Maricopa County, Arizona, not later than 10 days after this Waiver takes effect.
  5. Covenants Running with the Land. The Owner and the City acknowledge and agree this Waiver runs with the Property and is binding upon the Owner, their successors, assigns, and any subsequent owners or lessees of the Property.
  6. Bar to Action. The Owner and the City acknowledge and agree this Waiver shall serve as a bar to any future claim for diminished value based upon the adoption of the Data Center Regulations or otherwise arising from the facts and circumstances of the Claim.
  7. Governing Law. This waiver, and all rights and obligations created hereby, shall be determined and governed by the laws of the State of Arizona.

...

PASSED by the City Council of the City of Phoenix this \_ day of \_ 2026.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Denise Archibald, City Clerk

APPROVED AS TO FORM:  
Julie M. Kriegh, City Attorney

BY: \_\_\_\_\_

REVIEWED BY:

\_\_\_\_\_  
Ed Zuercher, City Manager

DRAFT

Acknowledgement

By signing below, the undersigned represents and warrants that they are the lawful Owner of the Property or duly authorized to sign this Waiver on behalf of the Owner, and that this Waiver is knowing and voluntary.

Owner/Authorized Agent: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**State of Arizona )**  
**County of Maricopa ) ss.**

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

DRAFT