October 15, 2026

Administrative Note to this document:

The following document is a **DRAFT Economic Development Agreement** currently under consideration by the Graham City Council.

This is a DRAFT document and has not been formally and finally negotiated with Headwaters Site Development, LLC. Some data elements will be absent in this document.

Neither the City nor Headwaters Site Development, LLC. have formally and finally agreed to any term, provision, specification, restriction, or other parameter as shown in this document.

The City Council will next debate this DRAFT Economic Development Agreement at a Special Called Meeting to be held on **October 29, 2026, at 6:00 p.m. at City Hall, 608 Elm St., Graham, Texas.** This Special Called Meeting will be open to the public.

The City Council formally directed the release of this document in its DRAFT form to provide the public with the opportunity to review this document PRIOR to the scheduled Special Called Meeting referenced above.

The City Council is not formally soliciting comments on the DRAFT document; however, members of the public are welcome and encouraged to attend the Special Called Meeting referenced above. At this meeting, members of the public will have the opportunity to provide input on the DRAFT Economic Development Agreement.

Released by:

Eric Garretty, City Manager, City of Graham, Texas

DEVELOPMENT AGREEMENT

CITY OF GRAHAM

STATE OF TEXAS §

COUNTY OF YOUNG §

This Development Agreement (the "**Agreement**") is entered into by and between the **City of Graham** (the "**City**"), a home-rule municipality of the State of Texas, and **Headwaters Site Development LLC** (the "**Developer**"), a Texas limited liability company, its successors and permitted assigns. City and Developer are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, City is authorized under Section 212.172 of the Texas Local Government Code to enter into development agreements with owners of land in City's extraterritorial jurisdiction (the "**ETJ**") for purposes of providing for infrastructure for the land, including water, wastewater, and other utility systems, authorizing enforcement of land use regulations in the ETJ, and providing other lawful terms and considerations the parties consider appropriate; and

WHEREAS, the Developer has acquired approximately _____ acres of real property in unincorporated Young County, Texas (the "**Property**"), which is contiguous to the City's extraterritorial jurisdiction and which is more particularly described in Exhibit A, attached hereto, and incorporated herein for all purposes; and

WHEREAS, the Developer intends to develop the Property into a data center campus, which may include one or more data center buildings and related structures and infrastructure (the "**Project**") in accordance with the Concept Plan depicted in Exhibit B, attached hereto, and incorporated herein for all purposes; and

WHEREAS, the Property is not currently located within any Certificate of Convenience and Necessity for wastewater service; and

WHEREAS, the City owns and operates the Graham Wastewater Treatment Plant located at 1050 Sewer Plant Road, Graham, Texas 76450, and a municipal sanitary and industrial sewer system which discharges into Salt Creek; and

WHEREAS, the City is developing a Reclaimed Water System that the City expects to be capable of conveying reclaimed water to a location near the Property; and

WHEREAS, Developer anticipates that the Project will require a substantial, long-term commitment of capital and resources in order for the Project to be successful, and Developer is unwilling to risk such capital and resources without sufficient assurances that City will provide continuous and adequate wastewater collection and treatment services ("Wastewater Services")

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and reasonable access to the City's reclaimed water services ("Reclaimed Water Services"), as provided by this Agreement; and

WHEREAS, the Developer has agreed to the annexation of the Property into the City's extraterritorial jurisdiction before or upon the Effective Date of this Agreement and before the commencement of Reclaimed Water Services or Wastewater Services; and

WHEREAS, Developer has agreed to provide certain community and infrastructure benefits described in this Agreement in order to timely receive such Reclaimed Water Services and Wastewater Services and from City; and

WHEREAS, the purpose of this Agreement is: (i) to establish the terms under which the City will provide Reclaimed Water Services and Wastewater Services to the Property and under which Developer will design, construct, and fund the infrastructure necessary to connect the Property to those services; and (ii) to establish certain development, environmental, infrastructure, emergency-response, and operational standards for the Project; and

WHEREAS, the Parties agree and acknowledge that neither City nor the Developer are required to enter into this Agreement; and

WHEREAS, the City Council has determined that annexation of the Property into the ETJ and execution of this Agreement will promote City's economic development and diversification interests, expand City's tax base, create employment opportunities, and enhance the quality of life of the City's and surrounding community's residents; and

WHEREAS, the City Council has determined that this Agreement serves a public purpose and promotes the health, safety, and general welfare of City's residents.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS

For purpose of this Agreement, the following definitions shall apply:

"***Annexation***" shall mean the extension of the City's extraterritorial jurisdiction at the property owner's request in accordance with applicable provisions of Chapter 42 of the Texas Local Government Code, as amended.

"***Annual Infrastructure Improvement Fees***" means funds paid by Developer to City in accordance with and subject to Section 3.2 which shall not be less than Nine Hundred Thousand Dollars and 00/100 ($900,000.00) per year per Data Center Building.

"***Annual Infrastructure Improvement Fee Trigger Date***" means the first Business Day of the month that is no less than thirty (30) calendar days following Energization of a Data Center Building.

"***Average Daily Water Demand***" or "***ADD***" means the average volume of Reclaimed Water, as applicable, delivered to the Property during a calendar year, or during a partial calendar year using the applicable number of days, expressed in MGD.

"***Average Daily Wastewater Flows***" or "***ADF***" means the arithmetic average of all total twenty-four (24)-hour wastewater volumes generated by the Property during a calendar month, measured in MGD.

"***Business Day***" means any day other than a Saturday, a Sunday, a federally observed national holiday, the Friday after Thanksgiving Day, and December 24th.

"***Certificate of Occupancy***" or "***CO***" means a certificate issued by the applicable governmental authority certifying that a building or structure is suitable for occupancy.

"***City***" means the City of Graham, Texas.

"***City Council***" means City's governing body established pursuant to the City of Graham Home Rule Charter.

"***City Manager***" means City's City Manager, his or her designee, or such other person appointed by the City Council from time to time to perform the duties and have the authority of City Manager as set forth in the City of Graham Home Rule Charter.

"***City's Representative***" means an independent engineer or consultant to monitor the design phase of the Reclaimed Water Improvements and/or Wastewater Improvements, attend project meetings, and provide reports to City regarding compliance with the Reclaimed Water Design Documents and/or Wastewater Design Documents and project schedules.

"***Code of Ordinances***" means the Code of Ordinances, City of Graham, Texas.

"***Data Center Building***" means, collectively, (i) any facility, building, or structure, or any portion thereof, that is designed, constructed, or used primarily for the storage, management, processing, and/or transmission of digital data, and housing computer and/or network equipment, systems, servers, appliances, and other associated components related to digital data operations, together with (ii) all associated mechanical, electrical, plumbing, cooling, power distribution, and security systems, regardless of the ownership, tenancy, or operational control of such facility, building, or structure, and including any expansions, modifications, or phases thereof.

"***Developer***" means Headwaters Site Development LLC, together with its permitted successors and assigns under this Agreement.

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"***Developer Affiliate***" means any entity that directly or indirectly controls, is controlled by, or is under common control with Developer. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of more than fifty percent (50%) of the voting securities or other ownership interests, by contract, or otherwise.

"***Effective Date***" means the date on which the last party executes this Agreement following approval by the City Council and annexation of the Property into the City's ETJ.

"***Electric Utility***" means Oncor Electric Delivery Company LLC or any successor transmission or distribution service provider serving the Property.

"***Energization***" means the first date on which electric power is delivered to permanent facilities at a Data Center Building's permanent service voltage to the location at which the electric power facilities connect to a Data Center Building's electrical system, as identified for the purpose of serving the Data Center Building's permanent electrical load, following the execution of all required interconnection and service agreements, if any. Energization does not include the delivery of temporary construction power, backfeed or test power, or power delivered solely to support commissioning, equipment testing, or ancillary buildings or functions.

"***Force Majeure***" means an occurrence of any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, government or de facto governmental action, restrictions or interferences (unless caused by the intentional acts or omissions of the Party), fires, explosions, floods or other inclement weather, strikes, slowdowns or work stoppages, incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions or similar causes affecting the area in which the Property is located that results in a reduction of labor force or work stoppage in order to comply with local, state, or national disaster orders, construction delays, shortages or unavailability of supplies, materials or labor, necessary condemnation proceedings, or any other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstances are similar to any of those enumerated or not, in which case the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or performance shall be extended for a period of time equal to the period such Party was delayed, provided the Party whose performance is delayed provides written notice to the other Party not later than fifteen (15) Business Days after the last day of the month of the occurrence of the event(s) or condition(s) causing the delay or the date the Party whose performance has been delayed becomes aware or should have reasonably known of the event, describing such event(s) and/or condition(s) and the date on which such event(s) and/or condition(s) occurred.

"***Infrastructure Improvement Fees***" means funds paid by Developer to City, including the Initial Construction Improvement Fees and the Annual Infrastructure Improvement Fees in accordance with and subject to Section 3.1 and Section 3.2 for capital improvements benefitting the City's residents, including but not limited to water towers, transmission lines, fire apparatus, and other major infrastructure projects or capital investments or for costs incurred for the design,

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construction, and/or operation of public parks, recreation facilities, trails, community centers, and other quality-of-life improvements, or for any other lawful purpose as determined by the City Council in its sole discretion, including, but not limited to, the purchase of real and/or personal property to be used for any such uses. Such Infrastructure Improvement Fees have been voluntarily negotiated between City and Developer and are consideration for the Reclaimed Water Services and Wastewater Services provided by City to Developer under this Agreement.

"***Initial Construction Improvement Fees***" means funds paid by Developer to City in accordance with and subject to Section 3.1.

"***Initial Construction Improvement Fee Trigger Date***" means the first Business Day of the month that is no less than thirty (30) calendar days following the earlier of (a) issuance to Developer of the first permit (such as a grading permit) by the applicable governmental authority for Data Center Building on the Property or (b) the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities for any Data Center Building on the Property.

"***MGD"*** means million gallons per day.

"***Off-Site Easement***" means any easement or right-of-way not located on, under, or over the Property that is necessary for the design, construction, installation, operation, maintenance, removal, and/or replacement of any of the Utility Improvements.

"***Off-Site Easement Costs***" means all reasonable and documented costs incurred by City to acquire or purchase the Off-Site Easements, whether by negotiated purchase or through the exercise of City's power of eminent domain, including, but not limited to (i) all of City's reasonable attorneys' fees; (ii) appraisal fees, including fees relating to expert testimony and hearing and trial preparation; (iii) court costs, including, but not limited to, filing fees, special commissioners' fees, service fees, and jury fees; (iv) property owner's costs and attorney's fees ordered to be paid by a court or special commissioners; (v) postage and courier costs; (vi) costs for surveys, to the extent City reasonably requires additional survey work; and (vii) all closing costs and other costs relating to acquisition of title to the Off-Site Easement, including, but not limited to, title company escrow fees, owner's title policy premiums (inclusive of customary endorsements such as the survey deletion endorsement); recording fees, document preparation fees, costs for tax certificates, and other costs customarily incurred by buyers and sellers of an interest in real property in Young County, Texas.

"***On-Site Easement***" means an easement or right-of-way located on, under, over and/or otherwise encumbering the Property or any other real property owned by Developer and/or a Developer Affiliate, whether owned prior to, on, or after the Effective Date, that is necessary for the construction, installation, operation, maintenance, repair, removal, and/or replacement of any of the Reclaimed Water Improvements and/or the Wastewater Improvements.

"***Person***" means any individual, trust, estate, partnership (general, limited, or limited liability), joint venture, company, corporation, association, limited liability company, or other legal entity, business organization, or enterprise.

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"***Project***" means the development of the Property with one or more Data Center Buildings and all related or associated improvements, buildings, structures, utilities, offices, utility buildings, structures, appurtenances, access improvements, stormwater facilities, Wastewater Improvements, Reclaimed Water Improvements, system service connections, and other infrastructure.

"***Property***" means the parcels of land located in unincorporated Young County, Texas, as more particularly described in Exhibit A, together with additional real property or interests therein acquired by Developer, an affiliate of Developer, or a successor owner or end user in connection with or for development of the Project.

"***Reclaimed Water***" means Type I reclaimed water as defined by the Texas Commission on Environmental Quality (TCEQ) rules, being treated effluent that meets the quality standards for Type I reclaimed water set forth in 30 Texas Administrative Code Chapter 210, as amended or succeeded from time to time.

"***Reclaimed Water Delivery Point***" means the point identified in plans approved by the City at which City delivers Reclaimed Water to the Property.

"***Reclaimed Water Improvements***" means one or more transmission pipelines and related pumps, valves, data and communications facilities, meters, and other appurtenances necessary to transport not less than 0.10 MGD of Reclaimed Water from the Wastewater Treatment Plant to the Property at the Reclaimed Water Delivery Point to be designed and constructed by Developer in accordance with this Agreement.

"***Reclaimed Water System***" means the City's system that conveys Reclaimed Water from the Wastewater Treatment Plant to a location near the Property, including repairs, improvements, additions, updates, and replacements.

"***Related Agreements***" means collectively, any and all other agreements entered into between City and Developer (or a Developer Affiliate) in connection with the Project or other agreement relating to the development of the Property.

"***TCEQ***" means the Texas Commission on Environmental Quality or its successor state agency.

"***Term***" and "***Term of this Agreement***" means, collectively, the Initial Term and, if applicable, the Extension Term, as defined in Sections 2.1 and 2.2, respectively, which shall not exceed forty-five (45) years.

"***Utility Improvements***" means, collectively, the Reclaimed Water Improvements and the Wastewater Improvements.

"***Wastewater Point of Entry***" means the point identified in plans approved by the City at which wastewater leaves Developer's on-site facilities and is accepted into City's Wastewater System, and at or before which wastewater is metered for purposes of this Agreement.

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"***Wastewater Improvements***" means one or more transmission pipelines (whether force main or gravity) and related pumps, valves, data and communications facilities, meters, manholes, lift stations, and other appurtenances necessary to transport domestic wastewater generated at the Property to the Wastewater Point of Entry to be designed and constructed by Developer in accordance with this Agreement.

"***Wastewater System***" means the Wastewater Treatment Plant together with the City's municipal sanitary and industrial sewer system, including repairs, improvements, additions, updates, and replacements.

"***Wastewater Treatment Plant***" means the City's wastewater treatment plant located at 1050 Sewer Plant Road, Graham, Texas 76450, together with any repairs, improvements, and additions thereto and updates and replacements thereof.

ARTICLE II
TERM

Section 2.1 - Initial Term. The initial term of this Agreement (the "**Initial Term**") shall commence on the Effective Date and end on the day prior to the thirtieth (30th) anniversary of the Effective Date, unless sooner terminated in accordance with Article VII of this Agreement.

Section 2.2 - Extension. The Term of this Agreement may be extended for an additional period of fifteen (15) years (the "**Extension Term**") upon the mutual written agreement of the Parties, executed in accordance with applicable law. Any extension shall be approved by the City Council and shall be subject to the same terms and conditions of this Agreement except for such amendments to which the Parties may agree. No Extension Term shall, together with the Initial Term, create a total term that exceeds forty-five (45) years.

Section 2.3 - Effect of Expiration. Upon expiration of the Term or other termination of this Agreement, all obligations of the Parties hereunder shall terminate, except for (a) obligations that have accrued prior to such expiration, (b) obligations that by their nature survive termination or expiration, and (c) any obligation for payment of Infrastructure Improvement Fees under Article III that are due and payable by Developer and for which all conditions creating the obligation to make such payments have been satisfied, even if such payments are due after the termination of this Agreement, unless termination is due to an uncured default by City.

ARTICLE III
INFRASTRUCTURE IMPROVEMENT FEES

Section 3.1 – Initial Construction Improvement Fees. Developer shall pay the Initial Construction Improvement Fees to City in accordance with the following:

(a) The Initial Construction Improvement Fees shall be paid to City as follows:

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(1) For the first Data Center Building constructed on the Property, the greater of Two Million Dollars and 00/100 ($2,000,000.00) or Four Dollars and 00/100 ($4.00) per planned square foot, as determined by the Certificate of Occupancy, certified as-built drawings, architect's certificate, or other documentation reasonably acceptable to City, not later than the Initial Construction Improvement Fee Trigger Date for the first Data Center Building; and

(2) For each additional Data Center Building constructed on the Property, Seven Hundred Fifty Thousand Dollars and 00/100 ($750,000.00), not later than the Initial Construction Improvement Fee Trigger Date for each additional Data Center Building.

(b) Initial Construction Improvement Fees shall be assessed and payable separately for each Data Center Building.

(c) Prior to Energization or the placement of personal property within any Data Center Building, the City may verify the final square footage of each Data Center Building by any reasonable means, including review of permits, plans, and Certificates of Occupancy, field measurements, and comparison with data of the Young Central Appraisal District. Developer shall provide the City reasonable access to each Data Center Building during normal business hours on two (2) Business Days' notice, subject to Developer's reasonable security and safety protocols, and shall furnish any additional documentation the City reasonably requests. If the final square footage of any Data Center Building is greater than the planned square footage determined pursuant to Section 3.1(a)(1), the Initial Construction Improvement Fees shall be adjusted accordingly and Developer shall pay to City an amount equal to the difference between the Initial Construction Improvement Fees based on the planned square footage and the Initial Construction Improvement Fees based on the final square footage.

(d) Payments for the Initial Construction Improvement Fees shall be made by wire transfer to an account designated by the City Manager.

Section 3.2 – Annual Infrastructure Improvement Fees. Developer shall pay the Annual Infrastructure Improvement Fees to City in accordance with the following:

(a) The Annual Infrastructure Improvement Fees shall be paid to City as follows:

(1) For each Data Center Building constructed on the Property, twenty (20) annual installments of the greater of Three Dollars and 00/100 ($3.00) per square foot, as determined by the Certificate of Occupancy, certified as-built drawings, architect's certificate, or other documentation reasonably acceptable to City, or Nine Hundred Thousand Dollars and 00/100 ($900,000.00), not later than the Annual Infrastructure Improvement Fee Trigger Date and continuing and on or before every anniversary of said Annual Infrastructure Improvement Fee Trigger Date for nineteen (19) years thereafter.

(b) In no event shall the Annual Infrastructure Improvement Fees for any Data Center Building be less than Nine Hundred Thousand Dollars and 00/100 ($900,000.00) per year.

(c) The Annual Infrastructure Improvement Fees shall be assessed and payable separately for each Data Center Building such that each Data Center Building will have an independent Annual Infrastructure Improvement Fee Trigger Date and schedule of twenty (20) annual installments of Annual Infrastructure Improvement Fees.

(d) Following Energization, the City may reverify the square footage of each Data Center Building by any reasonable means, including review of permits, plans, and Certificates of Occupancy, field measurements, and comparison with data of the Young Central Appraisal District. Developer shall provide the City reasonable access to each Data Center Building during normal business hours on two (2) Business Days' notice, subject to Developer's reasonable security and safety protocols, and shall furnish any additional documentation the City reasonably requests. If the square footage of any Data Center Building increases beyond the square footage determined pursuant to Section 3.2(a)(1), the Annual Infrastructure Improvement Fees shall be adjusted accordingly and Developer shall pay to City an amount equal to the difference between the Annual Infrastructure Improvement Fees based on the initial square footage and the Annual Infrastructure Improvement Fees based on the increased square footage.

(e) Payments for the Annual Infrastructure Improvement Fees shall be made by wire transfer to an account designated by the City Manager.

Section 3.3 – Use of Infrastructure Improvement Fees. City shall use funds paid for the Infrastructure Improvement Fees for capital improvements benefitting the City's residents, including but not limited to water towers, transmission lines, fire apparatus, and other major infrastructure projects or capital investments or for costs incurred for the design, construction, and/or operation of public parks, recreation facilities, trails, community centers, and other quality-of-life improvements as determined by the City Council in its sole discretion, including, but not limited to, the purchase of real and/or personal property to be used for any such uses. Notwithstanding the foregoing, the Parties acknowledge and agree that the Infrastructure Improvement Fees paid by Developer to City may be used by the City for any lawful purpose, as determined by the City Council in its sole discretion.

Section 3.4 – Proof of Payment; Suspension of City Performance.

(a) Not later than thirty (30) days after a payment of any installment of Infrastructure Improvement Fees is due to City, Developer shall deliver or cause to be delivered such document or documents that evidence payment of such installment (each a "**Proof of Payment**"), which documents may include, but not be limited to, copies of receipts or other documents issued by the recipient of such installment(s), copies of cancelled checks showing the checks have been fully negotiated and not returned for insufficient funds, copies of wire transfer receipts showing the relevant funds wire was executed and successfully completed such that funds were received by the City. Any such document shall show the amount and date of payment.

(b) Developer acknowledges, understands, and agrees that City's willingness to enter into this Agreement was dependent on City's reliance on Developer's agreement to pay the

Infrastructure Improvement Fees and that City would not have entered into this Agreement but for Developer's agreement to pay the Infrastructure Improvement Fees. Notwithstanding anything in this Agreement to the contrary, if Developer fails to (i) timely pay any Infrastructure Improvement Fees installment or (ii) timely deliver to City a Proof-of-Payment, and such failure continues for a period of thirty (30) days after City delivers to Developer written notice of such failure, City shall have the right to suspend the performance of City's obligations pursuant to this Agreement including, but not limited to, the provision of Wastewater Services, Reclaimed Water Services, and/or other utilities and services provided by City to the Property. Such suspension of City's obligation shall terminate on the fifth (5th) Business Day after Developer pays the required installment of the Infrastructure Improvement Fees and/or delivers to City the required Proof-of-Payment.

(c) Except as expressly provided herein, City shall not be liable to Developer for any direct, indirect, consequential, or punitive damages relating to damages that Developer, its officers, employees, agents, partners (limited or general), managers, shareholders, or others may suffer as the result of City suspending performance of any of City's obligations when authorized by this Section 3.4.

(d) The suspension of City's performance of its obligations pursuant to this Section 3.4, including, but not limited to, the suspension of the provision of Wastewater Services, Reclaimed Water Services, and/or other utilities and services to the Property shall be the sole remedy for Developer's failure to pay an Infrastructure Improvement Fees installment and/or timely deliver a Proof-of-Payment and shall not serve as an Event of Default for which City may terminate this Agreement.

Section 3.5 – Community Partnership. The Parties acknowledge that Developer became a member of the Graham Chamber of Commerce prior to the Effective Date. Developer shall remain a member of the Graham Chamber of Commerce or its successor organization throughout the Term of this Agreement at the Large Business level or equivalent executive partnership level.

ARTICLE IV
DEVELOPMENT STANDARDS

Section 4.1 – Applicable Regulations. The Property will be developed in compliance with (a) the Concept Plan, and (b) unless otherwise provided herein, the regulations, ordinances, and other requirements of Young County in effect as of the Effective Date. Except as provided herein, the City shall have no regulatory authority over the Project's development standards and shall have no rights to review or approve development standards or specifications, building plans, plats, permits, materials, or any other development standard items. Notwithstanding anything to the contrary in this Agreement, the provisions of this Agreement and the performance of the Parties pursuant to this Agreement shall be subject to applicable federal and state laws and regulations. To the extent a federal and/or state law and/or regulation conflicts with a provision of this Agreement

and otherwise pre-empts such provision, the Parties will comply with such conflicting federal and/or state law and/or regulation notwithstanding the provision(s) of this Agreement.

Section 4.2 – Noise Standards. Prior to the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities for any Data Center Building on the Property, an acoustic study shall be conducted along the boundaries of the Property to establish an existing conditions baseline dBA level at the property lines, and a copy of such study provided to City. Except during periods of construction on the Property, noise generated by the use of the Property at a property line adjacent the Property shall not exceed the greater of (i) 65 dBA or (ii) the pre-development level that is measured in the field at such property line. Developer shall use commercially reasonable efforts to address any noise-related complaints within ninety (90) calendar days of receipt of such complaints.

Section 4.3 – Light and Glare. Outdoor lighting shall be designed and installed in accordance with industry-standard dark sky principles. Any light fixture used for exterior illumination must be fully shielded, pointed downward, and placed in a manner so that the light source is not directly visible from any other properties or public roadways. In order to reduce glare and light trespass into neighboring lands and to reduce negative impacts to wildlife, exterior illumination shall be restricted to light sources with a Correlated Color Temperature of 3,500K or less. As used herein, "Fully Shielded" means no direct uplight (i.e., no light emitted above the horizontal plane running through the lowest point on the fixture where light is emitted). The use of streetlights should be held to a minimum. The use of reflective surfaces should always be considered as an alternative to streetlights. Notwithstanding anything to the contrary in this Section 4.3, in the event of any conflict or inconsistency between the lighting requirements set forth herein and any requirements applicable to utility infrastructure imposed pursuant to applicable federal, state, or local laws, statutes, regulations, codes, ordinances, or orders, the requirement that is more stringent shall control and govern.

Section 4.4 – Building Construction Standards. Each Data Center Building shall be constructed with durable, high-quality exterior materials and architectural treatments in accordance with plans prepared by a registered architect.

Section 4.5 – Water. The Heating/Ventilation/Air Conditioning ("**HVAC**") systems for all Data Center Buildings constructed on the Property shall be designed and constructed with a closed loop cooling system for industrial-use only with a system water volume not to exceed _____ (_____) gallons of water per Data Center Building. No potable water shall be authorized for use in filling the HVAC system or for evaporative cooling purposes for the Data Center Buildings on the Property.

Section 4.6 – Wastewater. Discharges into City's Wastewater System shall be in accordance with Chapter 25 of the Code of Ordinances "Water and Sewers." Notwithstanding the foregoing, no water from any HVAC system may be discharged into the Wastewater System without the prior, written consent of the City, which shall not be unreasonably withheld and shall be granted by the City under the same standards applicable to other Wastewater System customers

within the same customer class located within City's corporate limits pursuant to the Code of Ordinances, as may be amended from time to time.

Section 4.7 – Electrical Infrastructure. Developer shall be solely responsible for the entire costs of any electrical grid connection, transmission, or substation upgrades required to serve the Project, and no portion of such costs shall be passed through to the City or the City's residential or commercial ratepayers.

Section 4.8 – Emergency Generator Operation. Operation of emergency site back-up generators ("**Back-up Generators**"), excluding primary generators, installed on the Property, shall be subject to the following:

(a) Back-up Generators may be tested one time during each calendar month for a period not longer than recommended by the manufacturer of the generator, such time to be between 8:00 a.m. and 5:00 p.m. Central Time and on any Monday through Friday;

(b) The exhaust systems of petroleum-powered Back-up Generators shall be piped upward and not directly towards any adjacent property;

(c) Back-up Generators shall be operated solely when necessary to maintain safe, effective, code compliant and continuous facility operation and shall not be operated for the purpose of (i) exporting or selling electric power to the ERCOT grid, (ii) except for temporary periods as provided in Section 4.8(e), below, providing electric power as a substitute for permanent power received directly or indirectly from a certificated electric transmission company because of the failure to secure the purchase and transmission of sufficient electrical service to the Property and the buildings located thereon, or (iii) providing backup electric power to any building not located on the Property;

(d) For purposes of Section 4.8(c), above, the momentary paralleling or incidental export that occurs as part of closed-transition transfer, synchronization, testing, or protective operations shall not be deemed operation for export, provided the Back-up Generator is not configured or operated for sustained net export and complies with all interconnection requirements; and

(e) Back-up Generators may be operated on a temporary basis at any time and for only such time as reasonably necessary to provide sufficient electricity to maintain operations of electric powered equipment and systems located on the Property including (i) during or following an event that results in damage to or destruction of electric transmission facilities that causes a loss or reduction of electric utility service below safe operational levels to one or more buildings on the Property, (ii) when Oncor requires a reduction of electricity use on the Property during a load shedding event; (iii) when Oncor is upgrading or otherwise making changes to its electric transmission equipment that necessitates a temporary cutoff of electric power to one or more buildings located on the Property; (iv) when privately-owned electrical equipment serving a building on the Property is being upgraded or altered necessitating a temporary cutoff of electric power to one or more buildings located on the Property, (v) when required for routine maintenance

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of electric powered equipment and systems located on the Property; and (vi) during such periods of time that Oncor or ERCOT, for any reason other than the failure of the owner or a tenant on the Property to contract for and purchase the transmission of sufficient levels of electric service, is temporarily unable to provide electrical service sufficient for normal operations at the Property. For purposes of this Section 4.8(e), only the Back-up Generator(s) that provide(s) electric power to the building(s) located on the Property affected by a loss or reduction of electrical power shall be operated during the events described in this Section 4.8(e).

Section 4.9 – Air Quality. The operation of diesel Back-up Generators and other non-road equipment on the Property shall comply with U.S. Environmental Protection Agency (EPA) Tier 4 emission standards for non-road engines adopted and published in 40 Code of Federal Regulations Part 1039 or 40 Code of Federal Regulations Part 60, Subpart IIII, in effect at the time of Energization of each Data Center Building for which such equipment will be supporting and enforced by the EPA and the Texas Commission on Environmental Quality.

4.10 – Fire Hazards. Notwithstanding anything in this Agreement to the contrary, all Data Center Buildings constructed on the Property shall be equipped with automatic fire suppression and early detection systems appropriate for their occupancy and the equipment housed within them, including any battery energy storage systems, consistent with nationally recognized fire and life-safety standards. Developer shall provide adequate on-site fire department access and water supply and shall reasonably coordinate pre-incident planning with City and Young County emergency responders.

4.11 – Stormwater Management. Developer shall implement on-site stormwater detention designed to limit post-development peak runoff to pre-development levels and shall implement reasonable erosion and sediment control measures during construction. Developer shall maintain all stormwater management facilities in good working condition for the operational life of the Project.

4.12 – Traffic Impacts. A Traffic Impact Analysis ("**TIA**") shall be prepared and submitted to City by the Developer. The scope of work for such TIA shall be coordinated by the City Engineer and the appropriate official in the Texas Department of Transportation, shall take into account all parameters during the construction phase and post-construction phases on the Property, and shall include traffic impacts during combinations of construction and operations, whichever yields higher traffic numbers. Developer shall comply with traffic plans adopted by the City, reasonably plan routes and manage traffic to limit impacts on the surrounding community and shall restore any City or Young County roadway materially impacted by construction traffic to at least its pre-construction condition.

4.13 – Water Conservation Plan and Drought Contingency Plan. Developer agrees to comply with the applicable water conservation and drought contingency plans, as mandated by City or Young County and as may be amended from time to time.

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4.14 – Construction Worker Housing. During construction, Developer shall use commercially reasonable efforts to provide housing for the Project's construction workers and shall seek to minimize impacts to the supply of rental housing, degradation of housing quality, and rental rates in the surrounding community.

4.15 – Decommissioning. Within one hundred eighty (180) days after ceasing operations of the Project, Developer shall remove the Data Center Buildings from the Property, level all disturbed areas, remove all debris and all of Developer's equipment, facilities, and material, restore the Property such that it will support crops or natural range vegetation thereon, and generally restore the surface of the Property to the same condition and quality as it was before the commencement of the Project. Developer shall deposit funds into a segregated escrow account as necessary to cover all decommissioning costs. This Section 4.15 shall survive the expiration or earlier termination of this Agreement.

ARTICLE V
INFRASTRUCTURE PARTNERSHIP

Section 5.1 – Reclaimed Water Improvements.

(a) Funding Responsibility. The Reclaimed Water Improvements shall be designed, permitted, and constructed by Developer, at Developer's sole cost and expense, and in accordance all applicable City standards for similar public infrastructure. The City's agreement to provide Reclaimed Water Services to the Property is conditioned upon City obtaining a reclaimed water authorization from TCEQ allowing City's use of Reclaimed Water under 30 Texas Administrative Code Chapter 210, and the subsequent execution of an Agreement for the Purchase and Use of Reclaimed Water in compliance with 30 Texas Administrative Code Chapter 210 made between the Parties; provided that the Agreement for the Purchase and Use of Reclaimed Water shall include the same rates, fees, and charges generally applicable to other Reclaimed Water customers within the same customer class located within City's corporate limits pursuant to the Code of Ordinances and adopted utility rate schedules, as may be amended from time to time.

(b) Reclaimed Water Design Phase.

(1) Upon receipt of written notice from City to Developer allowing Developer to commence of design of the Reclaimed Water Improvements (the "**Reclaimed Water Design Commencement Notice**"), Developer shall promptly nominate one or more professional engineers (whether one or more, the "**Reclaimed Water Project Engineer**") to prepare complete design and engineering plans and specifications for the Reclaimed Water Improvements (the "**Reclaimed Water Design Documents**").

(2) City shall have the right to review and approve Developer's nomination of the Reclaimed Water Project Engineer, which approval shall not be unreasonably withheld or delayed. If City fails within ten (10) Business Days after delivery of the name of the nominated Reclaimed Water Project Engineer by Developer to City to either approve or disapprove such Reclaimed Water Project Engineer, such Reclaimed Water Project Engineer shall be deemed to be approved by City.

(3) City shall have the right to review and approve the scope of the work for the Reclaimed Water Project Engineer, which approval shall not be unreasonably withheld or delayed. If City fails within ten (10) Business Days after delivery of the draft scope of work by Developer to City to either approve such scope of work or provide comments requesting changes to such scope of work, such scope of work shall be deemed to be approved by City.

(4) If Developer changes the substantive terms of such scope of work (excluding changes made in response to City's prior comments) after City's review but prior to signing the contract with the Reclaimed Water Project Engineer, Developer shall deliver the revised scope of work to City for additional comment and approval, which approval shall not be unreasonably withheld or delayed. If City fails within ten (10) days after delivery of the revised scope of work by Developer to City to either approve such scope of work or provide comments requesting changes to such scope of work, such revised scope of work shall be deemed to be approved by City.

(5) City shall have the right to engage, at City's cost, a City's Representative to monitor the design phase of the Reclaimed Water Improvements, attend project meetings, and provide reports to City regarding compliance with the Reclaimed Water Design Documents and project schedule. Developer shall provide City's Representative with reasonable access to the project site, design meetings, and relevant project documentation. Developer will consult with City regarding the design of Reclaimed Water Improvements during the Reclaimed Water Design Phase and deliver to City copies of the draft plans and specifications for the Reclaimed Water Improvements for City's review when such plans reach 30% completion. Following receipt of City's comment on the 30% review documents and upon completion of 100% documents intended for construction, Developer will deliver such documents to City for City's records.

(6) Not later than five (5) Business Days after receipt of a written request from City or the City's Representative, Developer shall deliver, or caused to be delivered, to City such documents and other information that City or the City's Representative may request relating to the design of the Reclaimed Water Improvements and/or Developer's daily and peak capacity requirements for Reclaimed Water that City and/or the City's Representative determine in their sole discretion to be needed in order to review the Reclaimed Water Design Documents. The Parties understand, acknowledge, and agree that City and/or the City's Representative may make multiple requests for information from Developer and that the time for delivery of the requested information shall apply to each such request.

(7) Subject to delays resulting from Force Majeure, or City's delay in providing required information or other acts required to be performed by City, Developer shall use commercially reasonable efforts to cause the Reclaimed Water Design Documents to be completed not later than eighteen (18) months after City's receipt of the Reclaimed Water Design Commencement Notice (the "**Reclaimed Water Design Deadline**").

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(c) Reclaimed Water Construction Phase. Upon City's approval of the Reclaimed Water Design Documents and delivery of a written notice from City to Developer allowing Developer to commence construction of the Reclaimed Water Improvements (the "**Reclaimed Water Construction Commencement Notice**"), Developer shall promptly take such steps reasonable and necessary in accordance with state law to procure a contractor for construction of the Reclaimed Water Improvements in accordance with the Reclaimed Water Design Documents. Subject to delays relating to one or more Force Majeure Events, Developer shall, at Developer's sole cost and expense, cause construction of the Reclaimed Water Improvements to be completed not later than twenty-four (24) months after City's receipt of the Reclaimed Water Construction Commencement Notice (the "**Reclaimed Water Construction Deadline**"). City may not deliver the Reclaimed Water Construction Commencement Notice to Developer prior to (i) review and approval by City of the Reclaimed Water Design Documents, (ii) the date on which all approvals and permits for construction of the Reclaimed Water Improvements have been issued by all governmental authorities having regulatory jurisdiction over the construction and/or operation of the Reclaimed Water Improvements; (iii) title to all On-Site Easements relating to construction of the Reclaimed Water Improvements has been conveyed to City; and (iv) City has been reimbursed for all Off-Site Easement Costs incurred by City.

(d) Force Majeure Extension. The Reclaimed Water Design Deadline and the Reclaimed Water Construction Deadline shall each be extended on a day-for-day basis for any delay caused by an event of Force Majeure, provided Developer delivers written notice to City of the occurrence of such event of Force Majeure within fifteen (15) Business Days after Developer becomes aware of the event or condition causing the delay. Such notice shall describe the nature of the Force Majeure event, the date of its occurrence, and Developer's good faith estimate of the anticipated duration of the delay. Developer shall use commercially reasonable efforts to mitigate the effects of any Force Majeure event and shall provide City with periodic updates (not less frequently than every thirty (30) days) regarding the status of the Force Majeure event and Developer's mitigation efforts. Upon cessation of the Force Majeure event, Developer shall promptly resume performance and notify City in writing that the Force Majeure event has ended.

(e) On-Site Easements. Developer shall, at no cost to City, convey to City, or cause to be conveyed to City, all On-Site Easements through execution of a separate recordable instrument in a form reasonably acceptable to City.

(f) Off-Site Easements.

(1) The Parties acknowledge that, as of the Effective Date, Developer may not own or otherwise control the real property on, over, and under which Off-Site Easements may need to be located. Developer shall be primarily responsible for acquiring and paying all costs related to purchasing and conveying to City all Off-Site Easements. If Developer is unable to acquire through negotiations one or more Off-Site Easements, City agrees to exercise commercially reasonable efforts to purchase such Off-Site Easement(s), but only after:

(i) Developer notifies City in writing that Developer has made a good faith effort to purchase the property necessary for the

construction of the identified Off-Site Easement(s);

(ii) Developer provides to the City Manager copies of the written offers that Developer has made to purchase the Off-Site Easement(s) and all written counteroffers received by Developer from the owner of the property to be encumbered by the Off-Site Easement, and such other written information relating to Developer's efforts to acquire title to such Off-Site Easement(s) reasonably requested by the City Manager; and

(iii) The City Manager determines, in the City Manager's reasonable discretion, that Developer has made one or more good faith offers to purchase such Off-Site Easement(s) for consideration not less than fair market value for said property that have been rejected by the owner of such Off-Site Easement(s) and has provided said owner reasonable time to consider and reply to such offers.

(2) Subject to paragraph (3), below, not later than ten (10) days after the City Manager makes the finding required in paragraph (1), above, City shall notify Developer in writing that City intends to proceed with directly purchasing the Off-Site Easement(s) that Developer is unable to acquire either through negotiations with the subject property owner or through the exercise of City's eminent domain authority.

(3) City shall not be required to commence any negotiations or other efforts to acquire an Off-Site Easement until Developer has paid to City the amount of Twenty-Five Thousand Dollars ($25,000) to be held by City in its accounts until used to pay Off-Site Easement Costs relating to acquisition of title to the Off-Site Easement to be acquired. City agrees to account for such funds separately on City's books of account (the "**Off-Site Easement Fund**"). Upon written request of Developer, which request shall not be more frequent than once per calendar month, City agrees to provide a written accounting of the amounts spent by City from the Off-Site Easement Fund and the purpose for such expenditures. Whenever the Off-Site Easement Fund reaches a balance of less than $2,000, upon written request by City, Developer shall pay to City sufficient funds to bring the balance of the Off-Site Easement Fund to $15,000. Provided, however, City shall not incur Off-Site Easement Costs relating to the acquisition of title to the Off-Site Easement being acquired (not including the purchase price, Special Commissioner's Award, or judgment for damages, regardless of whether by agreed judgment or judgment of the court or jury, to be paid to the owner of the Off-Site Easement) beyond $50,000 without the prior written consent of Developer, which shall not be unreasonably withheld.

(4) Not later than ten (10) days after City acquires title to the Off-Site Easement, City agrees to refund to Developer any balance remaining in the Off-Site Easement Fund related to the Off-Site Easement being acquired. If

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upon City's acquisition of title to such Off-Site Easement, Off-Site Easement Costs relating to acquisition of such Off-Site Easement remain unpaid, City shall first apply any remaining balance in the Off-Site Easement Fund to pay such expenses, then City shall invoice Developer for any remaining amounts due, which Developer shall pay not later than fifteen (15) days after receipt of the invoice.

(5) Developer shall deliver to City the amount of the purchase price for the Off-Site Easement, whether established through negotiations between City and the owner of the Off-Site Easement, or as set forth in an Award of Special Commissioners' as part of an eminent domain proceeding as follows:

(i) If City has agreed to acquire the Off-Site Easement with its owner through a negotiated agreement, Developer shall deliver the purchase price to City not later than thirty (30) calendar days after receipt of written request from City, but in no case earlier than five (5) Business Days prior to the closing on said purchase;

(ii) If City has elected to acquire the Off-Site Easement through an eminent domain proceeding, Developer shall deliver the amount of the Special Commissioners' Award to City not later than two (2) Business Days after receipt of a copy of the Special Commissioners' Award;

(iii) If either City or the owner of the Off-Site Easement timely files objections to the decision of the Special Commissioners' Award and a judge or jury grants an award of damages to the owner of the Off-Site Easement that is greater than the Special Commissioners' Award of damages, Developer shall pay to City the difference between such award (including any pre-judgment interest) and the amount of the Special Commissioners' Award not later than five (5) calendar days after Developer is notified of the court's entry of judgment in the case;

(iv) If either City or the owner of the Off-Site Easement timely files objections to the decision of the Special Commissioners' Award and a judge or jury grants an award of damages to the owner of the Off-Site Easement that is less than the Special Commissioners' Award of damages, City shall reimburse Developer the difference between such award (including any pre-judgment interest) and the amount of the Special Commissioners' Award not later than thirty (30) calendar days after (A) City is notified of the court's entry of judgment in the case, and (B) receipt of such overpayment from either the owner of the Off-Site Easement (if the funds in the amount of the Special Commissioners' Award were previously deposited into the court registry and withdrawn by the owner of the Off-Site Easement) or the Young County Clerk (if the funds in the amount of the Special Commissioners'

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Award were previously deposited in the court registry not subsequently withdrawn); and

(v) If, after commencement of an eminent domain suit, City enters into a settlement agreement with the owner of the Off-Site Easement resulting in the conveyance of the Off-Site Easement to City, Developer shall pay to City not later than thirty (30) calendar days after receipt of a copy of such settlement agreement such amounts City is required to pay to the owner of the Off-Site Easement and other costs as set forth in such settlement agreement.

(vi) Nothing contained herein shall require the City to exercise its eminent domain authority to acquire any Off-Site Easement. Any such exercise of the City's eminent domain authority shall be at the sole discretion of the City, shall require the approval of City Council, and shall be used only for lawful public purposes.

(6) The provisions of this Section 5.1(f) shall apply to each Off-Site Easement to be acquired separately. For clarification, if more than one Off-Site Easement is to be acquired by City, then paragraphs (1) through (5) of this Section 5.1(f) shall apply independently to each Off-Site Easement to be acquired by City.

(7) City shall have no obligation to commence Reclaimed Water Service to the Property unless and until City has been reimbursed all Off-Site Easement Costs incurred by City.

(g) Ownership and Priority Rights.

(1) Upon final completion of construction of the Reclaimed Water Improvements in accordance with the plans and specifications approved by City, inclusive of any change orders amending such plans and specifications approved by City's Representative, and the satisfaction of all other conditions set forth in this Agreement that must be satisfied before City acceptance of the Reclaimed Water Improvements, Developer shall dedicate and convey to City, at no cost to City, the Reclaimed Water Improvements and, to the extent not already conveyed to City, all Off-Site Easements, On-Site Easements, and other real property interests reasonably necessary for City to own, operate, maintain, repair, replace, and access the Reclaimed Water Improvements except for any Reclaimed Water facilities located on Developer's side of the Reclaimed Water Delivery Point, which shall remain privately owned. For the avoidance of doubt, upon final completion and acceptance by City, the Reclaimed Water Improvements shall be owned, operated, maintained, and repaired by City and shall constitute part of City's Reclaimed Water System.

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(2) Developer shall have a priority right to receive Reclaimed Water produced by the Reclaimed Water Improvements of 0.10 MGD for the duration of the Term. The Parties understand, acknowledge, and agree Developer shall additionally be required to pay any and all customary and applicable tap, connection, inspection, and capacity fees associated with the provision of Reclaimed Water to the Property.

(3) The Parties understand, acknowledge, and agree that City may use, reserve, contract for, or provide to third-parties through the use of the Reclaimed Water Improvements any Reclaimed Water capacity in excess of the 0.10 MGD committed to Developer, including additional capacity produced by the Reclaimed Water Improvements, provided such use is subordinate to and does not impair City's ability to satisfy its commitment to Developer under this Agreement.

Section 5.2 – Wastewater Improvements.

(a) Funding Responsibility. The Wastewater Improvements shall be designed, permitted, and constructed by Developer, at Developer's sole cost and expense, and in accordance all applicable City standards for similar public infrastructure.

(b) Wastewater Design Phase.

(1) Upon receipt of written notice from City to Developer allowing Developer to commence design of the Wastewater Improvements (the "**Wastewater Design Commencement Notice**"), Developer shall promptly nominate one or more professional engineers (whether one or more, the "**Wastewater Project Engineer**") to prepare complete design and engineering plans and specifications for the Wastewater Improvements (the "**Wastewater Design Documents**").

(2) City shall have the right to review and approve Developer's nomination of the Wastewater Project Engineer, which approval shall not be unreasonably withheld or delayed. If City fails within ten (10) Business Days after delivery of the name of the nominated Wastewater Project Engineer by Developer to City to either approve or disapprove such Wastewater Project Engineer, such Wastewater Project Engineer shall be deemed to be approved by City.

(3) City shall have the right to review and approve the scope of the work for the Wastewater Project Engineer, which approval shall not be unreasonably withheld or delayed. If City fails within ten (10) Business Days after delivery of the draft scope of work by Developer to City to either approve such scope of work or provide comments requesting changes to such scope of work, such scope of work shall be deemed to be approved by City.

(4) If Developer changes the substantive terms of such scope of work (excluding changes made in response to City's prior comments) after City's review but prior to signing the contract with the Wastewater Project Engineer, Developer shall deliver

the revised scope of work to City for additional comment and approval, which approval shall not be unreasonably withheld or delayed. If City fails within ten (10) days after delivery of the revised scope of work by Developer to City to either approve such scope of work or provide comments requesting changes to such scope of work, such revised scope of work shall be deemed to be approved by City.

(5) City shall have the right to engage, at City's cost, a City's Representative to monitor the design phase of the Wastewater Improvements, attend project meetings, and provide reports to City regarding compliance with the Wastewater Design Documents and project schedule. Developer shall provide City's Representative with reasonable access to the project site, design meetings, and relevant project documentation. Developer will consult with City regarding the design of Wastewater Improvements during the Wastewater Design Phase and deliver to City copies of the draft plans and specifications for the Wastewater Improvements for City's review when such plans reach 30% completion. Following receipt of City's comment on the 30% review documents and upon completion of 100% documents intended for construction, Developer will deliver such documents to City for City's records.

(6) Not later than five (5) Business Days after receipt of a written request from City or the City's Representative, Developer shall deliver, or caused to be delivered, to City such documents and other information that City or the City's Representative may request relating to the design of the Wastewater Improvements and/or Developer's daily and peak capacity requirements for Wastewater that City and/or the City's Representative determine in their sole discretion to be needed in order to review the Wastewater Design Documents. The Parties understand, acknowledge, and agree that City and/or the City's Representative may make multiple requests for information from Developer and that the time for delivery of the requested information shall apply to each such request.

(7) Subject to delays resulting from Force Majeure, or City's delay in providing required information or other acts required to be performed by City, Developer shall use commercially reasonable efforts to cause the Wastewater Design Documents to be completed not later than eighteen (18) months after City's receipt of the Wastewater Design Commencement Notice (the "**Wastewater Design Deadline**").

(c) Wastewater Construction Phase. Upon City's approval of the Wastewater Design Documents and delivery of a written notice from City to Developer allowing Developer to commence construction of the Wastewater Improvements (the "**Wastewater Construction Commencement Notice**"), Developer shall promptly take such steps reasonable and necessary in accordance with state law to procure a contractor for construction of the Wastewater Improvements in accordance with the Wastewater Design Documents. Subject to delays relating to one or more Force Majeure Events, Developer shall, at Developer's sole cost and expense, cause construction of the Wastewater Improvements to be completed not later than twenty-four (24) months after City's receipt of the Wastewater Construction Commencement Notice (the "**Wastewater Construction Deadline**"). City may not deliver the Wastewater Construction Commencement Notice to Developer prior to (i) review and approval by City of the Wastewater Design Documents, (ii) the date on which all approvals and permits for construction of the Wastewater Improvements

have been issued by all governmental authorities having regulatory jurisdiction over the construction and/or operation of the Wastewater Improvements; (iii) title to all On-Site Easements relating to construction of the Wastewater Improvements has been conveyed to City; and (iv) City has been reimbursed for all Off-Site Easement Costs incurred by City.

(d) Force Majeure Extension. The Wastewater Design Deadline and the Wastewater Construction Deadline shall each be extended on a day-for-day basis for any delay caused by an event of Force Majeure, provided Developer delivers written notice to City of the occurrence of such event of Force Majeure within fifteen (15) Business Days after Developer becomes aware of the event or condition causing the delay. Such notice shall describe the nature of the Force Majeure event, the date of its occurrence, and Developer's good faith estimate of the anticipated duration of the delay. Developer shall use commercially reasonable efforts to mitigate the effects of any Force Majeure event and shall provide City with periodic updates (not less frequently than every thirty (30) days) regarding the status of the Force Majeure event and Developer's mitigation efforts. Upon cessation of the Force Majeure event, Developer shall promptly resume performance and notify City in writing that the Force Majeure event has ended.

(e) On-Site Easements. Developer shall, at no cost to City, convey to City, or cause to be conveyed to City, all On-Site Easements through execution of a separate recordable instrument in a form reasonably acceptable to City.

(f) Off-Site Easements.

(1) The Parties acknowledge that, as of the Effective Date, Developer may not own or otherwise control the real property on, over, and under which Off-Site Easements may need to be located. Developer shall be primarily responsible for acquiring and paying all costs related to purchasing and conveying to City all Off-Site Easements. If Developer is unable to acquire through negotiations one or more Off-Site Easements, City agrees to exercise commercially reasonable efforts to purchase such Off-Site Easement(s), but only after:

(i) Developer notifies City in writing that Developer has made a good faith effort to purchase the property necessary for the construction of the identified Off-Site Easement(s);

(ii) Developer provides to the City Manager copies of the written offers that Developer has made to purchase the Off-Site Easement(s) and all written counteroffers received by Developer from the owner of the property to be encumbered by the Off-Site Easement, and such other written information relating to Developer's efforts to acquire title to such Off-Site Easement(s) reasonably requested by the City Manager; and

(iii) The City Manager determines, in the City Manager's reasonable discretion, that Developer has made one or more good faith offers to purchase such Off-Site Easement(s) for consideration not less

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than fair market value for said property that have been rejected by the owner of such Off-Site Easement(s) and has provided said owner reasonable time to consider and reply to such offers.

(2) Subject to paragraph (3), below, not later than ten (10) days after the City Manager makes the finding required in paragraph (1), above, City shall notify Developer in writing that City intends to proceed with directly purchasing the Off-Site Easement(s) that Developer is unable to acquire either through negotiations with the subject property owner or through the exercise of City's eminent domain authority.

(3) City shall not be required to commence any negotiations or other efforts to acquire an Off-Site Easement until Developer has paid to City the amount of Twenty-Five Thousand Dollars ($25,000) to be held by City in its accounts until used to pay Off-Site Easement Costs relating to acquisition of title to the Off-Site Easement to be acquired. City agrees to account for such funds separately on City's books of account (the "**Off-Site Easement Fund**"). Upon written request of Developer, which request shall not be more frequent than once per calendar month, City agrees to provide a written accounting of the amounts spent by City from the Off-Site Easement Fund and the purpose for such expenditures. Whenever the Off-Site Easement Fund reaches a balance of less than $2,000, upon written request by City, Developer shall pay to City sufficient funds to bring the balance of the Off-Site Easement Fund to $15,000. Provided, however, City shall not incur Off-Site Easement Costs relating to the acquisition of title to the Off-Site Easement being acquired (not including the purchase price, Special Commissioner's Award, or judgment for damages, regardless of whether by agreed judgment or judgment of the court or jury, to be paid to the owner of the Off-Site Easement) beyond $50,000 without the prior written consent of Developer, which shall not be unreasonably withheld.

(4) Not later than ten (10) days after City acquires title to the Off-Site Easement, City agrees to refund to Developer any balance remaining in the Off-Site Easement Fund related to the Off-Site Easement being acquired. If upon City's acquisition of title to such Off-Site Easement, Off-Site Easement Costs relating to acquisition of such Off-Site Easement remain unpaid, City shall first apply any remaining balance in the Off-Site Easement Fund to pay such expenses, then City shall invoice Developer for any remaining amounts due, which Developer shall pay not later than fifteen (15) days after receipt of the invoice.

(5) Developer shall deliver to City the amount of the purchase price for the Off-Site Easement, whether established through negotiations between City and the owner of the Off-Site Easement, or as set forth in an Award of Special Commissioners' as part of an eminent domain proceeding as follows:

(i) If City has agreed to acquire the Off-Site Easement with

its owner through a negotiated agreement, Developer shall deliver the purchase price to City not later than thirty (30) calendar days after receipt of written request from City, but in no case earlier than five (5) Business Days prior to the closing on said purchase;

(ii) If City has elected to acquire the Off-Site Easement through an eminent domain proceeding, Developer shall deliver the amount of the Special Commissioners' Award to City not later than two (2) Business Days after receipt of a copy of the Special Commissioners' Award;

(iii) If either City or the owner of the Off-Site Easement timely files objections to the decision of the Special Commissioners' Award and a judge or jury grants an award of damages to the owner of the Off-Site Easement that is greater than the Special Commissioners' Award of damages, Developer shall pay to City the difference between such award (including any pre-judgment interest) and the amount of the Special Commissioners' Award not later than five (5) calendar days after Developer is notified of the court's entry of judgment in the case;

(iv) If either City or the owner of the Off-Site Easement timely files objections to the decision of the Special Commissioners' Award and a judge or jury grants an award of damages to the owner of the Off-Site Easement that is less than the Special Commissioners' Award of damages, City shall reimburse Developer the difference between such award (including any pre-judgment interest) and the amount of the Special Commissioners' Award not later than thirty (30) calendar days after (A) City is notified of the court's entry of judgment in the case, and (B) receipt of such overpayment from either the owner of the Off-Site Easement (if the funds in the amount of the Special Commissioners' Award were previously deposited into the court registry and withdrawn by the owner of the Off-Site Easement) or the Young County Clerk (if the funds in the amount of the Special Commissioners' Award were previously deposited in the court registry not subsequently withdrawn); and

(v) If, after commencement of an eminent domain suit, City enters into a settlement agreement with the owner of the Off-Site Easement resulting in the conveyance of the Off-Site Easement to City, Developer shall pay to City not later than thirty (30) calendar days after receipt of a copy of such settlement agreement such amounts City is required to pay to the owner of the Off-Site Easement and other costs as set forth in such settlement agreement.

(vi) Nothing contained herein shall require the City to exercise its eminent domain authority to acquire any Off-Site Easement.

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Any such exercise of the City's eminent domain authority shall be at the sole discretion of the City, shall require the approval of City Council, and shall be used only for lawful public purposes.

(6) The provisions of this Section 5.2(f) shall apply to each Off-Site Easement to be acquired separately. For clarification, if more than one Off-Site Easement is to be acquired by City, then paragraphs (1) through (5) of this Section 5.2(f) shall apply independently to each Off-Site Easement to be acquired by City.

(7) City shall have no obligation to commence Wastewater Services to the Property unless and until City has been reimbursed all Off-Site Easement Costs incurred by City.

(g) Ownership and Wastewater Service Rates.

(1) Upon final completion of construction of the Wastewater Improvements in accordance with the plans and specifications approved by City, inclusive of any change orders amending such plans and specifications approved by City's Representative, and the satisfaction of all other conditions set forth in this Agreement that must be satisfied before City acceptance of the Wastewater Improvements, Developer shall dedicate and convey to City, at no cost to City, the Wastewater Improvements and, to the extent not already conveyed to City, all Off-Site Easements, On-Site Easements, and other real property interests reasonably necessary for City to own, operate, maintain, repair, replace, and access the Wastewater Improvements except for any Wastewater Improvements located on Developer's side of the Wastewater Point of Entry, which shall remain privately owned. For the avoidance of doubt, upon final completion and acceptance by City, the Wastewater Improvements shall be owned, operated, maintained, and repaired by City and shall constitute part of City's Wastewater System.

(2) Upon final completion and acceptance by City of the Wastewater Improvements, the City shall provide Wastewater Service to the Property under the same rates, fees, and charges generally applicable to other Wastewater System customers within the same customer class located within City's corporate limits pursuant to the Code of Ordinances and adopted utility rate schedules, as may be amended from time to time.

Section 5.3 – Reclaimed Water Services and Wastewater Services. City agrees to provide Reclaimed Water Services and Wastewater Service to the Property subject to the following:

(a) Reclaimed Water delivered to the Property shall be used on the Property solely for domestic, industrial, and landscape irrigation purposes, subject to applicable laws, permits, and regulations, and shall be the exclusive source of water supplied by City for the Property, including cooling, HVAC system fill and makeup, process water, and other industrial uses.

(b) For sake of clarity, Developer shall not be authorized to use potable water at the Property for non-domestic purposes, nor shall City be obligated to deliver potable water to the Property to be used for any purpose.

(c) Subject to the terms and conditions of this Agreement, for each utility service separately, after completion and acceptance by City of the Utility Improvements necessary to provide such utility service (and, with respect to Reclaimed Water service only, the Reclaimed Water Improvements), City shall reserve and maintain throughout the Term sufficient capacity in its Reclaimed Water System and Wastewater System to:

(1) Accept, convey, and treat domestic wastewater generated from the Property at the Wastewater Point of Entry up to an ADF of _____ MGD, provided, however, that notwithstanding anything in this Agreement to the contrary, City may reduce, suspend, or terminate the acceptance, conveyance, and treatment of domestic wastewater generated from the Property to the extent necessary for the City to comply with City's Texas Pollutant Discharge Elimination System permit issued by TCEQ or other TCEQ regulations; and

(2) Deliver up to an ADD of _____ MGD of Reclaimed Water to Developer at the Reclaimed Water Delivery Point and provide Reclaimed Water as a one-time fill of each building's closed loop HVAC systems collectively for all buildings constructed on the Property, such amount not to exceed Four Hundred Thousand (400,000) gallons of Reclaimed Water collectively for all buildings constructed on the Property. Developer agrees to take at the Reclaimed Water Delivery Point all such Reclaimed Water desired for use by Developer during the term of this Agreement. Notwithstanding anything in this Agreement to the contrary, City may reduce, suspend, or terminate the delivery or use of Reclaimed Water to the extent necessary for the City to comply with 30 Texas Administrative Code Chapter 210.

For clarification, nothing in this Section 5.3(c) shall be construed as requiring City to (i) provide more Reclaimed Water and/or (ii) accept more domestic wastewater than the volumes actually consumed or produced, respectively, by Reclaimed Water and/or Wastewater System customers on the Property. For further clarification, City shall not be in default of this Agreement if the average daily volume of Reclaimed Water delivered and/or wastewater received is reduced because of customers located on the Property having service temporarily or permanently discontinued for failure to pay to City required customer charges and fees for receipt of such utility services. No reduction in, or failure to use, any volume of service at any time shall reduce, forfeit, or otherwise diminish City's capacity commitments to the Property under this Section 5.3(c).

ARTICLE VI
DEFAULT AND REMEDIES

Section 6.1 – Notice and Cure.

(a) Prior to declaring an Event of Default, the Party alleging a default by the other Party (the "**Noticing Party**") shall deliver written notice (a "**Default Notice**") to the other Party (the "**Noticed Party**") specifying in reasonable detail the nature of the alleged Event of Default including, but not limited to, a reference to the specific provision(s) of this Agreement with which the Noticed Party is allegedly failing to comply and a description of such non-compliance.

(b) Not later than sixty (60) days after receipt of the Default Notice, the Noticed Party shall either (i) cure the described default or (ii) provide a response to the Noticing Party as to why the Noticed Party is not in default and no default has occurred.

(c) If the default described in the Default Notice is of a nature that cannot reasonably be cured within sixty (60) days, the cure period shall be extended for an additional sixty (60) days, provided that the Noticed Party has commenced good-faith efforts to cure the default within the initial sixty (60)-day period and is diligently pursuing such cure to completion.

(d) No Event of Default shall be deemed to have occurred until the applicable cure period has expired without the default being cured.

Section 6.2 – Escalation Process. Prior to delivering a Default Notice pursuant to Section 6.1, the Noticing Party may first deliver an informal written notice to the Noticed Party identifying the concern and requesting a meeting between the City Manager and an authorized officer of Developer to be held not later than fifteen (15) Business Days after delivery of such informal notice to discuss resolution. The delivery of an informal notice under this Section 6.2 is not a precondition to the exercise of any other remedy but is intended to encourage early resolution of disputes.

Section 6.3 - Remedies.

(a) Upon the occurrence of an Event of Default that is not cured within the applicable cure period, the Noticing Party may pursue any remedy available under Texas Local Government Code Section 212.172(i)-(k).

(b) The Parties agree that specific performance is an appropriate remedy for breach of this Agreement, as the Property and the obligations hereunder are unique and monetary damages may not be an adequate remedy.

(c) Upon the occurrence of an Event of Default by City that is not cured within the applicable cure period, Developer may suspend payment of installments of the Infrastructure

Improvement Fees until such time as the default is cured. Upon City's cure of the default set forth in the applicable Default Notice, Developer shall resume making installment payments of the Infrastructure Improvement Fees and, if an installment was due and payable during the period in which Developer had suspended payments, such installment shall be paid not later than ten (10) Business Days after City completed curing of the applicable default.

(d) Neither Party shall be liable to the other for any consequential, punitive, special, or exemplary damages arising out of or relating to this Agreement, except as expressly allowed under Texas Local Government Code Section 212.172(j)(2), regardless of whether such damages are based on breach of contract, tort, strict liability, or any other legal theory.

ARTICLE VII
TERMINATION

Section 7.1 - Termination Events.

This Agreement may be terminated upon the occurrence of any of the following:

(a) by mutual written agreement of the Parties;

(b) by the Noticing Party following an uncured Event of Default in accordance with Article VI;

(c) by City upon the occurrence of a Bankruptcy or Insolvency of Developer, as defined herein. For purposes of this Agreement, "Bankruptcy or Insolvency" means: (i) Developer's dissolution or liquidation; (ii) the appointment of a receiver, trustee, or custodian for Developer or substantially all of its assets; (iii) a general assignment by Developer for the benefit of creditors; or (iv) the commencement of any proceeding under any bankruptcy, insolvency, or reorganization law by or against Developer that is not dismissed within ninety (90) days of filing;

(d) by either Party upon a final, non-appealable determination by a court of competent jurisdiction that this Agreement or any material provision hereof is illegal, invalid, or unenforceable and cannot be reformed in accordance with Section 9.7;

(e) by City if Developer fails to file the voluntary annexation petition within the time required by Article VIII; or

(f) by Developer in the event of an uncured default by City under the terms of this Agreement relating to a failure by City to provide committed Reclaimed Water Services or Wastewater Services or to construct the infrastructure necessary to provide such services.

Section 7.2 – Notice of Termination. Termination under Section 7.1(b), (c), (d), (e), or (f) shall be effective upon not less than thirty (30) days' prior written notice to the other Party, specifying the grounds for termination.

Section 7.3 - Effect of Termination on Accrued Obligations. Other than a termination relating to an uncured default, any obligation or liability that has accrued prior to the effective date of termination, but has not been fully performed as of the date of termination, shall survive the termination of this Agreement, including without limitation:

(a) Any Infrastructure Improvement Fees under Article III that are due and payable by Developer and for which all conditions creating the obligation to make such payments have been satisfied, even if such payments are due after the termination of this Agreement, unless termination is due to an uncured default by City; and

(b) Any indemnification obligations arising from an event on or before the date of termination.

(c) Developer's decommissioning responsibilities under Section 4.15.

ARTICLE VIII
ANNEXATION

Section 8.1 – Extraterritorial Jurisdiction and Taxes. Subject to the provisions of this Agreement, the City guarantees the continuation of the extraterritorial status of the Property, its immunity from full purpose annexation by the City without the consent of the Property owner, and its immunity from City property taxes for the term of this Agreement. Except as provided in this Agreement, the City agrees not to fully annex the Property without the consent of the Property owner, agrees not to involuntarily institute proceedings to fully annex the Property, and further agrees not to include the Property in a statutory annexation plan for the term of this Agreement. However, if the Property is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Property pursuant to Chapter 43 of the Texas Local Government Code.

Section 8.2 – Annexation Petition. Upon or before the approval of this Agreement by the City Council, Developer shall file with City a voluntary petition for annexation of the Property into the City's extraterritorial jurisdiction (the "**Annexation Petition**"). Developer hereby consents to the voluntary annexation of the Property into the City's extraterritorial jurisdiction and agrees not to withdraw or revoke the Annexation Petition without City's prior written consent, which may be withheld at City's sole discretion. Notwithstanding the foregoing to the contrary, Developer may withdraw the Annexation Petition prior to the effective date of the ordinance annexing the Property if prior to that date City has failed to cure within any applicable cure period a material breach of this Agreement by City.

Section 8.3 – Annexation Proceedings. The Annexation Petition shall be considered at the next regularly scheduled meeting of the City Council at which it is possible to comply with all applicable public notice, meeting, and other requirements of law. City shall use its reasonable efforts to process the Annexation Petition so that annexation of the Property occurs as soon as reasonably practicable following filing of the Annexation Petition.

Section 8.4 – Cooperation. Developer shall (i) execute and deliver or (ii) cause the then-current owner(s) of the Property to execute and deliver, all petitions, consents,

acknowledgments, affidavits, service agreements, and other documents reasonably necessary to complete the annexation of the Property into the City's extraterritorial jurisdiction. The Parties shall reasonably cooperate and take all actions reasonably necessary or appropriate to accomplish the annexation contemplated by this Article VIII.

Section 8.5 – Effect of Annexation. Upon annexation of the Property into the City's extraterritorial jurisdiction, the Property shall become subject to City's extraterritorial jurisdiction; provided, however, that the use and development of the Property shall continue to be governed by this Agreement, in accordance with the terms of this Agreement and applicable law.

Section 8.6 – Annexation into Extraterritorial Jurisdiction as Condition of Agreement. Notwithstanding anything herein to the contrary, the City's obligations under this Agreement, including to provide Reclaimed Water Services and Wastewater Services to the Property, shall be expressly contingent upon the Property being annexed into the City's extraterritorial jurisdiction.

Section 8.7 – Full Purpose Annexation. No earlier than thirty (30) years from the Energization of a Data Center Building, City and Developer shall negotiate in good faith for the full purpose annexation of that portion of the Property on which such Data Center Building is situated.

ARTICLE IX
MISCELLANEOUS

Section 9.1 – Emergency Response Services. City will provide police services, fire protection services, rescue services, and emergency response services to the Property only in accordance with the Interlocal Agreement(s) with other governmental agencies in Young County in effect upon the Effective Date.

Section 9.2 – Assignment.

(a) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. The terms of this Agreement shall constitute covenants running with the land comprising the Property and shall be binding on and benefit all owners of the Property.

(b) Developer may not assign this Agreement in whole or in part without the prior written consent of City; provided, however, Developer may assign this Agreement in its entirety, but not in part, to a Developer Affiliate or purchaser of the Property without the prior written consent of City, provided that (i) the assignee assumes in writing on a form reasonably approved by City all of Developer's obligations, liabilities, and responsibilities hereunder, and (ii) Developer provides written notice to City of such assignment not later than fifteen (15) days prior to the effective date of such assignment. No assignment of this Agreement by Developer, whether or not it requires the prior consent of City, shall be binding on City until a copy of such assignment signed by the assignor and assignee has been delivered to City.

(c) Upon the assignee's assumption of all of Developer's obligations hereunder and the provision of written notice to City of such assignment, Developer shall be released from its obligations hereunder for all claims and liabilities accruing or arising on and after the effective date of such assignment. Developer shall remain liable for and is not released from claims and liabilities related to or arising from this Agreement prior to the effective date of such assignment unless the assignee has agreed in writing to also assume all such liabilities and claims accruing against Developer prior to the effective date of such assignment.

Section 9.3 – Notices. All written notices and demands of any kind which any Party may be required or may desire to serve upon any other Party in connection with this Agreement may be (a) personally served, (b) served by registered or certified mail (postage pre-paid), (c) sent by email transmission (provided that the original notice or demand is also delivered by next day overnight delivery service), or (d) sent by next day overnight delivery service. Any such notice or demand shall be addressed to the Parties as listed in this Section 9.3. Service of any such notice or demand shall be deemed complete upon receipt in the event of personal service, on the third Business Day after deposit in the U.S. mail if sent via registered or certified mail, upon transmission if sent via email, and on the next Business Day if sent via an overnight delivery service with a delivery confirmation, if sent to each Party at the address set forth below with the required proper postage:

If to City:
City of Graham, Texas
Attn: Eric Garretty, City Manager
612 Elm Street
Graham, Young County, Texas 76450
Email: egarretty@grahamtexas.net

With a copy to:
Matthew A. Murray, City Attorney
500 S. Taylor, Suite 1200
Amarillo, Texas 79101
Email: matthew.murray@uwlaw.com

If to Developer:
Headwaters Site Development LLC
_____
_____
_____

A Party may change its address for notices by providing written notice to the other Parties in accordance with this Section 9.3.

Section 9.4 – Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law principles.

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Any action or proceeding arising out of or relating to this Agreement shall be brought exclusively in a court of competent jurisdiction in Young County, Texas, and each Party hereby consents to the jurisdiction and venue of such courts.

Section 9.5 – Entire Agreement. This Agreement, together with all exhibits attached hereto and the Related Agreements, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts, and writings with respect thereto.

Section 9.6 – Amendment. This Agreement may only be amended, modified, or supplemented by a written instrument signed by both Parties.

Section 9.7 – Severability. If any one or more provisions of this Agreement shall for any reason be determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the remaining provisions of this Agreement which shall remain in full force and effect. It is the intention of the Parties that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement, which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

Section 9.8 – No Joint Venture or Partnership. Nothing in this Agreement shall be construed to create a joint venture, partnership, or agency relationship between the Parties. Each Party is acting independently, and neither Party shall have the power or authority to bind or obligate the other Party in any manner.

Section 9.9 – Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 9.10 – Authorization. Each Party represents and warrants to the other that (a) it has full power, authority, and legal right to execute, deliver, and perform this Agreement; (b) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary action; and (c) this Agreement constitutes a legal, valid, and binding obligation of such Party, enforceable in accordance with its terms, subject to governmental immunity as limited by Texas Local Government Code Section 212.172 2 and to bankruptcy and equity principles.

Section 9.11 – Public Information. The Parties acknowledge that City is subject to and must comply with the Texas Public Information Act (Texas Government Code, Chapter 552, as amended). Developer understands and acknowledges that information received by City from Developer may constitute "public information" as that phrase is defined in the Texas Public Information Act (Texas Government Code Sections 552.001 et seq., or "**the Act**") which may be subject to disclosure subject to a written request delivered to City pursuant to the Act. If City receives a request for public information pursuant to the Act which includes within its scope information in any form that Developer has identified to City in writing or marked as Developer's confidential and/or proprietary information ("**Developer's Confidential**

Information"), City agrees to notify Developer of such request in accordance with applicable provisions of the Act. Developer shall, at Developer's cost, be solely responsible for asserting arguments to the Office of the Attorney General of the State of Texas pursuant to Section 552.305(b) of the Act regarding the reason(s) Developer's Confidential Information is exempt from disclosure to the public under the provisions of the Act and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of Developer's Confidential Information. Other than notifying Developer of the request for Developer's Confidential Information as provided in Section 552.305(d) of the Act, City may, but shall be under no obligation to, submit arguments to the Texas Attorney General relating to reasons Developer's Confidential Information is exempt from required release to the public.

Section 9.12 – Boycott Israel; Boycott Energy Companies; and Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations.

(a) Developer verifies that it does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.

(b) Developer verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended.

(c) Developer verifies that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and (ii) will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association.

(d) This Section 9.12 does not apply if Developer is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Developer has ten (10) or more fulltime employees and (ii) this Agreement has a value of $100,000.00 or more to be paid under the terms of this Agreement.

Section 9.13 – Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

9.14 – ***INDEMNIFICATION. DEVELOPER AGREES TO INDEMNIFY, DEFEND, AND HOLD THE CITY, EACH OF ITS ELECTED OFFICIALS, ALL OF ITS SERVANTS, AGENTS, AND EMPLOYEES, ANY PERSON OR LEGAL ENTITY DESIGNATED BY THE CITY TO PERFORM ANY FUNCTION REQUIRED BY THE TERMS OF THIS AGREEMENT (COLLECTIVELY, THE "INDEMNITEES") HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, COSTS, ACTIONS, CAUSES OF ACTION, AND ATTORNEYS' FEES INCURRED BY OR ALLEGED AGAINST THE INDEMNITEES ("CLAIMS") ARISING FROM OR IN ANY WAY RELATING TO THE TERMS, COVENANTS, AND CONDITIONS CONTAINED IN THIS AGREEMENT, AND THE ACTIONS CONTEMPLATED BY THIS AGREEMENT; PROVIDED,***

DEVELOPER SHALL NOT BE RESPONSIBLE TO INDEMNIFY THE INDEMNITEES FOR CLAIMS ARISING FROM THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE INDEMNITEES. THIS PROVISION DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE INDEMNITEES UNDER TEXAS LAW, NOR DOES THIS PROVISION WAIVE ANY DEFENSE OF ANY PARTY UNDER TEXAS LAW.

Section 9.15 – Form 1295 Certificate. Developer agrees to comply with Texas Government Code Section 2252.908, and, in connection therewith, Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and to print and execute the completed certificate in such form as is required by Texas Government Code Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

Section 9.16 – Disclosure of Conflicts. Developer hereby warrants to City that Developer has made full disclosure in writing of any existing or potential conflicts of interest related to the Project and this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Developer hereby agrees immediately to make full disclosure to City in writing.

Section 9.17 – Waiver of Immunity. In accordance with Texas Local Government Code Section 212.172(b-1)(5), City understands and acknowledges that, by entering into this Agreement, City has waived immunity to suit to the extent, and only to the extent, provided by Texas Local Government Code Section 212.172(i) relating to a breach of this Agreement by City. Nothing contained herein shall operate as a waiver of immunity beyond that provided by Texas Local Government Code Section 212.172(i).

Section 9.18 – Compliance with Texas Local Government Code Section 212.172(b-1). The Parties acknowledge, understand, and agree that this Agreement contains in substance the statements and disclosures required to be made by City to Developer and Owners as of the Effective Date pursuant to Texas Local Government Code Section 212.172(b-1).

Section 9.19 – Recording. This Agreement shall be recorded by the Developer, at the Developer's cost, in the Official Public Records of Young County, Texas.

Section 9.20 – Recitals. The recitals to this Agreement are incorporated herein.

Section 9.21 – Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

[*signature page follows*]

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SIGNED AND AGREED this ____ day of _____, 2026.

City of Graham,
a Texas home rule municipality

By: _____
Alex Heartfield, Mayor

Attest:

By: _____
Marci Bueno,
TRMC, City Secretary/Director of Finance

Approved as to Form:

By: _____
Matthew A. Murray, City Attorney

STATE OF TEXAS §

COUNTY OF YOUNG §

This instrument was acknowledged before me, the undersigned authority, on the ____ day of _____, 2026, by Alex Heartfield, Mayor of the City of Graham, a Texas home rule municipality, on behalf of said municipality.

_____
Notary Public, State of Texas
My Commission Expires: _____

[*signature page continues*]

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SIGNED AND AGREED this ____ day of _____, 2026.

Headwaters Site Development LLC,
a Texas limited liability company

By:_____

Name: _____

Title: _____

STATE OF TEXAS §

COUNTY OF _____§

This instrument was acknowledged before me, the undersigned authority, on the ____ day of _____, 2026, by _____, as _____ of Headwaters Site Development LLC, a Texas limited liability company, on behalf of said limited liability company.

_____
Notary Public, State of Texas
My Commission Expires: _____

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Exhibit A
The Property

[*to be attached*]

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Exhibit B
Concept Plan

[*to be attached*]

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