

RESOLUTION NO. 21-__

WHEREAS, the City has determined to enter into an agreement (the “Project Development Agreement”) by and among the City, The Industrial Development Board of the City of Huntsville (the “IDB”), and Starbelt LLC (“Starbelt”) in connection with the construction and operation by Starbelt and/or its affiliates of a second data center in the City consisting of a large group of networked computer servers and related technology for the remote storage, processing, and/or distribution of data for, and to support operations of, Starbelt and its affiliates, with expected expenditures of approximately \$750,000,000 in capital improvements and equipment and expected employment of at least fifty (50) full-time employees at an average annual compensation of not less than \$80,000, exclusive of fringe benefits (the “Project”); and

WHEREAS, the Project will be located within the North Huntsville Industrial Development Park on a site consisting of approximately 250 acres owned or in the process of being acquired by the Company and its affiliates (the “Project Site”); and

WHEREAS, as set forth in the Project Development Agreement, the City and the Company will agree to construct and develop various public infrastructure improvements in connection with the location of the Project on the Project Site; and

WHEREAS, the City has actively recruited major data centers as part of its ongoing efforts to market and bring high tech, cybersecurity, and other “Internet of Things” enterprises to the City, to continue the diversification of the City’s economy, employment base, and corporate citizenry, and to grow the City’s national and international reputation as a hub for sophisticated, high tech engineering, research and development, “Internet of Things”, and advanced manufacturing enterprises, and it is therefore necessary, wise, and in the public interest to facilitate the location of the Project in the City by approving and authorizing the execution of the Project Development Agreement and the other Project Documents (hereinafter defined); and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Huntsville, Alabama (the “Council”), that the Mayor be, and he is hereby, authorized to execute, by and on behalf of the City, the Project Development Agreement in substantially the form attached hereto and identified as “Project Development Agreement”, containing such changes, modifications, revisions, or clarifications as the Mayor shall deem necessary, desirable or appropriate; and

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed, along with the City-Clerk Treasurer, to take all actions as may be necessary or desirable, by and on behalf of the City, including the negotiation and execution of all additional agreements, notices, certificates, or other documents, in furtherance of the intent of the Project Development Agreement (collectively, the “Project Documents”); and

BE IT FURTHER RESOLVED, that the City-Clerk Treasurer is hereby authorized and directed to sign and attest the Project Development Agreement any of the other Project Documents, and to affix the seal of the City thereto.

ADOPTED this the 16th day of December, 2021

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 16th day of December, 2021

Mayor of the City of
Huntsville, Alabama

PROJECT DEVELOPMENT AGREEMENT

THIS PROJECT DEVELOPMENT AGREEMENT (this “Agreement”) is hereby made and entered into on December ____, 2021 (the “Effective Date”), by and among the **CITY OF HUNTSVILLE, ALABAMA**, an Alabama municipal corporation (the “City”), **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE**, a public corporation under the laws of the State of Alabama (the “IDB,” and together with the City, the “Local Authorities” and, individually, a “Local Authority”), and **STARBELT LLC**, a Delaware limited liability company (the “Company”). The City, the IDB and the Company are herein together sometimes referred to collectively as the “Parties” and, individually, as a “Party.”

RECITALS

WHEREAS, the Local Authorities and the Company entered into that certain Project Development Agreement (the “Project Starbelt Agreement”), dated May 30, 2018, pursuant to which the Company agreed to construct, install and equip a data processing center on an approximately 340 acre parcel of real property located within the North Huntsville Industrial Development Park (the “Project Starbelt Site”), with expected expenditures of approximately \$750,000,000 in capital improvements and equipment at the Project Starbelt Site and expected employment of at least fifty (50) full-time employees at an average annual compensation of not less than \$80,000 (exclusive of fringe benefits), in consideration for the Local Authorities providing certain incentives, abatements and agreements set forth in the Project Starbelt Agreement; and

WHEREAS, the Company has informed the Local Authorities that as of November 30, 2021, the Company and its Affiliates have met the terms of the Project Starbelt Agreement with respect to capital investment and payroll and are in the process of meeting such terms as to the number of new jobs; and

WHEREAS, the Company intends to construct, install and equip a second data processing center in the City consisting of a large group of networked computer servers and related technology for the remote storage, processing, and/or distribution of data for, and to support operations of, the Company and its Affiliates, including any expansions and additions thereto, on those certain parcels of real property owned or in the process of being owned by the Company, aggregating approximately 250 acres and located adjacent to the Project Starbelt Site (the “Site”) which, when combined with the Project Starbelt Site, totals or will total upon the closing of certain tracts therein approximately 590 acres in the aggregate (a depiction of the Site and the Project Starbelt Site is attached hereto as **EXHIBIT A**), with expected additional expenditures of approximately \$750,000,000 in capital improvements and equipment at the Site and expected employment of at least fifty (50) new full-time employees at an average annual compensation of not less than \$80,000 (exclusive of fringe benefits) (the “Project”), and has agreed to design and/or construct certain public infrastructure improvements outside of the Site and within the North Huntsville Industrial Park in support of the Project as more particularly referenced in Section 3.5; and

WHEREAS, the Company identified certain locations throughout the United States as potential sites for the Project including, among several others, the City, which offered incentives to the Company to locate the Project within their respective jurisdictions; and

WHEREAS, the City has been actively recruiting major data centers as part of its efforts to market and recruit high tech, cybersecurity and other “Internet of Things” enterprises to the City, to continue the diversification of the City’s economy, employment base, and corporate citizenry, and to grow the City’s national and international reputation as a hub for sophisticated, high tech engineering, research and development, “Internet of Things”, and advanced manufacturing enterprises; and

WHEREAS, the amount of the spending projected by the Company in connection with the Project could generate substantial revenues to the City from the levy of ad valorem taxes for public school purposes with what the City anticipates will be little to no material increase on the public school system of the City; and

WHEREAS, in order to recruit the Project, the City is willing to (i) extend or cause to be extended necessary sewer and water utility lines to the Site and construct or cause to be constructed other necessary sewer and water utility improvements for the Project at no cost to the Company, (ii) construct or cause to be constructed certain public roadway improvements for the Project at no cost to the Company, (iii) waive certain Permit and other fees respecting the Project, and (iv) agree to certain other terms and obligations, all as more particularly described and set forth herein and in the Utility Agreement; and

WHEREAS, in recognition of the significant economic and industrial development benefits communities have achieved from recruiting and investing in major data centers, the State of Alabama passed Act No. 2012-210, which permits the IDB to cause to be abated noneducational ad valorem and construction-related transactional taxes on the Project for a period of up to 30 years, and the IDB has been made a party to this Agreement to acknowledge its commitment to support the Project and such abatements as have been granted on November 19, 2021, as more particularly described and set forth herein; and

WHEREAS, the City has determined that the location of the Project at the Site through the provision of the incentives, abatements and agreements herein set forth would be in the best interests of the City and its citizens by, among other things: (i) promoting, improving, and expanding economic, technological, and advanced manufacturing development; (ii) increasing the number and diversity of high tech, engineering, and advanced manufacturing jobs and related employment opportunities; (iii) enabling the area within and surrounded by the North Huntsville Industrial Park to better attract and retain high tech, computer-based, and “Internet of Things” enterprises and advanced manufacturing enterprises; (iv) expanding the overall tax base of the City and, in particular, tax revenues for public school purposes without significantly increasing burdens on public school resources; and (v) enhancing the overall quality of life for the citizens of the City; and

WHEREAS, the development of the Project at the Site as herein provided will further assist in the expansion of economic developments that are critical to the sustained economic health and well-being of the City, and the City finds that providing the assistance respecting the Project

as described in this Agreement is being made under and in furtherance of any power and authority authorized by the Constitution of Alabama of 1901, as amended (the “Alabama Constitution”), and the City has determined that the expenditure of public funds for the purposes herein specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, agree and bind themselves as follows:

ARTICLE I
REPRESENTATIONS AND WARRANTIES

Section 1.1 Representations and Warranties of the Local Authorities.

(a) The City hereby makes the following representations and warranties to the Company as of the Effective Date:

(i) The City, by action of its governing body, has duly authorized the execution, delivery and performance of this Agreement, and has the power (including without limitation all authority under the Alabama Constitution) to perform its obligations contained herein.

(ii) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the City, violates, constitutes a default under or a breach of (A) any agreement, instrument, contract, mortgage, ordinance, resolution or indenture to which the City is a party or to which the City or its assets or properties are subject or (B) any law, judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the City or any of its assets or properties.

(iii) There is not now pending nor, to the knowledge of the City, threatened, any litigation, proceeding or investigation affecting the City which questions (A) the validity or organization of the City, (B) the members, titles or positions of the members of the governing body or the manner in which the officers of the City are selected, or (C) the subject matter of this Agreement.

(iv) To the actual knowledge of the City Regulatory Knowledge Group after reasonable inquiry, the City is in compliance with the requirements of material federal, state and local laws, rules and regulations applicable to or pertaining to quality criteria and standards for air, water, land and toxic or Hazardous Materials or substances, non-compliance with which could have a material adverse effect on the financial condition, properties, business or operations of the City.

(v) In connection with the negotiation and performance of this Agreement, the City has complied and covenants that it shall comply with all applicable laws, rules, and regulations including anti-corruption laws and has used and shall use only legitimate and ethical business practices.

(b) The IDB hereby makes the following representations and warranties to the Company as of the Effective Date:

(i) The IDB, by action of its governing body, has duly authorized the execution, delivery and performance of this Agreement, and has the power to perform its obligations contained herein.

(ii) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the IDB, violates, constitutes a default under or a breach of (A) any agreement, instrument, contract, mortgage, ordinance, resolution or indenture to which the IDB is a party or to which the IDB or its assets or properties are subject or (B) any law, judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the IDB or any of its assets or properties.

(iii) There is not now pending nor, to the knowledge of the IDB, threatened, any litigation, proceeding or investigation affecting the IDB which questions (A) the validity or organization of the IDB, (B) the members, titles or positions of the members of the governing body or the manner in which the officers of the IDB are selected, or (C) the subject matter of this Agreement.

(iv) In connection with the negotiation and performance of this Agreement, the IDB has complied and covenants that it shall comply with all applicable laws, rules, and regulations including anti-corruption laws and has used and shall use only legitimate and ethical business practices.

Section 1.2 Representations and Warranties of the Company. The Company hereby makes the following representations and warranties to the Local Authorities as of the Effective Date:

(a) The Company is duly organized and validly existing as a limited liability company under the laws of the State of Delaware and has duly authorized its execution, delivery and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by the Company, requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity (including, but not limited to, any governmental or quasi-governmental entity), except for such consents, filings, notices and hearings described herein, or already held or maintained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the Company, violates, constitutes a default under or a breach of (i) the Company's certificate of formation or other organizational documents of the Company, (ii) any agreement, instrument, contract, mortgage or indenture to which the Company is a party or to which the Company or its assets are subject, or (iii) any judgment, decree, order, ordinance, regulation, consent or resolution applicable to the Company or any of its assets.

(d) There is not now pending nor, to the knowledge of the Company, threatened, any litigation, proceeding or investigation affecting the Company which questions the

validity or organization of the Company, or any of the representations and warranties of the Company contained herein.

(e) In connection with the negotiation and performance of this Agreement, the Company has complied and covenants that it shall comply with all applicable laws, rules, and regulations including anti-corruption laws and has used and shall use only legitimate and ethical business practices.

ARTICLE II

OBLIGATIONS AND COMMITMENTS OF THE COMPANY

Section 2.1 Commencement of Construction. The Company acknowledges that the citizens of the City anticipate the receipt of economic benefit to their local economies in return for the expenditure of public funds respecting public improvements for the Project as herein set forth. Provided that: (i) the Company decides to proceed with the Project (which decision shall be made by the Company in its sole discretion), and (ii) the Company has given the City a written notice to proceed with the construction of the City Infrastructure Improvements for the Project (collectively, the “Company Conditions”), the Company agrees to Commence Construction of the Project not later than March 31, 2022 (the “Construction Commencement Deadline”), as such time may be extended by one or more Force Majeure Events as provided herein; provided, however, that the Company shall have two (2) options to extend the Construction Commencement Deadline, each for six (6) months (each, a “Construction Commencement Deadline Extension”), by providing written notice to the City prior to the expiration of the Construction Commencement Deadline, through March 31, 2023, as such time may be extended by one or more Force Majeure Events as provided herein but in no event beyond March 31, 2024.

Section 2.2 Company Discretion. The Company has acquired or is in the process of acquiring each of the parcels within the Site with the current intent of constructing and developing the Project thereon. Any and all development, construction and/or equipping of the Project shall be as deemed necessary and appropriate by the Company and in the Company’s sole and absolute discretion. Without limiting the generality of the foregoing, the City acknowledges and agrees that while the Company anticipates at this time that it will incur capital improvement expenditures and achieve employment levels and average annual compensation respecting the Project as described in the third recital of this Agreement (the “Company Estimates”), nothing in this Agreement including this Section 2.2 obligates the Company (nor shall it be deemed to obligate the Company) actually to incur such capital improvement expenditures or achieve such employment levels and/or average annual compensation, and it shall not be a default or a Company Event of Default if any or all of the Company Estimates are not realized or if the Company does not construct the Project as herein described or otherwise.

Section 2.3 Compliance with Laws Generally.

(a) The Company hereby covenants and agrees to cause any construction activities regarding the Project to be conducted in compliance with all applicable laws, ordinances, rules and regulations of any governmental authority, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster and environmental protection laws. The Company shall require any architect,

general contractor, subcontractor or other business performing any work in connection with the Project to obtain all necessary permits, licenses and approvals to construct the same.

(b) At all times during the Term, the Company shall be in material compliance with all applicable laws, ordinances, rules and regulations of the City and, further, shall be current in payment of any and all taxes, fees, and other charges imposed by the City, Madison County (the “County”) and all local government entities unless such payments are the subject of a bona fide dispute and are being challenged by the Company.

(c) Nothing contained in this Section 2.3 shall provide the Local Authorities with the right to bring a cause of action, in law or equity, against the Company or any of its Affiliates, for breach of contract or other claims arising under this Agreement or to take any action against the Company that, absent this Agreement or the covenants in this Section 2.3, the City otherwise would not possess, and nothing herein shall enable the Local Authorities to terminate, suspend or otherwise alter the terms of this Agreement, solely on account of a breach or alleged breach of any of the terms or provisions of this Section 2.3. This Section 2.3(c) shall not be deemed to limit the ability of the City to enforce its laws, rules and regulations generally and in the ordinary course (whether against the Company or otherwise).

Section 2.4 Force Majeure Events.

(a) If due to the occurrence of a Force Majeure Event the Company is not able to Commence Construction of the Project by the Construction Commencement Deadline (including any Construction Commencement Deadline Extensions), to complete the Company Infrastructure Improvements by the deadlines set forth on **EXHIBIT B**, or to meet any other obligations of the Company under this Agreement, then for each day of the Force Majeure Event each said deadline or obligation under this Agreement shall be extended by one (1) day; provided, that the Company shall have first provided written notice to the City as to the following: (i) a description of the Force Majeure Event in reasonable detail; (ii) an explanation of how the Company anticipates such event will affect the Company’s ability to timely perform such obligations; (iii) the actions the Company plans to undertake in order to address the conditions caused by the Force Majeure Event; and (iv) an approximation of how long the Company anticipates that the Force Majeure Event will delay its ability to meet the applicable obligation under this Agreement.

(b) If due to the occurrence of a Force Majeure Event the City is not able to complete the City Infrastructure Improvements by the deadlines set forth in **EXHIBIT B** or to meet any other obligations of the City under this Agreement, then for each day of the Force Majeure Event, each said deadline or obligation under this Agreement shall be extended by one (1) day; provided, that the City shall have first provided written notice to the Company as to the following: (i) a description of the Force Majeure Event in reasonable detail; (ii) an explanation of how the City anticipates such event will affect the City’s ability to timely perform such obligations; (iii) the actions the City plans to undertake in order to address the conditions caused by the Force Majeure Event; and (iv) an approximation of how long the City anticipates that the Force Majeure Event will delay its ability to meet the applicable obligation under this Agreement.

ARTICLE III

CITY OBLIGATIONS

Section 3.1 Designation of Project Coordinator. The Parties agree that it is in the best interests of the City and the Company for the development, design, engineering, construction, equipping and start-up of the Project to proceed within an expeditious timetable and that time is of the essence to achieve the timetable established by the Company. Accordingly, in order for the Project to commence as soon as possible and to proceed in an orderly and expeditious manner to meet such timetable, and throughout the Term, the City agrees to do all things and take all actions, in cooperation with the Company, to cause, without cost or charge to the Company, the appointment of the Project Coordinator to act as the City's representative to assist the Company in implementing and fulfilling the terms and conditions of this Agreement. As used herein, the term "Project Coordinator" means the specific full-time individual City employee designated by the City and approved by the Company to represent the City in coordinating with the Company regarding the needs and requirements of the Project as set forth in this Agreement and as may from time to time arise in an administrative, communications and permitting context so as to enable the Company to meet its obligations under this Agreement.

Section 3.2 Assistance with Permits. To the extent permitted by applicable law and provided that the Company shall have submitted all applications and other required information, documents, instruments and approvals in a complete and prompt manner, and without the following being deemed to limit or otherwise shorten any time periods prescribed by law, the City shall, with respect to the Project and the Infrastructure Improvements: (i) cooperate with the Company with respect to its timely filing of all applications for, obtaining and monitoring compliance matters relating to, and timely renewal of, all applicable permits, licenses, authorizations and approvals (collectively, "Permits") with the City and all applicable agencies thereof; such assistance to include, when applicable, facilitating the timely issuance of all Permits required in connection with construction of the Project and the Infrastructure Improvements, and (ii) use its best commercially reasonable efforts to (A) cause all Permit decisions necessary for the establishment and equipping of the Project and the Infrastructure Improvements to be made within sixty (60) days (ninety (90) days if a public hearing is requested) of filing the applicable and materially complete application in accordance with the applicable statutes and regulations, and (B) avoid an Approval Event; provided, however, that the City agrees to provide the Company with its comments to all Permit applications and related submissions for the Project within ten (10) days of receipt of such applications and related submissions. To the fullest extent permitted by and in compliance with applicable law, the City agrees to use best commercially reasonable efforts to effect, as expeditiously as reasonably possible, any act that would further the completion and continued operation of the Project, including without limitation, prompt completion of any required inspections in connection with the issuance of a certificate of occupancy for the Project, subject to the Company's compliance with any and all requirements for the issuance of the same.

Section 3.3 Waiver of Permit Fees. The City hereby waives, or agrees to cause to be waived, during the Term any and all Permit and any and all other fees charged or chargeable by the City relating to the design, approval, development or construction of the Project. Without limiting the generality of the foregoing, the Parties hereby determine that, for purposes of Ala. Reg. Section 355-10-1.02(d), as amended, this Section 3.3 constitutes the waiver pursuant to a signed project agreement of the permit fee levied by the City for an industrial development project.

Section 3.4 City Infrastructure Improvements. The City shall, acting both independently and by and through Huntsville Utilities, at no cost to the Company, provide or cause to be provided "point of service" sewer and water utility connections, roadway improvements and other infrastructure for the Project set forth and described in **EXHIBIT B** and more particularly shown on **EXHIBIT B-1**, **EXHIBIT B-2**, **EXHIBIT B-3**, and **EXHIBIT B-4** attached hereto (collectively, the "City Infrastructure Improvements") in accordance with the following:

(a) **Utilities Systems; Utilities Improvements.** The City acknowledges that the infrastructure and supply, capable of meeting the needs of the Project, for each of water ("Water") and sanitary and industrial sewer (collectively, "Sewer," and together with Water, the "Utilities" and, individually, a "Utility"), must exist and remain operational to allow for the successful development and operation of the Project. To the actual knowledge of the City Utility Knowledge Group after reasonable inquiry, the City is operating, repairing and maintaining all necessary systems for the Utilities (collectively, the "Utilities Systems" and, individually, a "Utilities System") in material compliance with all applicable local, state and federal laws, rules, regulations, policies, directives, orders, advisories and permits, and the City is utilizing best management practices recognized by regulatory authorities in the operation and maintenance of the Utilities Systems. The City further represents that each Utilities System has sufficient capacity to deliver its respective Utility service to meet the Company's requirements for use and operation of the Project as herein represented by the Company, which is or shall be in addition to the Utilities System capacity provided for the Company's operations at the Project Starbelt Site. If any Utilities shortage occurs as to either the Project Starbelt Site or the Project, subject to the City's obligation to provide top priority usage for public health and safety operations, the City will provide the Project priority in uninterrupted use of the Utilities System relative to current and future residential and recreational uses and top priority relative to current and future commercial uses. No Utility consumption measures or limitations arising from a Utilities shortage shall apply to the Project (or the Project Starbelt Site), unless required by clear and critical public health or safety conditions. Upon receipt by the City of written notice from the Company that it has Commenced Construction (and provided the Company has Commenced Construction), the City shall, acting both independently and by and through Huntsville Utilities, build and install, at no cost to the Company, extensions for Water and Sewer to one or more points on the property line of the Site that are adequately sized to meet the requirements of the Company to operate the Project at the Site and such other Utilities improvements at and in the North Huntsville Industrial Park and in support of the Project, as more particularly described on **EXHIBIT B** and more particularly shown on **EXHIBIT B-1**, **EXHIBIT B-2**, and **EXHIBIT B-3** attached hereto, which improvements shall include (but not be limited to) the Water Booster Pump Station reflected as "Project #4" on **EXHIBIT B**. The City and the Company acknowledge and agree that such exhibits reference the general intent of Utilities connectivity and the exact alignment will be confirmed in design which the Parties agree to work in good faith to design in a timely fashion. The City agrees that it will not charge in connection with the Utilities or the Utilities Systems any additional fees or rates solely to the Project or the Site or with the express or inferred intent to specifically and inequitably target the Project or the Site.

(b) **Roadway Improvements.** The City shall construct and make, at no cost to the Company, the public roadway improvements set forth and described in **EXHIBIT B** and more particularly shown on **EXHIBIT B-4** attached hereto (collectively, the "Roadway Improvements"). The City represents, and the Parties acknowledge and agree, that the City has

already commenced work on each of the Roadway Improvements in some capacity (e.g., preparation of design plans, compilation of bid packages or staging for physical construction). During construction and until completion of the Roadway Improvements, the City agrees not to impede the Company's reasonable continuous access to the Site. The Company and the City shall work together in good faith to ensure that the Company's construction of the Project does not unreasonably interfere with the City's construction of the Roadway Improvements, and that the City's construction of the Roadway Improvements does not interfere with the Company's construction of the Project. The City shall provide the Company at least forty-eight (48) hours advanced notice of all road closures in general proximity of the Site. The City hereby agrees that the Roadway Improvements shall be paved permanent roads and shall conform to all minimum standards for dedication to, and acceptance by the City, as a public road, and that the City shall thereafter maintain the Roadway Improvements in compliance with the City's strictest standards and policies.

(c) Construction Guidelines. The City shall cause its employees, contractors, subcontractors and agents retained or employed in connection with constructing the City Infrastructure Improvements (collectively, "City Representatives") to construct the City Infrastructure Improvements: (i) in accordance with the plans and specifications timely agreed upon by the Parties, (ii) in accordance with the schedule set forth on **EXHIBIT B** attached hereto or as the Parties may otherwise agree to in writing, (iii) in such a manner as to maintain harmonious labor relations and as not to interfere with or delay the work on the Project to be performed by the Company or its contractors, and (iv) in such a manner that the Company and its contractors shall have reasonable vehicular and pedestrian access to the Site via public rights of way or any easements of record at all times. The City shall, and shall cause the City Representatives to, act in a commercially reasonable manner and endeavor in good faith to ensure the timely progression of construction of the City Infrastructure Improvements. Notwithstanding anything herein to the contrary, the City shall complete construction of the City Infrastructure Improvements no later than the respective deadlines set forth on **EXHIBIT B**, subject to extension of not more than one year for a Force Majeure Event.

(d) Remedies for Failure to Make Timely Progress on City Infrastructure Improvements. If the City fails to commence or complete (or cause to be commenced or completed) any portion of any of the City Infrastructure Improvements within the time frames established on **EXHIBIT B**, as the same may be extended up to twelve (12) months by Force Majeure Events as herein provided, or as otherwise agreed in writing by the Parties, and that failure is not cured within thirty (30) days after receiving written notice of such failure from the Company (or, if the cure of that failure cannot be accomplished in thirty (30) days, the cure has not been commenced or is not proceeding with due diligence to completion), then the Company may, in its sole discretion, direct the City to take additional steps (the "City Extraordinary Measures") available to it under the applicable construction contract documents, and the City shall be obligated to undertake City Extraordinary Measures at no cost to the Company, which may include, but are not limited to, in the reasonable discretion of the City, ordering the applicable contractor(s) to take corrective measures necessary to expedite the progress of the work, including without limitation by: (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) taking other similar measures. The City covenants that said City Extraordinary Measures are or will be included in the applicable construction contract documents. Such City Extraordinary Measures shall continue until the City and the Company determine that the progress

of the work complies with the stage of completion necessary to have the City Infrastructure Improvements available to the Project as set forth on **EXHIBIT B**, as the same may be extended by Force Majeure Events as herein provided. The Company's right to require City Extraordinary Measures is solely for the purpose of ensuring compliance with the time frames set forth on **EXHIBIT B**, as the same may be extended by Force Majeure Events as herein provided. The City hereby covenants that it shall cooperate with the Company in good faith to cause such commencement, progress or completion on a timely basis.

Section 3.5 Company Infrastructure Improvements. The Company shall, at no cost to the Local Authorities, provide or cause to be provided "point of service" sewer and water utility connections and other infrastructure for the Project set forth and described on **EXHIBIT B** and more particularly shown on **EXHIBIT B-1** and **EXHIBIT B-3** attached hereto, which improvements shall include (but not be limited to) the Wastewater Lift Station reflected as "Project #5" on **EXHIBIT B** (collectively, the "Company Infrastructure Improvements," and together with the City Infrastructure Improvements, the "Infrastructure Improvements") in accordance with the following:

(a) **Utilities Improvements.** The Company hereby agrees that the Company Infrastructure Improvements for Water, reflected as "Project #1" on **EXHIBIT B**, shall conform to all minimum standards for dedication to, and acceptance by Huntsville Utilities, such that Huntsville Utilities may thereafter maintain such Company Infrastructure Improvements for Water in compliance with Huntsville Utilities' strictest standards and policies. The Company hereby agrees that the Company Infrastructure Improvements for Sewer, reflected as "Project #5" and "Project #6" on **EXHIBIT B**, shall conform to all minimum standards for dedication to, and acceptance by the City, such that the City may thereafter maintain such Company Infrastructure Improvements for Sewer in compliance with the City's strictest standards and policies. The Company and the City acknowledge and agree that the exhibits to this Agreement reference the general intent of Utilities connectivity and the exact alignment will be confirmed in design.

(b) **Construction Guidelines.** The Company shall cause its employees, contractors, subcontractors and agents retained or employed in connection with constructing the Company Infrastructure Improvements (collectively, "Company Representatives") to construct the Company Infrastructure Improvements: (i) in accordance with the plans and specifications timely agreed upon by the Parties, (ii) in accordance with the schedule set forth on **EXHIBIT B** attached hereto or as the Parties may otherwise agree to in writing, and (iii) in such a manner as to maintain harmonious labor relations and as not to interfere with or delay the work on the City Infrastructure Improvements to be performed by the City or Huntsville Utilities, as the case may be, or their respective contractors. The Company shall, and shall cause the Company Representatives to, act in a commercially reasonable manner and endeavor in good faith to ensure the timely progression of construction of the Company Infrastructure Improvements. Notwithstanding anything herein to the contrary, the Company shall complete construction of the Company Infrastructure Improvements no later than the respective deadlines set forth on **EXHIBIT B**, subject to extension of not more than one year for a Force Majeure Event. The City agrees to inspect the Company Infrastructure Improvements as required from time to time and in a timely fashion.

Section 3.6 Communication, Coordination and Scheduling. Time being of the essence in the performance of this Agreement, it is essential that the work on the Project and the

Infrastructure Improvements be coordinated at all times and the Infrastructure Improvements be timely completed in support of the commencement of operations of the Project. The Parties shall schedule and conduct meetings at least every two (2) weeks unless otherwise mutually determined to discuss such matters as procedures, progress, coordination, communication and scheduling of the work on the Project and Infrastructure Improvements (the “Progress Meetings”). The City shall designate the representatives of the City and Huntsville Utilities to be present at the Progress Meetings. The City shall promptly prepare and distribute minutes of the Progress Meetings to the designated representatives of the City, Huntsville Utilities and the Company.

Section 3.7 Off-Site Elevated Water Tank. The City acknowledges that the Company and Huntsville Utilities may, but shall not be required to, at their own discretion enter into a separate cost sharing agreement in connection with the design and construction of a new elevated water tank within the North Huntsville Industrial Development Park service area at a location outside of the Site. The City will not object to the establishment of such elevated water tank, if requested by the Company and Huntsville Utilities, subject to any approvals required by any applicable City, state, and federal laws, regulations, and ordinances.

Section 3.8 Water Wells and Rainwater Redundancy. If the Company elects to establish redundant and/or backup water sources by: (a) drilling wells on the Site or in connection with the Project (to the extent permitted by law), or (b) collecting rainwater on the Site in connection with the Project, the City will not object to the establishment of such wells on the Site or the collection of such rainwater, or the installation, construction and maintenance of infrastructure and equipment relating to establishment of redundant and/or backup water supply and sewer resources, subject to the Company’s compliance with any applicable City, state, and federal laws, regulations, and ordinances.

Section 3.9 On-Site Wastewater Treatment. The City agrees and acknowledges that the Company may at its own discretion establish redundant and/or back-up sewer resources and install, construct and maintain infrastructure and equipment related to such establishment of redundant and/or backup sewer resources; provided, that the use of any such redundant and/or backup sewer resources shall be subject to the Company’s compliance with applicable City, state and federal laws and regulations.

Section 3.10 Alternative Energy. The City acknowledges that the Company is exploring options to use alternative energy sources to operate all or any portion of the Project. Such potential alternative energy sources include solar panels and geothermal cooling. The City confirms that neither of these two alternative energy sources is prohibited for use on the Site under the Applicable Rules and the City will permit use of these alternative energy sources if requested by the Company, subject to any approvals required by any other applicable City, state and federal laws and regulations.

Section 3.11 Entitlement to Develop Project.

(a) The City has taken all of the actions listed on **EXHIBIT C** to authorize the Project (collectively, the “Project Approvals”). Except as expressly noted on **EXHIBIT C**, the Project Approvals are the only actions that are required pursuant to the City’s ordinances, rules and regulations in order for the Company to complete the development of the Project under the

Applicable Rules. Notwithstanding the foregoing, nothing herein prohibits the Company from seeking other or further reviews, Permits or approvals as may be necessary or desirable, in the Company's sole discretion, in connection with the Project.

(b) The Site is currently zoned Planned Industrial (PI) pursuant to the Zoning Ordinance of the City of Huntsville. As of the Effective Date, subject to the Company's compliance with the requirements of the Project Approvals, no rule, regulation, ordinance or official policy of the City prohibits or prevents the completion, occupancy or operation of the Project in accordance with the uses, densities, designs, heights, set back requirements, signage regulations, parking ratios, permitted demolition and other development entitlements incorporated in the Project Approvals. The City acknowledges and agrees that the following uses are specifically identified as permitted uses under the existing PI zoning classification: offices, computer and data processing centers and services, research and development operations, and research, experimental and testing laboratories. The City further acknowledges and agrees that any substations constructed or installed by the Company on the Site to facilitate the Project are permitted under the existing PI zoning classification as "accessory structures" (as that term is used in the Zoning Ordinance of the City) supporting the Company's use of the Site as a computer and data processing center. With respect to parking ratios, the City further acknowledges and agrees that the Zoning Ordinance of the City for the Site specifically provides that, for data processing centers with total gross floor area (GFA) in excess of 200,000 square feet, the parking ratio is and will be no more than one parking space for each 750 square feet of GFA for regular employee use areas (e.g., office space, kitchens, training areas, employee circulation, etc.) and one parking space for each 4,000 square feet of GFA for data halls (not including penthouses used for mechanical equipment or air circulation). The Company has the vested right to develop the Project under Applicable Rules, subject to the terms and conditions of the Applicable Rules. The Company's vested rights shall include, without limitation, the right to remodel, renovate, rehabilitate, rebuild, or replace the Project or any portion thereof (including without limitation the right to replenish equipment used in operating the Project) for any reason, including without limitation in the event of damage, destruction, or obsolescence of the Project or any portion thereof, all subject to the Company's compliance to the then current Applicable Rules and the covenants and agreements of the Company in this Agreement (collectively, "Renovation Activities"). To the extent that all or any portion of the Project is undergoing Renovation Activities, the Company may locate that portion of the Project at any other location of the Site, subject to the Applicable Rules and the covenants and agreements of the Company in this Agreement.

Section 3.12 Changes in Applicable Rules. As used herein, the term "Applicable Rules" means all of the rules, regulations, ordinances, and official policies of the City respecting the Project or the Site; provided that the Applicable Rules shall not include any new or modified City rules, regulations, ordinances, or official policies enacted by the City after the Effective Date with the express or inferred intent to specifically and inequitably target the Project or the Site. The City represents that there is no City law, regulation, contract or policy in effect on the Effective Date which would prevent the City from satisfying its obligations under this Agreement. The City agrees that it will not change or modify any Applicable Rule, including without limitation any zoning, land use limitations or building regulation, with the express or inferred intent to specifically and inequitably target the Project or the Site and which adversely affects the Project or the Site. In recognition of certain actions taken (or threatened to be taken) within the scope of the Company's industry in other jurisdictions, and without implying any reason to suspect the City of any such

action, the Company has asked that the City agree to the provision contained in the immediately preceding sentence.

Section 3.13 Additional Obligations of the City.

(a) To the fullest extent permitted by and in compliance with applicable law, the City acknowledges and supports the Company's ongoing efforts to maintain administrative efficiency and simplicity by, subject to the Company's compliance with the applicable City code and obtaining any necessary approval for the issuance of the same, using one street address and operating at the Site under a single business license issued by the City.

(b) To the fullest extent permitted by and in compliance with applicable law, the City agrees to use best commercially reasonable efforts to effect, as expeditiously as reasonably possible, any act that would further the completion and continued operation of the Project, including without limitation, prompt completion of any required inspections in connection with the issuance of a certificate of occupancy for the Project, subject to the Company's compliance with any and all requirements and obligations for the issuance of the same.

Section 3.14 Local Sales and Property Tax Abatement. The City hereby consents to the grant by the IDB of a tax abatement for the benefit of the Company and its Affiliates of all noneducational State of Alabama, County and City ad valorem, construction-related transaction and mortgage and recording taxes to the maximum extent allowed under the Tax Incentive Reform Act of 1992, ALA. CODE §§ 40-9B-1 *et seq.*, as amended, for the maximum period allowed under ALA CODE. § 40-9B-3(a)(12), as amended, under the terms of that certain Second Amendment to Tax Abatement Agreement as approved by the IDB on November 19, 2021, as amended (the "Amended Tax Abatement Agreement"). The Local Authorities agree to take such steps and to execute such additional documents, if any, as are necessary for the Company and its Affiliates to maximize the benefit of all of the tax abatements provided for under Ala. Act No. 2012-210, as amended, and in the Amended Tax Abatement Agreement, respecting the Project. The Local Authorities agree to waive any fees or costs related to the grant of any and all tax abatements allowed under the Tax Incentive Reform Act of 1992, §40-9B-1 *et seq.* ALA. CODE, as amended, whether now or in the future.

Section 3.15 New Taxes. The City agrees that during the Term, the City staff shall not recommend or support any new taxes, special taxes, assessments, levies, impositions, duties, deductions, withholding and charges, and/or fees (collectively "New Taxes") that are applicable solely to the Project or the Site or data centers generally or with the express or inferred intent to specifically and inequitably target the Project or the Site or data centers generally. In recognition of certain actions taken (or threatened to be taken) within the scope of the Company's industry in other jurisdictions, and without implying any reason to suspect the City of any such action, the Company has asked that the City agree to the provision contained in the immediately preceding sentence. The Company shall have the right, to the extent permitted by law, to protest, oppose, and (if such a tax is the subject of a public referendum to which corporate entities are permitted to vote) vote against any and all New Taxes, including New Taxes imposed with respect to any cooperative districts, infrastructure financing or other similar districts affecting the Project or the Site.

ARTICLE IV

CONDITIONS PRECEDENT

Section 4.1 Conditions Precedent to the Obligations and Commitments of the Local Authorities. Anything in this Agreement to the contrary notwithstanding, the Local Authorities shall not be obligated to perform their obligations hereunder until the City shall have received the Company's executed counterpart of this Agreement, duly executed by a duly authorized representative of the Company.

Section 4.2 Conditions Precedent to the Company's Obligations. Anything in this Agreement to the contrary notwithstanding, the Company shall not be obligated to perform its obligations hereunder, until:

(a) The City, by and through Huntsville Utilities, shall have delivered to the Company a duly executed counterpart of the Utility Agreement;

(b) The City and the IDB shall have delivered to the Company a duly executed counterpart of this Agreement; and

(c) The Company Conditions have been satisfied in full.

Section 4.3 Outside Date. In the event that all of the conditions set forth in Section 4.1 and Section 4.2 shall not have occurred by March 1, 2022, as may be extended under Section 2.1 (the "Outside Date"), then this Agreement shall terminate and be of no further force and effect, without any liability of any Party hereto to the other, unless the same is extended per written instrument executed by the Mayor, acting on behalf of the City, the Chairman of the Board of the Directors of the IDB, acting on behalf of the IDB, and an authorized officer or signatory, acting on behalf of the Company, in which case the "Outside Date" shall be the last day of such extension. The said Mayor and said Chairman are hereby authorized and directed to execute any such extension up through and including December 31, 2022, as extended by any Construction Commencement Deadline Extension.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.1 Events of Default by the Local Authorities.

(a) Any one or more of the following shall constitute an event of default by the City under this Agreement (a "Local Authorities Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the City seeking or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the City as a bankrupt, or any assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or the filing by the City of a petition or answer

proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or the filing of any such petition or answer by any other person if such petition or answer shall not be stayed or dismissed within sixty (60) days; or

(ii) the failure by the City or the IDB, as the case may be, to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of thirty (30) days after written notice thereof from the Company to the City, unless (A) the Company shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the applicable Local Authority has commenced and is diligently pursuing appropriate corrective action.

(b) If a Local Authorities Event of Default occurs, the Company shall have available to it all rights and remedies, both legal and equitable, provided by law (including without limitation specific performance and mandamus); provided, however, the Company shall not be entitled to any punitive, incidental, consequential, or other similar damages, whether arising at law, in equity or otherwise.

Section 5.2 Events of Default by the Company.

(a) Any one or more of the following shall constitute an event of default by the Company under this Agreement (a "Company Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) at any time prior to the completion by the Company of its obligations and commitments hereunder, the dissolution or liquidation of the Company, or the filing by the Company of a voluntary petition in bankruptcy, or the Company seeking or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the Company as a bankrupt, or any assignment by the Company for the benefit of its creditors, or the entry by the Company into an agreement of composition with its creditors, or the filing by the Company of a petition or answer proposing the adjudication of the Company as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or the filing of any such petition or answer by any other person if such petition or answer shall not be stayed or dismissed within sixty (60) days; or

(ii) failure by the Company to perform or observe any of its material agreements or covenants contained in this Agreement, which failure shall have continued for a period of ninety (90) days after written notice thereof from the City, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, or (B) during such 90-day period or any extension thereof, the Company has commenced and is diligently pursuing appropriate corrective action. The parties acknowledge and agree that Section 2.3 contains no material agreements or covenants for purposes of the foregoing sentence.

(b) If a Company Event of Default occurs, the City shall have available to it all rights and remedies, both legal and equitable, provided by law (including without limitation specific performance and mandamus); provided, however, the City shall not be entitled to any punitive, incidental, consequential, or other similar damages, whether arising at law, in equity or otherwise.

Section 5.3 Remedies Subject to Applicable Law. All rights, remedies and powers provided in this ARTICLE V may be exercised only to the extent the exercise thereof does not violate any applicable provision of law, and all the provisions of this ARTICLE V are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Confidentiality.

(a) No Local Authority shall disclose nor cause the disclosure of any Confidential Information provided to it by the Company, nor use the Company's Confidential Information except to fulfill its obligations under this Agreement or without the Company's prior written consent unless the Confidential Information (i) has already been or is subsequently disclosed publicly by third parties not under a duty of confidentiality, (ii) was previously known or subsequently discovered independently by the Local Authority obliged to keep it confidential under this Agreement without the benefit of access to the Confidential Information as evidenced by tangible records, or (iii) is required to be disclosed by order of a court of law or other governmental authority, provided the Local Authority compelled to disclose exercises reasonable efforts to obtain a protective order or confidential treatment of such disclosure. Without limiting the generality of the foregoing, the City agrees that the form and substance of any materials to be presented at any meeting which is open to the public will be provided in advance to the Company for its approval, which shall not be unreasonably withheld. The non-disclosure and non-use obligations in this Section 6.1 shall survive for a period of five (5) years after any termination or expiration of this Agreement; provided, however, if such Confidential Information is a Trade Secret, the non-disclosure and non-use obligations shall survive for at least as long as such information remains a Trade Secret under applicable law.

(b) In the event a Local Authority receives a public records request for disclosure of this Agreement or any Confidential Information, or otherwise a request for such types of information under Public Records Laws, it shall first (i) notify the Company of the same within ten (10) business days of the receipt of such request, (ii) provide the Company with a copy of such request, (iii) provide the Company with a copy of the redacted public record if any that the Local Authority intends to provide to the requesting party, and (iv) permit the Company to commence legal action seeking an injunction or similar order from a court to prohibit such disclosure for a period of thirty (30) days. Such Local Authority will not intervene or object to such action unless the same is filed against the Local Authority or unless the Local Authority determines (pursuant to paragraph (c) below) that such disclosure is required by the Local Authority under Public Records Laws. Additionally, unless the Local Authority determines (pursuant to paragraph (c)

below) that such disclosure is required under Public Records Laws, it shall defend against such request (subject to the requirement for indemnity from the Company as provided below).

(c) The Company acknowledges that each Local Authority is subject to the laws, regulations and rules of the United States of America and the State of Alabama that could require the disclosure of this Agreement and/or information relating to this Agreement (collectively, "Public Records Laws"). The Company agrees that, anything in this Section 6.1 to the contrary notwithstanding, each Local Authority shall have the right, if and to the extent reasonably determined by such Local Authority as to be required by the Public Records Laws and upon the advice of counsel, to disclose this Agreement and/or information provided to such Local Authority in connection with this Agreement. If a Local Authority intends to disclose the Confidential Information pursuant to the Public Records Laws, order of a court of law or other governmental authority, such Local Authority will give the Company prior notice. Provided, however, that the Local Authorities agree only to use Confidential Information in the furtherance of their respective official duties and obligations in general and in meeting their obligations under this Agreement. And provided, further, that each Local Authority agrees not to publish, disseminate or otherwise make available to the general public any of the Confidential Information (whether or not such information is marked confidential or proprietary).

(d) The Company agrees to indemnify and hold the Local Authorities, and their respective directors, officers and employees, harmless from and against any and all claims, expenses or damages arising from any action filed by any third party in a court of competent jurisdiction seeking to compel Confidential Information due to the Local Authorities' good faith attempt to comply with this Section 6.1, including the Local Authorities' protection of Confidential Information as provided for under this Agreement. In the event of any such action filed by any third party seeking Confidential Information for which the Company is providing indemnity hereunder, then the Local Authorities agree that they will (i) vigorously defend such action in consultation with the Company, (ii) keep the Company informed on a regular basis of developments in such litigation, and (iii) consult with the Company before taking any position or making any decisions that could affect the Company's interests in the litigation. The Company, at its option and sole discretion, has the right, in lieu of providing such indemnity, to choose counsel for the defense of such third party claim under this Section 6.1(d). The Company's indemnity obligation hereunder shall not apply in the event of any breach of confidentiality by any of the Local Authorities in contravention of Section 6.1.

(e) If either Local Authority is named as a defendant in any civil action commenced to compel the production or disclosure of Confidential Information at any time, then such Local Authority shall promptly notify the Company upon its actual knowledge of the commencement of such action. If the Company objects to the disclosure of the Confidential Information sought in any such action, such Local Authority shall (i) vigorously defend the same in consultation with the Company, (ii) keep the Company informed of developments in such litigation and (iii) consult with the Company before taking any position or making any decision that might affect the Company's interests in such matter, so long as there is a reasonable basis in law and fact for defending such action. In determining whether there is a reasonable basis in law and fact for refusing to deliver any record in response to request therefor, the applicable Local Authority may rely conclusively on the advice of counsel.

(f) As used herein, “Confidential Information” shall mean all information marked confidential or proprietary contained in this Agreement and/or any related agreement, exhibit, schedule or other writing or electronic communication in whatsoever way related to the Project, including, without limitation, if so marked as confidential or proprietary, information relating to the Company and/or any of its Affiliates, the projected or actual quantity and type of utility services, as well as the number of employees projected to be hired or actually hired to operate the Project, the projected or actual capital investment or spending by the Company in the Project, the projected or actual relative proportion of real vs. personal property invested (or any subcomponents thereof), any line-item or other detailed breakdown of the assessed value of personal property as a component of the total assessed value of the Project, as well as any proprietary or competitively sensitive information contained in this Agreement and marked proprietary or competitively sensitive, including any and all Trade Secrets. For the avoidance of doubt, the Company understands that at and in connection with the meeting of the City Council of the City, and of the board of directors of the IDB, at which this Agreement is approved by each such entity, the City and the IDB will disclose a redacted version of this Agreement as reasonably provided by the Company.

Section 6.2 Severability; Enforceability. If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

Section 6.3 Term. Unless sooner terminated in accordance with the terms hereof, the initial term of this Agreement shall expire on the last day of Project Year 33, plus, as to the obligations of the Local Authorities only, any additional periods thereafter until the expiration of any and all applicable statutes of limitation on any actions taken by the Local Authorities in connection herewith (the “Term”).

Section 6.4 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the transactions described herein, and there are no representations, oral or written, relating to the transactions described herein which have not been incorporated herein. Any agreement hereafter made shall be ineffective to change, modify, or discharge this Agreement in whole or in part unless such agreement is in writing, and is signed by the Party against whom enforcement of any change, modification, or discharge is sought.

Section 6.5 Counterparts; Recorded Memorandum; Assignment.

(a) This Agreement may be executed in two or more counterparts, each of which shall constitute but one and the same agreement.

(b) The Company may in its sole discretion, but shall not be obligated to, record a memorandum of this Agreement setting forth the existence of this Agreement with the Recorder’s Office of the County.

(c) Except as set forth in Section 6.5(d) below, this Agreement is not assignable by (i) the Company without the prior written consent of the City, which shall not be unreasonably withheld, conditioned or delayed, or (ii) either Local Authority without the prior written consent

of the other Parties. The City agrees to respond to any requested assignment of this Agreement by the Company within ten (10) business days of receipt of the Company's request. If the City fails to reject such requested assignment in writing within such ten (10) business day period, then the City shall be deemed to have approved the Company's requested assignment.

(d) Without the need for either Local Authority's consent, the rights and obligations of the Company under this Agreement may be transferred or assigned in whole or in part by the Company to any Affiliate of the Company (and upon such assignment the Company shall be relieved of its assigned covenants, commitments and obligations hereunder).

Section 6.6 Binding Effect; Governing Law. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their respective successors and assigns. This Agreement shall be governed exclusively by, and construed and interpreted in accordance with, the laws of the State of Alabama.

Section 6.7 Notices.

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

(i) If to the City:

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

(ii) If to the IDB:

The Industrial Development Board
of the City of Huntsville
Huntsville, Alabama 35801
Attn: Chairman

(iii) If to the Company:

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

With a copy to:

Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North, Suite 1700
Birmingham, AL 35203
Attn: Thomas H. Brinkley

and

Starbelt LLC
1601 Willow Road
Menlo Park, CA 94025
Attn: Real Estate Legal Counsel

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

Section 6.8 Liabilities of the Local Authorities. Any provision hereof to the contrary notwithstanding, the Parties agree and acknowledge that the obligations and commitments of the City as set forth herein are limited by the limitations imposed by the Alabama Constitution.

Section 6.9 Survival of Covenants. The covenants in this Agreement shall not terminate until they have been fully performed or have expired by their terms.

Section 6.10 No Waiver. No consent or waiver, express or implied, by any Party to any breach or default by any other Party in the performance by such other Party of its obligations and commitments hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations or commitments of such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare such other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any Party shall be construed to be a waiver or limit the need for such consent in any other or subsequent instance.

Section 6.11 Venue. Each of the Parties irrevocably submits to the jurisdiction of the Alabama state courts sitting in Morgan County, Alabama (collectively, the "Courts") over any suit, action or proceeding arising out of or relating to this Agreement or any transaction undertaken in connection therewith (an "Agreement Action"); and waives, to the fullest extent permitted by law, any objection or defense that such Party may now or hereafter have based on improper venue, lack

of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts.

Section 6.12 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture among the Parties and their respective permitted successors and assigns.

Section 6.13 Headings. The headings in the Sections in this Agreement are for convenience of reference only and shall not form a part hereof.

Section 6.14 Business Days. As used herein, the term “business day” means a day that is not a Saturday, Sunday or legal holiday in the State of Alabama. All other references to “days” hereunder shall mean calendar days. If the date for performance of any covenant or obligation under this Agreement falls on a Saturday, Sunday or legal holiday in the State of Alabama, then the date for performance thereof shall be extended to the next business day.

Section 6.15 No Third-Party Beneficiaries. This Agreement is intended only for the benefit of the signing Parties, and neither this Agreement, nor any of the rights, interest, obligations or commitments hereunder, is intended for the benefit of any other person or third-party.

Section 6.16 Estoppel Certificate. At any time, and from time to time, the Company may deliver written notice to either or both Local Authorities, and the City may deliver written notice to the Company, requesting that such Party certify in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended, or if amended, the identity of each amendment; (iii) the requesting Party is not then in breach of this Agreement, or if in breach, a description of each such breach; and (iv) any other factual matters reasonably requested (an “Estoppel Certificate”). The Local Authorities acknowledge that an Estoppel Certificate may be relied upon by transferees or successors in interest to the Company or the Project or any portion thereof.

Section 6.17 Arm’s-Length Transaction. Each of the City and the Company acknowledges that this Agreement will be interpreted as an agreement between two parties of equal bargaining strength, it being the intention of both the City and the Company that this Agreement reflect the conditions which would be obtained between comparable, independent persons in substantially similar transactions (taking into account the relative responsibilities and risks between the parties) and comparable market and economic conditions and circumstances.

ARTICLE VII **DEFINITIONS**

All initially capitalized terms not otherwise defined herein shall have the following meanings:

“Affiliate” of any specified entity shall mean any other entity directly or indirectly Controlling or Controlled by or under direct or indirect common Control with, or which directly or indirectly owns voting securities of an entity directly or indirectly Controlled by, such specified entity.

“Agreement” shall have the meaning set forth in the Preamble.

“Agreement Action” shall have the meaning set forth in Section 6.11.

“Alabama Constitution” shall have the meaning set forth in Paragraph 11 of the Recitals.

“Amended Tax Abatement Agreement” shall have the meaning set forth in Section 3.14.

“Applicable Rules” shall have the meaning set forth in Section 3.12.

“Approval Event” means any governmental approval not being granted to the Company or its Affiliates on a timely basis (or being materially delayed upon application having been duly made by the Company that complies with the requirements for such approval to be granted) in a manner that materially adversely impacts the timeline for development of the Project and/or the Infrastructure Improvements or the timely employment of individuals to work at the Project.

“City” shall have the meaning set forth in the Preamble.

“City Extraordinary Measures” shall have the meaning set forth in Section 3.4(d).

“City Infrastructure Improvements” shall have the meaning set forth in Section 3.4.

“City Regulatory Knowledge Group” shall mean those officers of the City set forth on **EXHIBIT D** under the heading “CITY REGULATORY KNOWLEDGE GROUP”.

“City Representatives” shall have the meaning set forth in Section 3.4(c).

“City Utility Knowledge Group” shall mean those officers of the City set forth on **EXHIBIT D** under the heading “CITY UTILITY KNOWLEDGE GROUP”.

“Commence Construction”, “Commenced Construction” or “Commencement of Construction” means that the Company has entered a binding contract with a licensed contractor in the State of Alabama for the construction of the Project and has applied for a building permit for the Project.

“Company” shall have the meaning set forth in the Preamble.

“Company Conditions” shall have the meaning set forth in Section 2.1.

“Company Estimates” shall have the meaning set forth in Section 2.2.

“Company Event of Default” shall have the meaning set forth in Section 5.2(a).

“Company Extraordinary Measures” shall have the meaning set forth in Section 3.5(c).

“Company Infrastructure Improvements” shall have the meaning set forth in Section 3.5.

“Company Representatives” shall have the meaning set forth in Section 3.5(b).

“Complete Construction” or “Completed Construction” shall be deemed to have occurred on the date on which the certificate of occupancy shall have been delivered to the Company for the Project.

“Confidential Information” shall have the meaning set forth in Section 6.1(f).

“Construction Commencement Deadline” shall have the meaning set forth in Section 2.1.

“Construction Commencement Deadline Extension” shall have the meaning set forth in Section 2.1.

“Control” when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “Controlling” and “Controlled” have meanings correlative to the foregoing.

“County” shall have the meaning set forth in Section 2.3(b).

“Courts” shall have the meaning set forth in Section 6.11.

“Effective Date” shall have the meaning set forth in the preamble; provided however, that this Agreement shall not be effective unless and until all of the Tax Abatement Agreement, the Utility Agreement, and the State Agreement have been fully executed.

“Estoppel Certificate” shall have the meaning set forth in Section 6.16.

“Force Majeure Event” shall mean, (i) with respect to a Company commitment, a matter beyond the reasonable control of the Company (excluding unfavorable economic conditions), including, but not limited to: acts of God, including, without limitation, pandemic, earthquakes, fire, floods, tornados, hurricanes, and extreme weather conditions; acts of terrorism; financial and/or banking crises that limit normal extensions of credit; civil disturbances; power failures; discovery of Hazardous Materials; the failure by the City to satisfy a commitment under this Agreement due to the claimed occurrence of a Force Majeure Event; and the failure of any governmental entity to timely inspect or approve a design with respect to or to timely issue, upon proper submission and documentation by the Company, any Permit required to Commence Construction at the Project, or to Complete Construction at the Project, including, but not limited to, tax exemption certificates, building permits, zoning, vacated property interests, certificates of occupancy and environmental permits, and (ii) with respect to a City commitment, a matter beyond the reasonable control of the City (excluding unfavorable economic conditions), including, but not limited to: acts of God, including, without limitation, pandemic, earthquakes, fire, floods, tornados, hurricanes, and extreme weather conditions; acts of terrorism; financial and/or banking crises that

limit normal extensions of credit; civil disturbances; power failures; and discovery of Hazardous Materials.

“Hazardous Materials” shall mean any hazardous wastes, hazardous substances, hazardous materials and toxic substances, as those terms are defined in the Resource Conservation and Recovery Act (42 U.S.C.A. §§ 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.A. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C.A. §§ 1801 et seq.), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 et seq.), the Clean Air Act (42 U.S.C.A. §§ 7401 et seq.), the Clean Water Act (33 U.S.C.A. §§ 1251 et seq.), the Occupational Safety and Health Act, 29 USC §§651 et seq. (to the extent it regulates occupational exposure to Hazardous Materials), and any other applicable federal, state or local law, statute, rule, ordinance, order, regulation, judgment, decree, binding and enforceable and common law (in each case as amended, and any judicial or administrative interpretation thereof) relating to materials having adverse effects on human health or the environment, and includes, but is not limited to, asbestos, polychlorinated biphenyls (PCBs), petroleum products and lead-based paints.

“IDB” shall have the meaning set forth in the Preamble.

“Infrastructure Improvements” shall have the meaning set forth in Section 3.5.

“Local Authority” or “Local Authorities” shall have the meaning set forth in the Preamble.

“Local Authorities Event of Default” shall have the meaning set forth in Section 5.1(a).

“New Taxes” shall have the meaning as set forth in Section 3.15.

“Outside Date” shall have the meaning set forth in Section 4.3.

“Party” or “Parties” shall have the meaning set forth in the Preamble.

“Permits” shall have the meaning set forth in Section 3.2(a).

“Progress Meetings” shall have the meaning set forth in Section 3.6.

“Project” shall have the meaning set forth in Paragraph 3 of the Recitals.

“Project Approvals” shall have the meaning set forth in Section 3.11(a).

“Project Coordinator” shall have the meaning set forth in Section 3.1.

“Project Starbelt Agreement” shall have the meaning set forth in Paragraph 1 of the Recitals.

“Project Starbelt Site” shall have the meaning set forth in Paragraph 1 of the Recitals.

“Project Year” shall mean each twelve (12) month calendar year beginning on January 1 and ending on December 31. Project Year 1 shall begin on the first day of the year following the date on which the Company has Completed Construction of the Project, or such earlier date as to which the Company has provided written notice to the City.

“Public Records Laws” shall have the meaning set forth in Section 6.1(c).

“Renovation Activities” shall have the meaning set forth in Section 3.11(b).

“Roadway Improvements” shall have the meaning set forth in Section 3.4(b).

“Sewer” shall have the meaning set forth in Section 3.4(a).

“Site” shall have the meaning set forth in Paragraph 3 of the Recitals.

“State Agreement” means that certain State Project Agreement by and between the State of Alabama and the Company dated as of the Effective Date.

“Term” shall have the meaning set forth in Section 6.3.

“Trade Secret” means any proprietary or competitively sensitive information contained in this Agreement, or any related agreement, schedule or other writing, including without limitation information which falls within the definition of “trade secret” as such term is defined in the Trade Secret Act.

“Trade Secret Act” means the Alabama Trade Secret Act, ALA. CODE §§8-27-1 *et seq.*, as amended.

“Utility” or “Utilities” shall have the meaning set forth in Section 3.4(a).

“Utility Agreement” shall mean that certain amended and restated addendum to utility agreement by and between the Company and Huntsville Utilities for the provision of water and sewer utility services to be provided in connection with the Project at the Project Starbelt Site and the Site.

“Utilities System” or “Utilities Systems” shall have the meaning set forth in Section 3.4(a).

“Water” shall have the meaning set forth in Section 3.4(a).

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the City, the IDB and the Company have each caused this Agreement to be duly executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and have caused this Agreement to be dated as of the Effective Date.

"CITY":

CITY OF HUNTSVILLE, ALABAMA

ATTEST:

City Clerk

By _____
Mayor

(SEAL)

Signature Page of "City"

"IDB":

**THE INDUSTRIAL DEVELOPMENT
BOARD OF THE CITY OF
HUNTSVILLE, ALABAMA**

ATTEST:

Secretary

By _____
Chairman

Signature Page of "IDB"

“COMPANY”:

STARBELT LLC, a Delaware limited
liability company

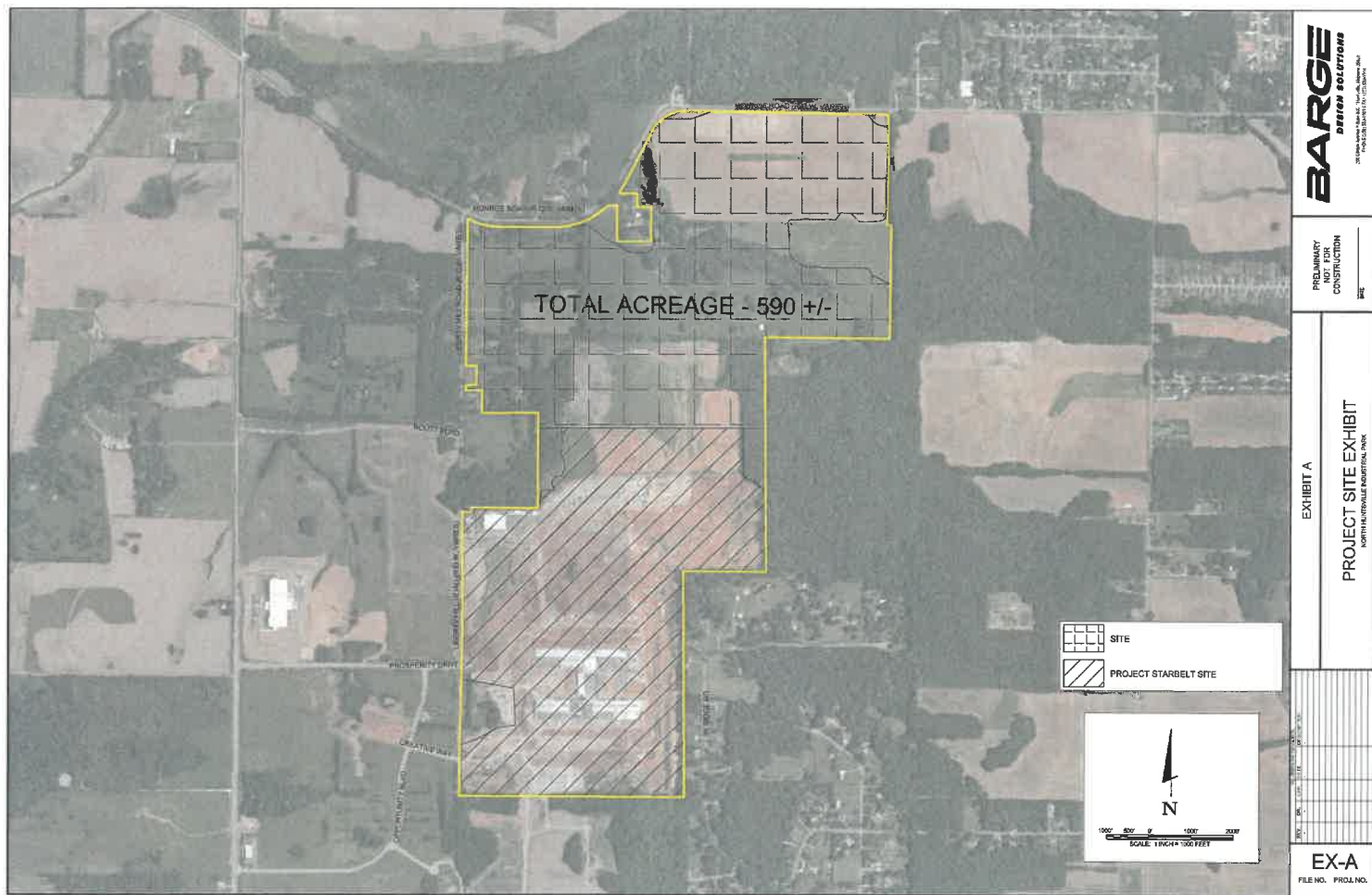
By: _____

Its: _____

Signature Page of “Company”

EXHIBIT A

THE SITE



BARGE
DESIGN SOLUTIONS

[illegible]

PRELIMINARY
NOT FOR
CONSTRUCTION

1

EXHIBIT A

PROJECT SITE EXHIBIT

THE 13TH

EX-A

FILE NO. PROJ. N.

EXHIBIT B
DESCRIPTION OF INFRASTRUCTURE IMPROVEMENTS

Exhibit B
Description of Infrastructure Improvements

	Project #	Project*	Responsible Parties			Completion Date	Scope	Exhibit Reference
			Design + Design Funding	Construction + Construction Funding	Final Ownership			
Water	1	Liberty Hill North 16-inch Water Main Extension	Company	Company	HU	4/1/2023	Installation of 2500 LF of 16-inch water main along Liberty Hill from Routt Road to the proposed Project Ferris water meter location.	EX B-1, Key Note 1
	2	Liberty Hill South 16-inch Water Main Extension	Company	City	HU	4/1/2023	Installation of 2000 LF of 16-inch water main along Liberty Hill from Prosperity Drive to existing 16-inch connection at Company's North meter.	EX B-1, Key Note 2
	3	Research Park Blvd 24-inch Water Main Extension	HU	HU	HU	6/1/2024	8200 LF of 24" water main extension along Research Park Blvd from Plummer Road to Hwy 53	EX B-2, Key Note 1
	4	Water Booster Pump Station (5,000GPM)	HU	HU	HU	6/1/2025	Booster station will transfer water within the City's pressure zone to the Liberty Hill Tank. Station proposed to be locate at Bob Wade Ln and Pulaski Pike.	EX B-1, Key Note 3
Sewer	5	Wastewater Lift Station (1400GPM)	Company	Company	City	4/1/2023	Construction of new 1400 gpm wastewater lift station. Design to be in coordination with City. Upon completion, Company shall dedicate all improvements and fee simple title of land for wastewater lift station.	EX B-3, Key Note 1
	6	Wastewater Forcemain 12-inch and 6-inch FMs	Company	Company	City	4/1/2023	Construction of approximately 8000 LF of 12-inch and 6-inch wastewater force mains from proposed lift station to Prosperity Drive.	EX B-3, Key Note 2 & 3
	7	Wastewater Forcemain 12-inch and 6-inch FMs	Company	City	City	4/1/2023	Construction of approximately 1700 LF of 6-inch force main and 8000 LF of 12-inch force main from Prosperity Drive to existing City collection system.	EX B-3, Key Note 2 & 3
Roadways	8	Liberty Hill Road Improvements 4th Leg of Roundabout	City	City	City	11/4/2021	Construction of 4th leg of roundabout (north) with roadway curb and gutter.	EX B-4, Key Note 1
	9	Liberty Hill Road Improvements South (Routt Rd to Roundabout)	City	City	City	1/6/2022	Repaving of existing Liberty Hill Road from existing roundabout to Routt Road.	EX B-4, Key Note 2
	10	Liberty Hill Road Improvements North (Routt Rd to Monroe Rd)	City	City	City	1/17/2023	Construction of 2-lane roadway consisting of 12-ft. lane widths with 2-ft. shoulders between Routt Road and Monroe Road. Company and City to coordinate timing of road improvements to minimize Project Ferris construction conflicts.	EX B-4, Key Note 5
	11	Routt Road Improvements	City	City	City	3/24/2022	Construction of pavement overlay (2 - 11-ft. lanes w/ shoulders) along Routt Road between Pulaski Pike and Liberty Hill Road. Installation of traffic signal at Pulaski Pike Intersection.	EX B-4, Key Note 3
	12	Pulaski Pike Monroe Road Intersection Improvements	City	City	City	3/15/2022	Construction of additional pavement to improve turning radius for truck access.	EX B-4, Key Note 4
	13	Monroe Road Liberty Hill Intersection Improvements	City	City	City	3/15/2022	Construction of additional pavement to improve turning radius for truck access.	EX B-4, Key Note 4
	14	Monroe Road Improvements	City	City	City	1/17/2023	Reconstruction and widening of Monroe Road from Pulaski Pike to approximately 5300 feet east of Liberty Hill Road. Road Improvements shall consist of two (2) 12-ft. travel lanes with 2-foot shoulders. Company and City to coordinate timing of road improvements to minimize Project construction conflicts.	EX B-4, Key Note 6

"City Infrastructure Improvements" to be designed and/or constructed by the City or Huntsville Utilities, as applicable, are denoted in green, and "Company Infrastructure Improvements" to be designed and/or constructed by the Company are denoted in blue.

EXHIBIT B-1 **ILLUSTRATION SHOWING LOCATION OF UTILITIES IMPROVEMENTS**

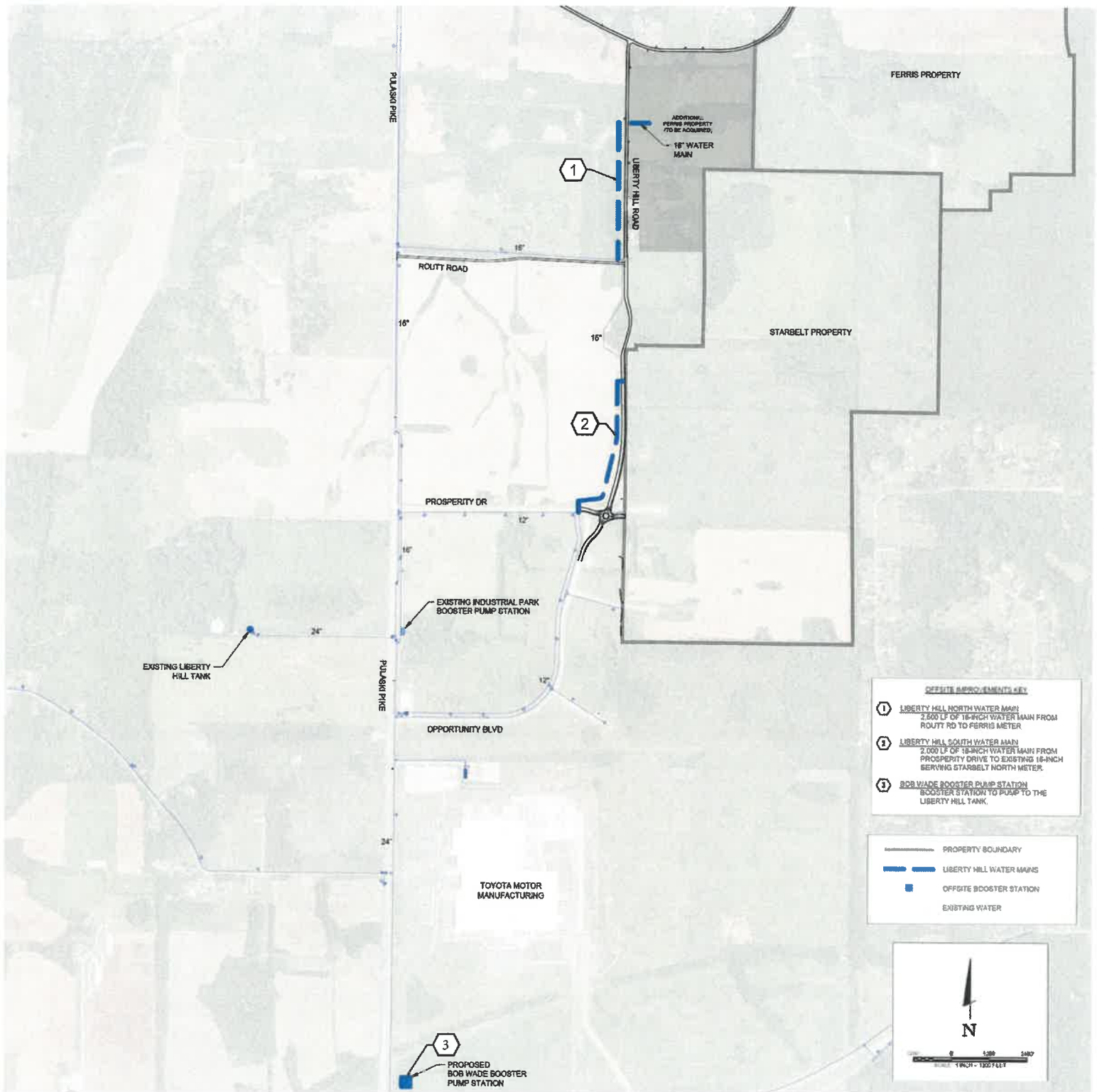


Exhibit B-1

EXHIBIT B-2
ILLUSTRATION SHOWING LOCATION OF UTILITIES IMPROVEMENTS

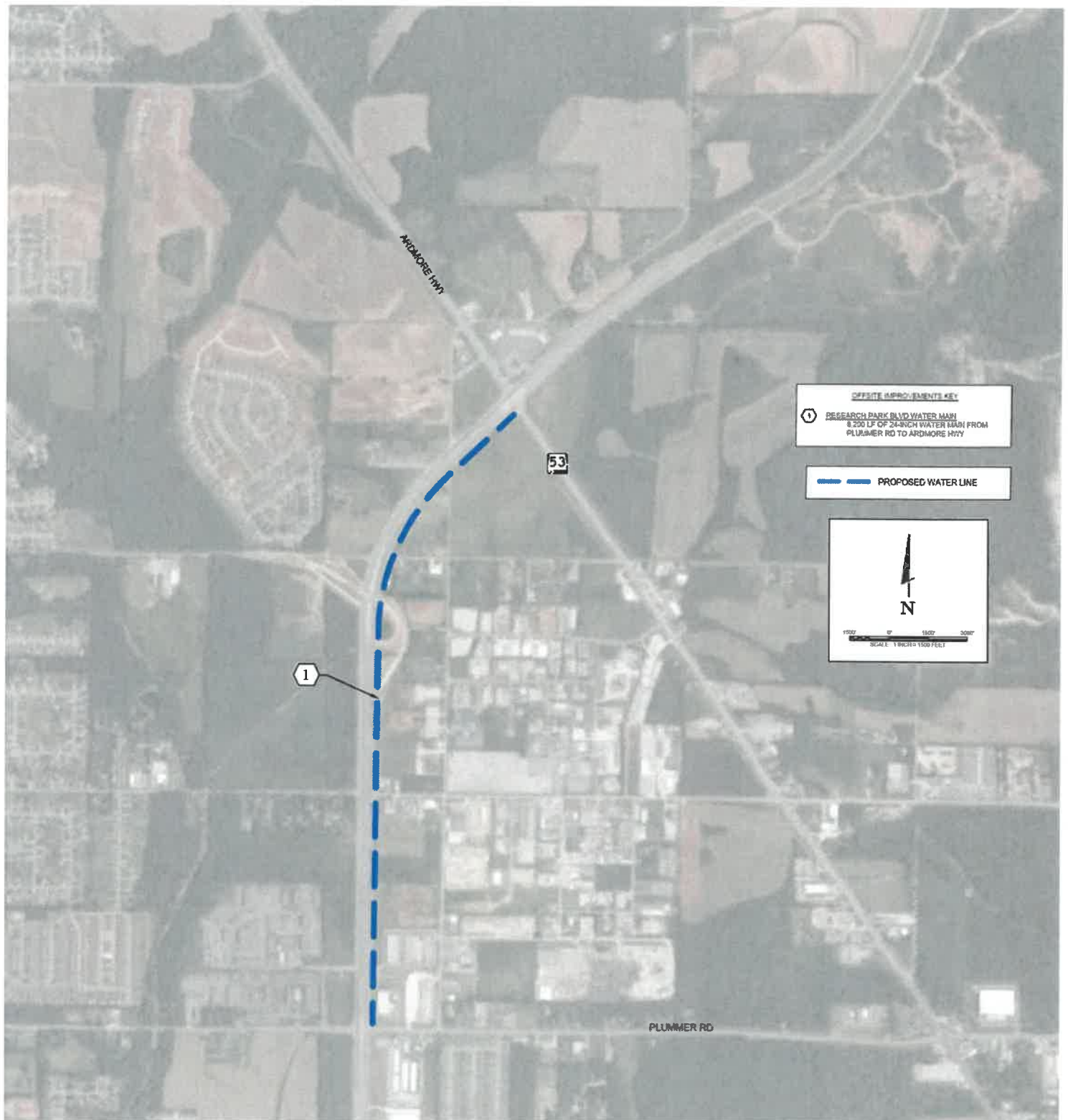


Exhibit B-2

EXHIBIT B-3 **ILLUSTRATION SHOWING LOCATION OF UTILITIES IMPROVEMENTS**

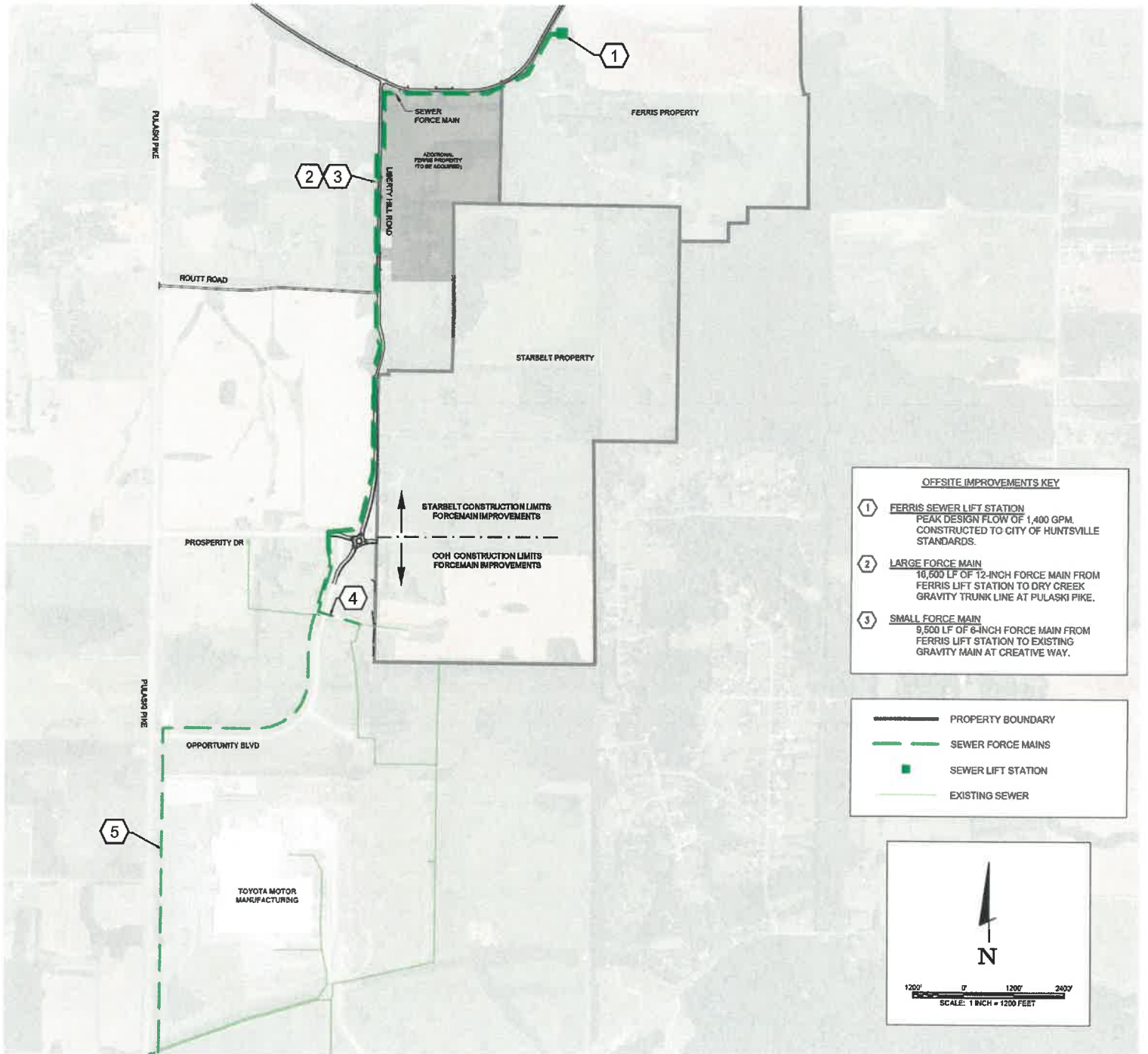


EXHIBIT B-4 **ILLUSTRATION SHOWING LOCATION OF UTILITIES IMPROVEMENTS**

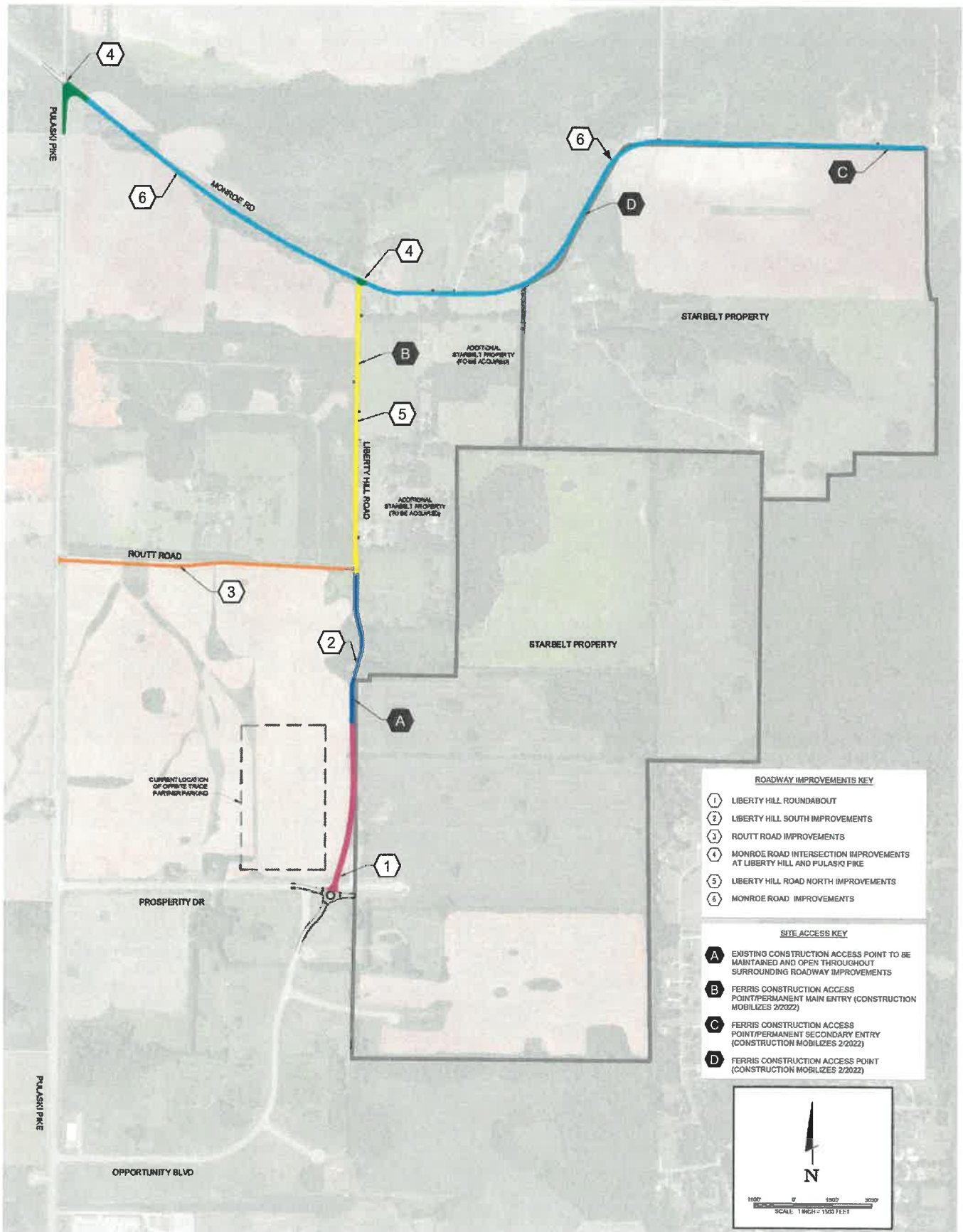


EXHIBIT C
PROJECT APPROVALS

1. Annexation of Land
2. Rezoning of Land
3. Engineering Review (Grading Permit)
4. Building Plan Submission and Review (Building Permit)
5. Water Tap and Capacity Fees
6. Sewer Tap and Capacity Fees
7. Substation Construction
8. Sign Permit Application
9. Right-of-Way Permit Application
10. Other Permit Application

EXHIBIT D

CITY'S KNOWLEDGE GROUPS

CITY UTILITY KNOWLEDGE GROUP

The following officers of the City of Huntsville are included within the meaning of "City Utility Knowledge Group":

1. Mayor
2. City Attorney (and all attorneys within the Office of the City Attorney)
3. Director of Natural Resources
4. Director of Water Pollution Control
6. Director of Urban and Economic Development
7. Chief Executive Officer of Huntsville Utilities
8. Huntsville Utilities Manager of Engineering Services

CITY REGULATORY KNOWLEDGE GROUP

The following officers of the City of Huntsville are included within the meaning of "Regulatory Knowledge Group":

1. Mayor
2. City Attorney (and all attorneys within the Office of the City Attorney)
3. Director of Natural Resources
4. Director of Water Pollution Control
5. Director of Public Works
6. Director of Urban and Economic Development
7. Chief Executive Officer of Huntsville Utilities