

## **AMENDED AND RESTATED ADDENDUM TO CONTRACT FOR UTILITIES**

THIS AMENDED AND RESTATED ADDENDUM TO CONTRACT FOR UTILITIES (this “Addendum”), made this the \_\_\_\_ day of February, 2022 (“Effective Date”), is by and between the CITY OF HUNTSVILLE, an Alabama municipal corporation, acting directly (“Huntsville”), and acting by and through its waterworks utility board, HUNTSVILLE UTILITIES (“Utilities” and together with Huntsville, the “City”), and STARBELT LLC, a Delaware limited liability company (the “Business Partner”), for Utility Services to be provided at all locations and Contract Accounts within Utilities Service Area, including pursuant to the Contract for Utilities, Non-Residential Utility Deposit and Adequate Securities Agreement originally dated May 30, 2018 (the “Contract”) to which it is attached. Utilities is an operating board of Huntsville and is not a separate legal entity from Huntsville. The City and the Business Partner are sometimes referred to herein collectively as the “Parties” and individually as a “Party.” Capitalized terms used herein but not defined in this Addendum shall have the meanings set forth in the Contract.

### **RECITALS**

A. The Parties previously entered into the Contract on May 30, 2018. Contemporaneously therewith, the Parties entered into that certain Addendum to Contract for Utilities dated May 30, 2018 (the “Original Addendum”), which was attached to and made a part of the Contract, pursuant to which the Parties jointly planned for the delivery of Water and Sewer services to the Project, as more particularly described below.

B. Huntsville owns and has delegated to Utilities the operation of a potable water system (together with any repairs to, updates or replacements of, or additions to the same, the “Water System”), and Huntsville owns and operates directly a municipal sanitary and industrial sewer system (together with any repairs to, updates or replacements of, or additions to the same, including without limitation the WWTPs (hereinafter defined) the “Sewer System”) in the City of Huntsville, Alabama.

C. As contemplated by the Contract and Original Addendum, the Business Partner has previously established on that certain parcel of real property more particularly described as the “Project Starbelt Site” on the map attached hereto as Exhibit A and incorporated herein by reference (the “Original Property”) and located within the North Huntsville Industrial Development Park (the “Industrial Park”), a multi-year large-scale project for use as a data center, and/or other facilities used to house, and in which are operated, maintained and replaced from time to time, computer systems and associated components, such as telecommunications and storage systems, cooling systems, power supplies and systems for managing property performance (including generators), and equipment used for the transformation, transmission, distribution or management of electricity (including substations), Internet-related equipment, data communications connections, environmental controls and security devices, structures and site features, as well as certain accessory uses or buildings located on the Original Property and other related or associated uses, buildings or structures such as (but not limited to) utility buildings, structures and appurtenances located on, adjacent to or near the Original Property that are reasonably related to the data center (collectively, the “Original Project”).

D. The Business Partner is currently pursuing an opportunity to expand the Original Project (together with the Original Project, the “Project”) on those certain parcels of real property more particularly described collectively as the “Site” on the map attached as Exhibit A (the “New Property”; and together with the Original Property, the “Property”), which New Property is located adjacent to the Original Property.

E. The City finds developments such as the Project to be in the public interest of the citizens of Huntsville, Alabama and thus desires to further encourage and aid the Project.

F. The Business Partner anticipates that the Project will continue to require a long-term commitment of the Business Partner’s resources, and will continue to require the careful integration between public capital facilities, construction schedules and the phasing of the development of the Project to be successful, collectively, for the Business Partner and the City.

G. Development of the Project on the Property will continue to involve a substantial commitment of private capital by the Business Partner, which commitment the Business Partner is unwilling to risk without sufficient assurances from the City that adequate, reliable potable water ("Water") and sanitary and industrial sewer ("Sewer") service, provided at reasonable rates, will be available to the Project and that the Business Partner will have continuous use of the Water System and the Sewer System in the operation of the Project.

H. The Water System and the Sewer System each have existing capacity which is not being used or reserved for use by others and is substantially in excess of existing and projected demands for Water service from the Water System and for Sewer service from the Sewer System.

I. Huntsville, through Utilities, intends to provide Water to the Project via the existing Water System consisting of looped water piping supplied by a 5,000,000 gallon water storage tank ("WST") that is filled using multiple public booster stations located to the south of the Property and via additions to the Water System as described in this Agreement. The City intends to provide sewer services to the Project via the Sewer System consisting of lift stations, force mains, and gravity sewer pipe for collection and conveyance of municipal waste and Wastewater (as hereinafter defined) to the City's six (6) Wastewater treatment plants ("WWTPs") and related infrastructure for treatment (the "Wastewater Collection System"). The Water System and the Sewer System are each sometimes referred to herein as the "System" and collectively as the "Systems." As used herein "Wastewater" means a combination of the water-carried wastes from the Project and includes treatable wastes therein.

J. Pursuant to the Project Development Agreement dated May 30, 2018 and the Project Development Agreement dated of even date herewith (collectively, the "Project Development Agreements") by and among, the City, the Business Partner, and the Industrial Development Board of the City of Huntsville ("IDB"), the Parties and the IDB have agreed that certain improvements of the Systems will be made to enhance Water and Sewer services.

K. The City desires to confirm the availability of Water and Sewer service for the Project, as the same may be expanded or modified, of a quantity that will support continuous operation of the Project and of an average quality (a) not less than that provided on average by the City during the five (5) years prior to the date of this Addendum to its commercial and industrial users with Water and Sewer service needs in similar volumes to those required by the Business Partner, and (b) at least as is required by permits issued to the City to provide Water and Sewer service, and all applicable local, state and federal laws and regulations (collectively, "Laws"), in each case so as to induce the Business Partner to develop the Project on the Property in reliance on such availability.

L. The Parties desire to amend and restate the Original Addendum in its entirety, in order to incorporate their understandings into this Addendum and to further jointly plan for the delivery of Water and Sewer services to the Project.

In consideration of the foregoing recitals and mutual promises hereinafter contained, IT IS AGREED AS FOLLOWS:

1. INCORPORATION. The City and the Business Partner hereby incorporate the terms of this Addendum into the Contract as if fully set forth therein. The Contract, as amended and supplemented by this Addendum, is hereinafter referred to as the "Agreement." To the extent there is a conflict between the terms of the Contract and this Addendum, this Addendum shall control. To the extent applicable to the Water and Sewer services, the Parties hereby incorporate the terms of Chapter 26 of the Code of Ordinance of the City of Huntsville, Alabama (the "Code") into the Agreement as if fully set forth herein.

2. INDEPENDENT CONSIDERATION. The Business Partner has paid to the City the sum of Five Hundred Dollars (\$500.00) as consideration and inducement to the City to enter into this Addendum and incorporate this Addendum into the Contract, which amount shall be non-refundable to the Business Partner.

3. CURRENT AVAILABILITY; PERMITTED CAPACITY. The City represents and warrants to the Business Partner as follows:

(a) Availability. Water and Sewer service currently is available to the Property, and, except as changed pursuant to the Project Development Agreements, such existing Water and Sewer service will remain available to the Property during the entire period of construction of the Project.

(b) Water System. The City possesses the existing legal right pursuant to a valid Water Supply Permit, Permit Number 2016-637, PWSID Number: AL0000882, with an expiration date of March 31, 2022, issued by the Alabama Department of Environmental Management (“ADEM”) to take in an unlimited number of gallons of Water per year (“Permitted Intake”) for treatment as potable Water (the “Permitted Water Use”), and its current water treatment plants have the design capacity to treat and transport up to 123.5 million gallons of potable Water per day. The City has no knowledge of any fact, circumstance or pending law, rule, regulation, order or directive which would or might cause a reduction in its Permitted Water Use or Permitted Intake.

(i) Minimum Guaranteed Water Flow. Huntsville, through Utilities, will provide up to 1,500 gallons of Water per minute (“gpm”) to the Business Partner through its current Water System. Through upgrades to the Water System outlined in the Project Development Agreements, Huntsville, through Utilities, will provide up to 5,000 gpm as required by the Business Partner’s Project build schedule.

(ii) Guaranteed Water Pressure. Huntsville, through Utilities, currently will provide guaranteed water pressure of 34 pound-force per square inch (“psi”) to the Business Partner. Through the upgrades to the Water System outlined in the Project Development Agreements, Huntsville, through Utilities, will provide a minimum water pressure of 65 psi.

(iii) Minimum/Maximum Guaranteed Water Quantity. For each phase of the Project, Huntsville, through Utilities, will provide to the Business Partner up to the daily and per minute capacities of Water as set forth in the Water Capacity Reservations (as defined in Exhibit B) in Exhibit B hereto. Notwithstanding the foregoing, however, Huntsville, through Utilities, does not cap the amount of Water usage for Commercial/Industrial customers under normal operating conditions.

(c) Sewer System. The City has the existing legal right pursuant to a valid National Pollutant Discharge Elimination System Permit, Permit Number AL0049531, with an expiration date of July 31, 2022, issued by ADEM to discharge up to 20 million gallons per day of Wastewater to the Sewer System (the “Permitted Discharge”), and the WWTPs have the design capacity to discharge up to 20 million gallons per day of Wastewater. The Sewer System has the capacity and capability to receive industrial discharges of the type generated by the evaporative cooling system to be used at the Project and other substantially similar industrial discharges and agrees that no pretreatment (including, without limitation, any pretreatment required by Alabama Administrative Code Section 335-6-5-.01, *et seq.* and the Clean Water Act) of such types of discharges shall be required. The City has no knowledge of any fact, circumstance or pending law, rule, regulation, order or directive which would or might cause a reduction in its Permitted Discharge. The City’s Water permits and Sewer permits are hereinafter collectively referred to as the “Permits.”

(i) Minimum/Maximum Permitted Discharge. For each phase of the Project, the City will provide to the Business Partner the right to discharge up to the daily and per minute capacities of Wastewater and Sewer discharge as set forth in the Sewer Capacity Reservations (as defined in Exhibit B) in Exhibit B hereto. Notwithstanding the foregoing, however, the City does not cap the amount of Wastewater and Sewer discharge for Commercial/Industrial customers under normal operating conditions.

4. CAPACITY RESERVATIONS. To ensure that the Systems will have sufficient capacity to deliver Water to, receive Wastewater from, and provide Sewer service to the Project as the Project develops, thus ensuring that the Business Partner may operate and expand the Project as it sees fit from time to time, the City acknowledges the Water, Wastewater and Sewer needs as set forth on Exhibit B

attached hereto and incorporated herein by reference and agrees that the capacities set forth thereon shall be reserved for the Project and available for the continuous use of the Project. The Business Partner shall give the City at least thirty (30) days' advance written notice of the anticipated date of commencement of operations of the Project. The Business Partner will use commercially reasonable efforts to provide the City with (i) periodic updates as to the status of the development of the Project and (ii) not less than ninety (90) days' advance notice of its intention to make use of each of the Water Capacity Reservations and the Sewer Capacity Reservations (collectively, the "Reservations") for each of the phases of the Project; provided, however, that failure to give such notice shall not preclude the Business Partner's use of the applicable capacity or reserved amount. On or before the anticipated commencement date of the phases set forth in such notice, the City shall cause the Project to be served by the Systems with the requisite volume of Water and Sewer services in accordance with the Reservations, and otherwise in accordance with this Agreement. From and after the Effective Date, the Reservations shall be continuously available to the Business Partner at all times during the Term (as defined in Section 8), subject only to the next sentence. The Parties agree to meet and review the Reservations every five (5) years during the Term of this Agreement to determine whether a reduction or increase in the Reservations is appropriate and to plan services for the Project. No change in the Reservations will be implemented without the mutual written consent of the Parties, which consent either Party may withhold in its sole discretion. For the avoidance of doubt, the Business Partner shall not be obligated to use or take any portion of the Reservations. Nothing contained in this Addendum, including without limitation this Section 4, shall be interpreted as obligating or otherwise requiring the Business Partner to construct any phase of the Project.

5. REDUNDANT SYSTEMS; CONTINGENCY PLANS. The City acknowledges and agrees that the Business Partner requires an uninterrupted supply of Water and Sewer service to the Project. Subject to the terms and conditions of this Agreement, the Business Partner may, and the City hereby consents to the same, establish redundant and/or back up Water and Sewer resources to serve the Project subject to the Business Partner's compliance with all applicable Laws and Permits.

6. WATER SUPPLY AND SEWER SERVICE PRIORITY.

(a) Nature of Operation of Project. The City acknowledges and agrees that the nature of the operation of the Project requires continuous and uninterrupted evaporative cooling to protect sensitive equipment required for essential operations. In the event of a Water shortage, the City agrees to meet with and consult with the Business Partner to discuss the impact of the Water shortage on the Project and to determine options for providing continuous use by the Project of the Water System Reservation and the Sewer Capacity Reservation. No consumption measures or limitations arising from such shortages shall apply to the Project, unless required by clear and critical public health conditions and applicable Law. If any Water shortage or Sewer curtailment is declared, the City will prioritize Water supply to services affecting public health, welfare and safety, including without limitation hospitals and booster stations. Thereafter, the City will prioritize Water supply and Sewer service to Commercial/Industrial customers that have been designated "Priority 1 Commercial/Industrial customers." The Business Partner is a Priority 1 Commercial/Industrial customer, and, in the event of a Water shortage for the Project, the City will give the Business Partner priority among all of the other Priority 1 Commercial/Industrial customers whose service is from the same portions of the Water System and the Sewer System serving the Property. The City represents and warrants to the Business Partner that: (i) the Business Partner's use of Water in connection with its data center operations does not violate any requirements of the Code; (ii) the monthly allocation of Water to the Business Partner shall not be lowered except as set forth in Section 6(b); and (iii) the City will not limit or otherwise reduce or discontinue the flow of Water to the Project unless necessary to provide top priority usage for public health and safety operations, of the citizens and customers served by the Systems, in which case the City will notify the Business Partner as soon as possible under the circumstances; (iv) if the City enacts or amends any Water shortage or Sewer curtailment ordinances and such ordinances create classifications of Water and Sewer users, the Project shall receive the classification with no lower priority for Water usage than any other Priority 1 Commercial/Industrial customer of the Water System, it being understood that the Project would not be located in the municipal limits of Huntsville, Alabama without the agreements set forth in this Addendum, and the Project currently intends to lawfully expend substantial funds in reliance on the Reservations provided for herein and has acquired a continuous right in the Reservations set forth herein.

(b) Repairs; Maintenance. Due to the critical, twenty-four (24) hours per day, seven (7) days per week operation of the Project, the City will, at its sole cost and expense (other than the charges for actual services used by the Project), keep and maintain the portions of the Systems that serve the Project and related supporting public infrastructure in good working condition and repair. Notwithstanding anything to the contrary set forth herein, the City shall within twenty-four (24) hours of the commencement of any Service Interruption (hereinafter defined) identify the cause of such Service Interruption and commence appropriate repair, restoration and maintenance measures to restore full Systems operations and service to the Project. The City shall diligently pursue such repair, restoration or maintenance measures until the Service Interruption is remedied and full Systems operations to the Project are restored. If the City determines that the Service Interruption will last more than twenty-four (24) hours, the City will contact the Business Partner, allow the Business Partner to identify its critical needs (or if the Business Partner cannot be reached, identify the critical needs), and prioritize restoration efforts to meet those critical needs. The City shall at all times have access to an inventory of spare components, parts, facilities, infrastructure and related appurtenances necessary for the City to fulfill its obligations hereunder. The City shall cause suitably trained employees or third party maintenance contractors to be available and on call to provide critical repair, restoration and maintenance services twenty-four (24) hours per day, seven (7) days per week. To the extent that full restoration or maintenance of a Service Interruption shall not be completed within twenty-four (24) hours of the commencement of such Service Interruption, the City promptly, but in any event not more than forty-eight (48) hours after the commencement of the Service Interruption, shall establish temporary alternative systems to restore Water and Sewer service to the Project, to the commercially reasonably best of its ability and subject to the City taking such actions and using its assets to ensure Water and Sewer service is available to meet public health and safety operations of the City, which alternative systems shall remain fully operational until such time as a full repair, restoration or maintenance of the Systems can be effected, subject to the City taking such actions and using its assets to ensure Water and Sewer service is available to meet public health and safety operations of the City. The City shall maintain maintenance and repair records for the Systems, and, upon reasonable notice and request therefor, such records promptly shall be made available for review by the Business Partner or its employees, agents or representatives. A "Service Interruption" shall mean (A) with respect to the Water System, a failure of the Water System to supply to the Project the volume of water reserved under the Water Capacity Reservation for any period of time, and (B) with respect to the Sewer System, the failure of the Sewer System to maintain the capacity reserved by the Sewer Capacity Reservation for any period of time.

(c) Future Permitted Capacity. The City shall give written notice to the Business Partner of any facts or circumstances to the knowledge of the City that would or are reasonably expected to result in a reduction in the permitted capacities of the Systems within five (5) business days of learning of such facts or circumstances or that a reduction in Water or Sewer service might result therefrom. A copy of the City's then current Permits relating to the Systems will be made available promptly upon the prior request of the Business Partner.

(d) Future Operations. Huntsville, individually or through Utilities, shall operate the Systems in compliance with all applicable Laws and Permits and shall use appropriate best management practices for Systems operations. Huntsville, individually or through Utilities, shall comply with all applicable federal and state public notification requirements regarding any "Notices of Violation" with respect to the Systems issued by ADEM or any other regulatory entity having jurisdiction over the Systems. If the City receives a Notice of Violation, directive, or order issued in connection with its operation or management of the Systems which contains a demand, requirement or deadline that could result in a Service Interruption for the Project, then the City promptly, but in no event later than five (5) days after receipt thereof, shall establish temporary alternative mechanisms to provide Water and Sewer services to the Project until the applicable Service Interruption, if any, is repaired or restored. In the case of such a Service Interruption, the City agrees to use reasonable efforts under the circumstances to restore Water and Sewer at the levels required under the Water Capacity Reservation and the Sewer Capacity Reservation.

7. FEES AND RATES FOR CONNECTIONS AND SERVICES. The Parties acknowledge and agree that Water and Sewer rates are set forth in Chapter 26 of the Code. The consumption, discharge, and availability charges are subject to periodic adjustment, but any increases or decreases therein must be approved by the City Council of the City (the "City Council"). As of the Effective Date, the charges for consumption of Water provided through the Water System and for Wastewater discharged through the

Sewer System are included in two separate consumption/discharge rates. The current rate charges to Commercial/Industrial consumers of Water and Sewer by Utilities and/or the City for monthly consumption/discharge per meter at the Project are as follows:

- (i) For consumption of up to 1,000,000 gallons of Water per month per meter, \$1.96 per 1,000 gallons consumed.
- (ii) For consumption above 1,000,000 gallons of Water per month per meter, \$1.61 per 1,000 gallons in excess of 1,000,000 consumed.
- (iii) For consumption through use of a sprinkler system, \$3.01 per 1,000 gallons of Water consumed per meter.
- (iv) For consumption of Water by the Project through a metered fire line, \$3.01 per 1,000 gallons consumed per meter.
- (v) For discharge to the Sewer System, \$4.83 per 1000 gallons discharged per meter.
- (vi) For having water available for consumption by the Business Partner, in addition to the consumption charge, a monthly availability charge applies. In the event there is no consumption, the availability charge alone will apply. The availability charge is based on the size of the meter as follows:

<b>Meter Size</b>	<b>Effective Rate (per month) – October 2016</b>
Each 1" Meter or Smaller	\$12.34
Each 1½" Meter	\$38.02
Each 2" Meter	\$57.68
Each 3" Meter	\$122.66
Each 4" Meter	\$199.01
Each 6" Meter	\$395.46
Each 8" Meter	\$537.91
Each 10" Meter	\$1,022.42
Fire Line	\$10.04 per inch
Fire Hydrant Charge	\$7.53

(a) No Discrimination. In any subsequent rate setting, the City agrees not to discriminate against the Business Partner in connection with the setting of standard fees, rates or other charges for the connection to or use of the Water System (collectively, "Water Rate") or, if separate from the Water Rate, the standard fees, rates or other charges for the connection to or use of the Sewer System (collectively "Sewer Rate"). In particular, the City agrees to set a Water Rate and, if applicable, a Sewer Rate for the Project that is no higher than the lowest Water Rate and Sewer Rate available to customers in the same rate classification based on use and consumption being charged for the respective Systems ("Equal Treatment Agreement"). The Business Partner shall not be charged for use of, or otherwise obligated to pay amounts in connection with, the Water System or Sewer System, other than (i) charges (at the Water Rate) attributable to the portion of the Water Capacity Reservation actually consumed or used by the Project, (ii) if separate from the Water Rate, charges (at the Sewer Rate) for the number of gallons of Wastewater discharged into the Sewer System by the Project (the "Discharge Amount"), and (iii) the applicable availability charge.

(b) Measurement of Wastewater Discharge. The City and the Business Partner acknowledge that a significant amount of Water entering the Project from the City's meter will be consumed and evaporated by cooling systems and the resulting Discharge Amount of Wastewater will be lower than the amount of Water entering the Project. It is agreed that a separate meter for Wastewater discharges will be installed for the Project to measure the actual Discharge Amount from the Project and that the Business Partner will only be charged for the number of gallons that are actually discharged into the Sanitary Sewer.

(c) Reasonable Fees and Rates. The City shall comply with the requirements of applicable Laws in connection with setting the Water Rate and the Sewer Rate, and such rates shall be reasonable. The Business Partner acknowledges that public hearings must be held prior to all Water Rate and Sewer Rate adjustments.

(d) Effect of Non-Payment for Service. Huntsville, directly or through Utilities, reserves the right to disconnect Water or Sewer service for non-payment of undisputed amounts as set forth in the Code; provided, however, that prior to any disconnection, the City shall provide the Business Partner a minimum of thirty (30) days after the date the unpaid Water and Sewer invoice was due to pay such invoice and shall provide the Business Partner with notification of termination at the Property at least five (5) business days before any service is disconnected.

(e) No Additional Fees. Without limiting the generality of the foregoing, the City agrees that the Business Partner shall not be charged any special fees or charges beyond those regularly assessed to similarly situated customers.

8. TERM. The term of this Agreement shall be a period of thirty-five (35) years from the Effective Date (the "Initial Term"). Sixty (60) days prior to expiration of the Initial Term or any Renewal Term (as hereinafter defined), the City and the Business Partner shall meet to review Water and Sewer capacity needs and to discuss any proposed modifications to the Water Capacity Reservation and the Sewer Capacity Reservation set forth herein. Provided, that if the Business Partner remains a customer of the Water System and the Sewer System and is not in default past any applicable cure periods, then this Agreement will be renewed and extended for successive additional ten (10) year periods (each, a "Renewal Term") and collectively with the Initial Term, the "Term") in the same form as this Agreement, subject to any modifications agreed upon by the Parties and related to the Water Capacity Reservation and the Sewer Capacity Reservation.

9. ADDITIONAL PROPERTY. This Agreement is hereby adopted and approved by the City to apply to any additional real property within the Industrial Park (whether in one or more parcels, the "Additional Property") that the Business Partner or its designee may later acquire. If the Business Partner or such designee acquires the Additional Property, then upon notice thereof to the City, the legal description of the Additional Property shall be attached to this Agreement as an additional exhibit; provided that this Agreement shall apply with respect to the Additional Property regardless of whether such additional exhibit is attached. The same Reservations set forth in Exhibit B shall be separately applicable to the Additional Property unless the Parties otherwise mutually agree to different Reservations.

10. DEFAULT AND REMEDIES.

(a) Default and Remedies. In the event of a default of this Agreement, the non-defaulting Party shall provide written notice of the default to the defaulting Party and shall specify a period of not less than thirty (30) days in which the defaulting Party shall have a right to cure the default; provided, however, such cure period may be extended if: (i) a default cannot reasonably be cured within the cure period provided in such notice, (ii) the curing Party notifies the non-defaulting Party of such fact by no later than the end of the cure period provided in the notice, (iii) the curing Party has theretofore been diligent in pursuing the cure, and (iv) the curing Party in such extension notice covenants to (and thereafter actually does) diligently pursue the cure to completion. In the event the defaulting Party fails to cure the default, the non-defaulting Party (A) may terminate this Agreement and seek damages from the defaulting Party, or (B) shall have available to it all rights and remedies, both legal and equitable, provided by Law (including without limitation specific performance and mandamus); provided, however, in no event shall any party hereto be entitled to punitive, incidental, consequential or other similar damages, whether arising at law, in equity or otherwise.

(b) Mutual Waiver of Punitive, Incidental and Consequential Damages. The Parties hereto agree to waive all claims against each other for any punitive, incidental, consequential, or other similar damages, whether arising at Law, in equity or otherwise.

11. LIMITATION OF LIABILITY. **THE PARTIES HEREBY WAIVE ALL CLAIMS AGAINST EACH OTHER FOR ANY PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES, WHETHER ARISING AT LAW, IN EQUITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, OR LOSS OF BUSINESS OPPORTUNITY INCURRED OR SUFFERED BY EITHER PARTY,**

**WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

12. CONFIDENTIALITY. The Parties acknowledge and agree that their respective duties relative to Confidential Information shall be governed by Article VI of the Project Development Agreements, the terms of which are incorporated herein by reference the same as if set forth herein in full.

13. ASSIGNMENT. Except as set forth in this Section, this Agreement is not assignable by (i) the Business Partner without the prior written consent of the City, which shall not be unreasonably withheld, conditioned or delayed, or (ii) the City without the prior written consent of the Business Partner. The City agrees to respond to any requested assignment of this Agreement by the Business Partner within ten (10) business days of receipt of the Business Partner's request. If the City fails to reject such requested assignment in writing within such ten (10) business day period, then the City shall be deemed to have approved the Business Partner's requested assignment. Without the need for the City's consent, the rights and obligations of the Business Partner under this Agreement may be transferred or assigned in whole or in part by the Business Partner to any affiliate of the Business Partner (and upon such assignment the Business Partner shall be relieved of its covenants, commitments and obligations hereunder).

14. MISCELLANEOUS.

(a) Force Majeure. The Parties hereto shall not be liable for any failure to perform hereunder as a result of an external event, circumstance or matter beyond their respective control, including, without limitation, acts of the United States of America, acts of the State of Alabama, acts of the City (with respect to a failure of the Business Partner to perform only), embargos, fire, flood, drought, hurricanes, tornadoes, explosions, acts of God or a public enemy, strikes, labor disputes, vandalism or civil riots, supply chain delays, and pandemics. However, if any such event interferes with the performance by a Party hereunder, such Party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance or to complete performance in as timely a manner as is reasonably possible. Notwithstanding anything to the contrary contained herein, Water shortages within the reasonable control of the City shall not constitute force majeure (with respect to a failure of the City to perform only), and the Parties' obligations in the event of such a Water shortage shall be governed by Section 6(b), Repairs; Maintenance. For the avoidance of doubt, Water shortages caused by drought or other natural causes shall not be considered within the reasonable control of the City and in such case performance of the City's obligations shall be subject to this Section 14(a).

(b) Amendment. Except for the Business Partner's right to modify the description of the Property from time to time as set forth in Section 9 hereof, this Agreement may be amended, modified, supplemented or canceled only by the mutual written consent of the City and the Business Partner, or their respective successors in interest or assigns.

(c) Recitals. The recitals of this Agreement are material terms of this Agreement and shall be binding upon the Parties.

(d) Severability. If any provision of this Agreement, or its application to any person, is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the Parties to the extent possible. In any event, invalidation of any provision of this Agreement, or its application to any person or circumstance, shall not affect any other provisions of this Agreement or its application to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect.

(e) Notices. All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the Party or to an officer of the Party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

(i) If to the City:



The City of Huntsville  
308 Fountain Circle  
8th Floor  
Huntsville, AL 35801  
Attention: City Attorney

Huntsville Utilities  
P.O. Box 2048  
Huntsville, AL 35804  
Attention: President/CEO

With a copy to:

Robert Miller  
122 Southside Square  
Huntsville, AL 35801

(ii) If to the Business Partner:

With a copy to:

Starbelt LLC  
1601 Willow Road  
Menlo Park, CA 94025  
Attention: Site Selection Manager

Maynard, Cooper & Gale, P.C.  
1901 Sixth Avenue North, Suite 2400  
Birmingham, AL 35203  
Attn: Thomas H. Brinkley

With a copy to:

Starbelt LLC  
1601 Willow Road  
Menlo Park, CA 94025  
Attention: Data Center Legal Counsel

Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

(f) General. This Agreement shall bind and benefit the Business Partner and the Business Partner's respective heirs, administrators, executors, successors, transferees, and assigns. This Agreement may not be modified except in writing signed by both Parties to this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama. A Party seeking to bring an action relating to the validity, construction, interpretation and enforcement of this Agreement will institute such action in the Circuit Court of Morgan County, Alabama, or the United States District Court for the Northern District of Alabama. The Parties consent to personal jurisdiction in either court.

(g) Amended and Restated Agreement. This Addendum is given to amend and restate in its entirety, and shall amend and restate in its entirety, that certain Addendum to Contract for Utilities dated May 30, 2018 by and between the City of Huntsville, acting directly and acting by and through its waterworks utility board, Huntsville Utilities, and Starbelt LLC. This Addendum shall be attached to and become part of the Contract.

[SIGNATURE PAGES TO FOLLOW]

**THE CITY:**

**CITY OF HUNTSVILLE**

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

SIGNATURE

Name: Tommy Battle

Title: Mayor, City of Huntsville

And

**CITY OF HUNTSVILLE D/B/A HUNTSVILLE  
UTILITIES**

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

SIGNATURE

Name: Wes Kelley

Title: CEO, Huntsville Utilities

**THE BUSINESS PARTNER:**

**STARBELT LLC**

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

SIGNATURE

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

I, the undersigned Notary Public in and for said County and State, hereby certify that Tommy Battle, whose name as Mayor of CITY OF HUNTSVILLE, an Alabama municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and official seal this the \_\_\_\_\_ day of February, 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[SEAL]

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

I, the undersigned Notary Public in and for said County and State, hereby certify that Wes Kelley, whose name as CEO of CITY OF HUNTSVILLE D/B/A HUNTSVILLE UTILITIES, an Alabama municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and official seal this the \_\_\_\_\_ day of February, 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[SEAL]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }  
 } ss.  
COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

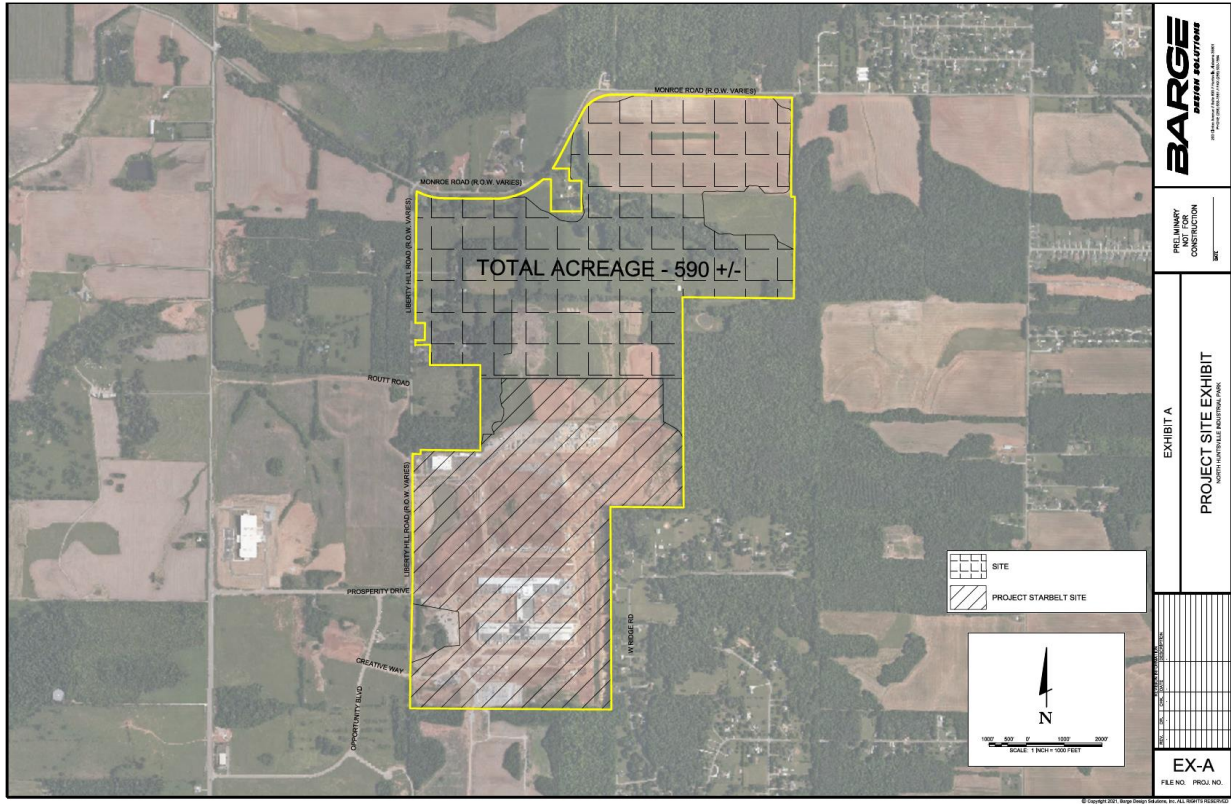
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**

**MAP OF THE PROPERTY**



## **EXHIBIT B**

### **RESERVATIONS**

1. Water Capacity Reservation. The total Water capacity reservation for the Property is Two Million Two Hundred Thousand (2,200,000) gallons per day to occur with a frequency not to exceed once during a 30 day period (and not on consecutive days) over a minimum duration of 12 hours, and Five Thousand (5,000) gallons per minute, at a minimum pressure of Sixty Five (65) pounds per square inch (the "Water Capacity Reservation") which the Business Partner anticipates will become necessary in the following Phases (described in Section 4 below) of the Project:

(a) Phase I — Two Hundred Fifty Thousand (250,000) gallons per day and One Thousand (1,000) gallons per minute, and at minimum pressure of Sixty Five (65) pounds per square inch (the "Phase I Water Capacity Reservation");

(b) Phase II — Five Hundred Thousand (500,000) gallons per day and Two Thousand (2,000) gallons per minute, and at minimum pressure of Sixty Five (65) pounds per square inch (the "Phase II Water Capacity Reservation");

(c) Phase III — Six Hundred Twenty Five Thousand (625,000) gallons per day and Two Thousand Five Hundred (2,500) gallons per minute, and at minimum pressure of Sixty Five (65) pounds per square inch (the "Phase III Water Capacity Reservation");

(d) Phase IV — One Million Two Hundred Thousand (1,200,000) peak gallons per day, a typical average day of Two Hundred Thousand (200,000) gallons per day, Three Thousand Nine Hundred (3,900) gallons per minute for 2 hours while maintaining a minimum residual water pressure of Sixty Five (65) pounds per square inch (the "Phase IV Water Capacity Reservation"); and

(e) Phase V — Two Million Two Hundred Thousand (2,200,000) peak gallons per day to occur with a frequency not to exceed once during a 30 day period (and not on consecutive days) over a minimum duration of 12 hours, otherwise One Million Six Hundred Thousand (1,600,000) peak gallons per day to be consumed over a 12 hour duration with a peak hour of 300,000 gallons at 5,000 gallons per minute, a typical average day of Two Hundred Fifty Thousand (250,000) gallons per day, Five Thousand (5,000) gallons per minute for 2 hours while maintaining a minimum residual water pressure of Sixty Five (65) pounds per square inch (the "Phase V Water Capacity Reservation"). Business Partner shall make commercial reasonable best efforts to give the Utilities as much notice as possible before calling for the maximum peak gallons per day.

2. Sewer Capacity Reservation. The total Sewer capacity reservation for the Property is One Million Two Hundred Fifty Thousand (1,250,000) gallons per day and Two Thousand Eight Hundred (2,800) gallons per minute (the "Sewer Capacity Reservation"), which the Business Partner anticipates will become necessary in the following Phases of the Project:

(a) Phase I — Seventy Thousand (70,000) gallons per day and Four Hundred (400) gallons per minute (the "Phase I Sewer Capacity Reservation");

(b) Phase II — One Hundred Forty Thousand (140,000) gallons per day and Eight Hundred (800) gallons per minute (the "Phase II Sewer Capacity Reservation");

(c) Phase III — One Hundred Seventy Five Thousand (175,000) gallons per day and One Thousand (1,000) gallons per minute (the "Phase III Sewer Capacity Reservation");

(d) Phase IV — Seven Hundred Thousand (700,000) peak gallons per day, a typical average day of One Hundred Fifty Thousand (150,000), One Thousand Nine Hundred (1,900)

gallons per minute for 2 hours (the "Phase IV Sewer Capacity Reservation"); and

(e) Phase V – One Million Two Hundred Fifty Thousand (1,250,000) peak gallons per day, a typical average day of Two Hundred Thousand (200,000), Two Thousand Eight Hundred (2,800) gallons per minute for 2 hours (the "Phase V Sewer Capacity Reservation").

3. Fire Capacity. The City represents and warrants to the Business Partner that the Water System has, and agrees that at all times during the Term of this Agreement the Water System will have, the capacity to deliver a minimum of Two Thousand Five Hundred (2,500) gallons of Water per minute to the Property for the duration of no less than two (2) hours to supply Water to load the Project's sprinkler system and to supply water to the Property in the event of a fire.

4. Phases. The Parties acknowledge that the Business Partner has already initiated the first phase of the Project ("Phase I") and has provided the City with sufficient notice thereof to allow the City sufficient time to construct required Water System improvements in the area. If the Business Partner determines to proceed with future "Phase II", "Phase III", "Phase IV" and "Phase V", the Business Partner shall provide the City with at least ninety (90) days' advance written notice of the commencement of such Phases, and the Water Capacity Reservation and Sewer Capacity Reservation for such Phases shall be available as of the commencement date provided in the Business Partner's notice, subject to the rights and obligations of the Parties set forth in the Development Agreements.