

CONFIDENTIAL / CONTAINS TRADE SECRETS AS DEFINED IN VA. CODE § 59.1-336, ET SEQ.
/ PROTECTED FROM DISCLOSURE UNDER FOIA, VA. CODE § 2.2-3705.6(3)

UTILITY SERVICES FUNDING AGREEMENT

THIS UTILITY SERVICES FUNDING AGREEMENT (the “Agreement”) is made and entered into as of the date upon which the last of Utility and Owner executes this Agreement, as indicated on the signature pages of this Agreement (the “Effective Date”), by and between the **WESTERN VIRGINIA WATER AUTHORITY**, a public service authority formed and existing in accordance with the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 of Title 15.2 of the Code of Virginia, 1950, as amended (the “Utility”), and **HELIO CAPITAL LLC**, a Delaware limited liability company (the “Owner”). Owner and Utility are collectively referred to herein as the “Parties”.

WHEREAS, Owner is, or will be, the owner of a certain tract of land (the “Land”) shown on Exhibit A attached to this Agreement (the “Land Depiction”) and more particularly described on Exhibit B, attached to this Agreement; and

WHEREAS, Utility provides, or will provide, water and wastewater services for the Land; and

WHEREAS, Owner has requested that Utility provide and Utility, subject to the terms of this Agreement, will reserve for Owner water supply capacity of no more than Two Million (2,000,000) gallons per day (the “Day 1 Water Solution”) and a wastewater service capacity of no more than Five Hundred Seventy Thousand (570,000) gallons per day (the “Day 1 Wastewater Solution,” and collectively with the “Day 1 Water Solution,” the “Day 1 Solution”) to the Land for the development and operation of data centers on the Land (the “Project”); and

WHEREAS, the Day 1 Solution exceeds (i) the current water supply and wastewater service capacity available to the Land utilizing Utility’s existing infrastructure and (ii) the future water supply and wastewater service capacity available to the Land under Utility’s current long-range planning for water supply and wastewater service capacity; and

WHEREAS, Owner anticipates future water supply and wastewater service capacity needs at the Land, in addition to the Day 1 Solution; and

WHEREAS, Utility has provided Owner with support and analysis in assessing and developing concepts for water and wastewater infrastructure improvements to support Owner’s development goals at the Land; and

WHEREAS, Owner desires to provide funds for Utility to use: (i) to undertake infrastructure and water supply planning required to meet the Day 1 Solution, (ii) to plan and prepare for Owner’s anticipated future additional water supply and wastewater service capacity needs at the Land over and above the Day 1 Solution (the “Day N Water Solution”), and (iii) to plan and prepare for the water supply and wastewater service needs throughout Utility’s service area, including identifying and planning for access to new water supply sources and identifying and planning for the development of new water and wastewater infrastructure; and

WHEREAS, the Parties desire to enter into an agreement concerning certain prerequisites to the development of the water and wastewater infrastructure improvements necessary for the Day 1 Solution for the Project and desire to set forth that agreement in writing; and

WHEREAS, the Parties acknowledge that a detailed design, permitting, and construction effort will be needed to complete the water and wastewater infrastructure improvements necessary for the Day 1 Solution for the Project, and the terms and conditions of the Parties’ mutual effort to complete the water and wastewater infrastructure improvements required for the Day 1 Solution for the Project will be



addressed in a separate design and construction agreement to which Botetourt County may be a party if required by either Party (the “Utility Development Agreement” or “UDA”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

1. Preliminary Engineering Costs and Reports. Owner shall pay Utility the sum of \$1,661,170, as total for such amount is set forth in Exhibit C (the “PEC Payment”) to fund: 1) a preliminary engineering report prepared by a vendor mutually acceptable to Owner and Utility, procured in accordance with Utility’s procurement procedures, (the “PER”) for the water supply and wastewater service infrastructure plan needed to meet the Day 1 Solution for the Project; 2) a water supply plan developed by a vendor mutually acceptable to Owner and Utility, procured in accordance with Utility’s procurement procedures, (the “WSP”) to develop screening level options for future studies of potential water supply sources that must be developed to meet both the anticipated future additional water supply needed for the Day N Water Solution, as well as the future water supply capacity needs for future system demand throughout Utility’s service area; 3) a facilities study, prepared by a vendor mutually acceptable to Owner and Utility, procured in accordance with Utility’s procurement procedures, of the Carvins Cove Reservoir and Water Treatment Plant (the “FSCC”) to determine needed improvements for Carvins Cove to support both the Day N Water Solution and the future water supply capacity needs for future system demand throughout Utility’s service area; and 4) engineering design of Route 11 Transmission Main – Phase 3. The foregoing will be subject to the following conditions:

a) Owner shall make the PEC Payment to Utility within thirty (30) days following the Effective Date. Utility will use the proceeds of the PEC Payment solely for the PER, WSP, and FSCC, unless otherwise agreed in writing by the Parties.

b) Utility understands time is important to Owner, and Utility will use its best efforts to complete the PER, the WSP, and the FSCC within the schedule proposed by Owner and approved by Utility, such approval not to be unreasonably withheld, conditioned, or delayed, such time period for completion of the PER not to exceed nine (9) months from the vendor’s commencement of the work, the WSP not to exceed eight (8) months from the vendor’s commencement of the work, and the FSCC not to exceed ten (10) months from the vendor’s commencement of the work; provided, however, any delay in any of the foregoing studies beyond Utility’s control shall not constitute a breach of this Agreement.

c) The PER will expand upon existing preliminary concepts for determining what is required to provide the Day 1 Solution for the Project. The PER will study alignments, pumping, storage, and other water supply system improvements needed to provide the Day 1 Solution for the Project, and scope will include, without limitation, preliminary construction schedule, water quality analysis, and permitting requirements.

d) The WSP will analyze all aspects of water supply planning in and around Utility’s service area in order to assess and evaluate viable alternative water supply sources and needed water supply infrastructure in order to meet the Day N Water Solution, which the Parties understand could require up to Eight Million (8,000,000) gallons per day, or six million (6,000,000) gallons per day above the Day 1 Water Solution, without impairing Utility’s ability to meet the current and future water supply capacity needs for future system demand throughout Utility’s service area. Analysis of potential water supplies will include ground water sources, surface water sources, interjurisdictional water supply projects, and alternate and reuse options. An objective of the WSP will be to study existing sources and expansion potential, as well as, to identify new water supply sources and infrastructure needed to meet both the anticipated future additional water supply



needed for the Day N Water Solution, as well as the future water supply capacity needs for future system demand throughout Utility's service area.

e) The FSCC will focus on the condition of the reservoir and water treatment plant infrastructure and what improvements are needed to increase the water supply available from Carvins Cove, the scope which shall include phasing for the Water Treatment Plant and any associated infrastructure. The FSCC will help determine the role Carvins Cove can play in meeting Utility's future water supply needs throughout Utility's service area. Owner agrees to make improvements to docks and piers located at Carvins Cove whenever Owner triggers the Day N Water Solution.

f) The Parties shall have the right to mutually agree upon updates and/or changes to the scope of the PER, WSP, and/or the FSCC without the necessity of formally amending this Agreement.

2. Water and Wastewater Terms of Service. Provided (i) Owner timely pays Utility the Water Availability Fee and the Sewer Availability Fee as stated below, (ii) the Parties agree to the terms of a Utility Development Agreement, to which Botetourt County may be a party if mutually agreed upon by the Parties, such agreement not to be unreasonably withheld, conditioned, or delayed by either Party, (iii) the Parties comply with their obligations under the Utility Development Agreement to develop the required water supply and wastewater service infrastructure improvements needed for the Day 1 Solution, and (iv) the required water supply and wastewater service infrastructure improvements required under the Utility Development Agreement are designed, constructed, commissioned, and dedicated to Utility, then Utility shall make available to Owner the following potable water supply and wastewater service capacities for the Project:

a) The total water capacity for the Project (the "Water Capacity Allocation") is no more than 2,000,000 gallons per day, and with a minimum pressure of 20 pounds per square inch.

b) The total sewer capacity for the Project (the "Sewer Capacity Allocation") is no more than 570,000 gallons per day.

c) Utility shall conduct its water and wastewater operations in its usual and customary manner. Utility's generally-applicable rules and regulations, including without limitation its General Business Rules and Regulations, Development Rules and Regulations, "Rules and Regulations – Wastewater Collection System – Industrial Pretreatment Program", and Drought Contingency Plan, as they may be amended from time-to-time and current copies of which are collectively attached hereto as Exhibit D, will apply to the Project. Utility shall provide written notice of any amendments to Utility's generally-applicable rules and regulations. Owner must comply with all such generally-applicable rules and regulations, including without limitation Utility's General Business Rules and Regulations and Drought Contingency Plan.

d) Utility will provide Owner at least three days' prior written notice of any planned outages of its water supply or wastewater system. The written notice will identify the anticipated length of the outage.

e) For unplanned outages, Utility will promptly commence, and thereafter diligently pursue, appropriate repair, restoration, replacement, and maintenance measures to restore service to the Project in Utility's usual and customary manner.



f) Nothing in this Agreement shall be construed as a warranty or guarantee that there will not be temporary service interruptions, mandatory drought restrictions, or Force Majeure Events beyond Utility's reasonable control that may impact the flow of water to the Project. Utility shall not be liable to Owner for any service interruption, drought, restriction, or other curtailment of water supply or wastewater service for the Project for events beyond Utility's reasonable control.

3. Water and Sewer Availability Fees. The fees that Owner shall pay in connection with the Water Capacity Allocation and the Sewer Capacity Allocation, are as follows:

a) Water Availability Fee. Owner shall pay to Utility the amount required under Utility's published schedule of standard rates and fees in effect at the time of payment for the meter size recommended for the Project in the PER plus the actual cost of the meter(s), including installation costs, all as more particularly set forth in the UDA. Owner shall pay the Water Availability Fee no later than sixty (60) business days after completion of the PER.

b) Sewer Availability Fee. Owner shall pay to Utility the amount required under Utility's published schedule of standard rates and fees in effect at the time of payment for the meter size recommended for the Project in the PER, all as more particularly set forth in the UDA. Owner shall pay the Sewer Availability Fee no later than sixty (60) business days after completion of the PER.

4. Utility Development Agreement. The Parties will use their best efforts to negotiate the terms of the Utility Development Agreement within the later of (i) ninety (90) days of the Effective Date and (ii) thirty (30) days after completion of the PER, in order to provide for the design and construction of the new utility infrastructure required for Utility to provide the Day 1 Solution for the Project. Unless otherwise agreed in the UDA or other written instrument, the UDA will require that the new utility infrastructure be designed and constructed as recommended in the PER to meet the Day 1 Solution. The UDA also will require that the new utility infrastructure be designed and constructed in accordance with Utility's Development Rules and Regulations, the Western Virginia Regional Design and Construction Standards, applicable Virginia Department of Health requirements, applicable requirements of other permitting agencies, any applicable design, construction, and development standards established by Botetourt County, and any other standards customarily applicable to the planning, design, and construction of water and wastewater infrastructure in the region. The UDA also will, among other mutually agreeable terms and conditions: (a) establish a delivery method for the design and construction of the new utility infrastructure, (b) require Owner to be responsible for all costs associated with the design, construction, permitting, and dedication of the new utility infrastructure required for Utility to provide the Day 1 Solution; provided any costs associated with the design and construction of the new utility infrastructure not required for Utility to provide Day 1 Solution but implemented by Utility shall be equitably prorated as more particularly addressed in the UDA, (c) provide for Botetourt County to be a party to the UDA if mutually agreed upon by the Parties, such agreement not to be unreasonably withheld, conditioned, or delayed by either Party, (d) require Owner to be responsible for all costs of performance and payment bonds or other security satisfactory to Utility and Botetourt County in an amount equal to not less than 100% of the estimated cost for the construction of all new utility infrastructure to be constructed, directly or through contractors, by Owner or Utility, (e) for the construction of all new utility infrastructure, require Owner to be responsible for all costs (including legal fees and expenses) associated with (i) permitting for the new utility infrastructure, (ii) the acquisition of any easements or rights of way required for Utility to provide the Day 1 Solution for the Project, and (iii) the design, procurement, construction and installation of the water pumping station(s) and water tank(s) required for Utility to provide the Day 1 Solution for the Project, (f) require that all new utility infrastructure be dedicated to Utility after construction, and (g) include other usual and customary terms and conditions for a Utility Development Agreement. The UDA shall require Owner to obtain and be responsible for the construction and installation of the water lines required for



Utility to provide the Day 1 Solution for the Project. Once the utility infrastructure is placed into service, Owner will pay all rates, fees, and charges established by Utility in accordance with Virginia law for water and sewer service.

5. Owner Notice of Need to Increase Beyond Day 1 Solution. Owner and Utility shall use commercially reasonable efforts to meet every six (6) months to discuss (i) any requested increase in water supply capacity for the Project above the Day 1 Water Solution, (ii) any requested increase in wastewater service capacity for the Project above the Day 1 Wastewater Solution, or (iii) how the on-site private infrastructure is intended to work, maximum flow rates, seasonal changes, and other pertinent discussions reasonable requested by Utility to ensure that the Project does not have an adverse impact on Utility's systems. The meetings are intended to provide the Parties sufficient time to design and construct additional water, wastewater, or recreational infrastructure that may be needed for any additional needed water or wastewater capacity for the Project. Owner will provide written notice to Utility and Botetourt County if it determines not to expand the Project beyond the Day 1 Solution. Owner will provide as much written notice as practicable under the circumstances to Utility and Botetourt County if it determines to expand the Project beyond the Day 1 Solution, including if available at the time of such written notice the anticipated water supply needed for the Day N Solution and the desired date for such additional water supply to be available at the Land, with the understanding that the development of the new utility infrastructure for the Day N Solution and the development of new water supply sources and utility infrastructure needed to replace the water supply capacity being made available to Owner for the Day N Solution and to connect those new water supply sources to Utility's system, for the benefit of Utility's remaining service area, will be lengthy and costly projects and, therefore, Owner will use commercially reasonable efforts to provide Utility and Botetourt County with as much notice as possible of its desired schedule for expanding the Project and implementing the Day N Solution. Utility has no obligation, and makes no warranty or guarantee, to provide increased capacity for the Project on Owner's desired schedule; provided, however, that Utility will use commercially reasonable efforts to provide such increased capacity on Owner's desired schedule provided such efforts by Utility do not materially impair or limit Utility's ability to provide water supply capacity to its customers throughout Utility's service area. If the Owner determines to go forward with the Day N Solution, the modified Project will be subject to additional water and sewer availability fees and an additional utility development agreement. If the Owner does not proceed with Day N Solution within thirty (30) years of the Effective Date of this Agreement, the expansion from Day 1 to Day N will automatically be considered abandoned by Owner, unless otherwise mutually agreed upon by the Parties, such agreement not to be unreasonably withheld, conditioned, or delayed.

6. Obligations of Owner.

a) Owner will timely pay monthly billings from Utility for water and wastewater usage in accordance with Utility's published schedule of rates, fees, and other charges and Utility's then-current General Business Rules and Regulations.

b) Owner will notify Utility within three (3) days of changes in operating conditions that alter expected water consumption or wastewater discharge by more than twenty (20) percent; provided, however, Owner may not exceed the Day 1 Water Capacity Allocation or Sewer Capacity Allocation.

c) If reasonably deemed necessary for the Project by Utility, Owner shall obtain a permit for the Project under Utility's Industrial Pretreatment Program and must, thereafter, comply with program requirements. If reasonably deemed necessary for the Project by Utility, Owner will submit its permit application for the Project at least one (1) year prior to the Project's commissioning.



d) If requested by Utility, Owner and Utility will enter into a new easement whereby Owner will grant to Utility a non-exclusive ingress and egress easement to Parcel No. 88-20W (the “Greenfield Tank Lot”), on terms reasonably acceptable to Utility and Owner, so Utility personnel have all necessary access to the Greenfield Tank Lot for operations, maintenance, repair, and replacement. Utility and Owner will cooperate on identifying a mutually acceptable location of the foregoing easement.

e) If reasonably deemed necessary for the Project by Utility, Owner and Utility will enter into a new easement whereby Owner will grant to Utility an easement on terms reasonably acceptable to Utility and Owner for access to and maintenance of Utility’s existing 16-inch main located on, under, and across the Land. The easement will allow for access to the water main and the operation, maintenance, repair, and replacement of the water main. This easement shall be granted to Utility no later than sixty (60) days following Utility’s request. Utility and Owner will cooperate on identifying a mutually acceptable location of the foregoing easement.

f) Pursuant to Utility’s Development Rules and Regulations, Owner acknowledges all facilities fall under “Mandatory Connection” requirements and that any new structures will be connected to Utility water and sewer, unless otherwise being served by the Owner’s private on-site utilities. Owner shall not use private well water for any use.

7. Obligations of Utility.

a) Utility acknowledges the importance to Owner of continuous water and wastewater service to the Project of a quantity and quality that will allow uninterrupted operations of the Project, including continuous evaporative cooling to protect sensitive equipment required for essential operations. Utility will, at its sole cost and expense (other than the charges for actual services used by the Project), keep and maintain its utility system and related supporting infrastructure in good working condition and repair and will, at its expense, make all government-mandated updates and modifications to its utility system. Utility does not guarantee a sufficient or uniform pressure or an uninterrupted supply. Utility shall not be liable to Owner for failure or interruption of continuous service or pressure changes that occur in the system except to the extent such failure or interruption of continuous service or pressure changes that occur in the system are caused by Utility’s willful misconduct. Utility shall not be liable to Owner for shutdowns for repairs or adjustments, breakdowns, accidents, or other causes beyond Utility’s control except to the extent such shutdowns are caused by Utility’s willful misconduct. Utility will undertake to use reasonable care and diligence in order to prevent and avoid interruptions and fluctuations in service, but it cannot and does not guarantee that such will not occur. Nothing in this Agreement is intended to waive, nor shall it be construed as having the effect of waiving, any of Utility’s common law or statutory immunities.

b) Utility will maintain ready access to an inventory of spare components, parts, facilities, infrastructure and related appurtenances necessary for Utility to maintain its utility system. Utility shall cause suitably trained employees or third-party maintenance contractors to be available and on call to provide critical repair, restoration and maintenance services 24 hours per day, 7 days per week.

c) Utility will maintain maintenance and repair records for its utility system and, upon reasonable notice and request, such records shall be made available for review by Owner or its employees, agents or representatives during regular business hours.



d) Utility will post published documents referenced in this Agreement and updates on its website for Owner's reference.

e) Utility shall reasonably cooperate with Owner in respect to the relocation of that certain access easement and utility easement related to a certain water tank lot and water treatment plant building located on the Land.

8. Term and Termination. The Term of this Agreement shall commence on the Effective Date and shall terminate as provided in this Section.

a) This Agreement shall terminate if such termination is expressly provided in any subsequent agreement of the Parties.

b) Otherwise, either Party may terminate this Agreement immediately by providing written notice to the other Party under the following conditions:

- i. By either Party, if Owner elects not to pursue the Project, or if the Project, once commenced, is discontinued or abandoned as evidenced by written notice from Owner to Utility;
- ii. By either Party, if both Parties mutually agree that the Parties have reached an impasse in negotiations on a Utility Development Agreement;
- iii. By either Party, if the Parties agree in writing to the termination of this Agreement;
- iv. By Utility, if based on the content of the PER, WSP, FSCC, or other available information, the anticipated cost of either the Day 1 Solution or the Day N Solution is prohibitive and Owner notifies Utility that Owner will not pay for the cost of either the Day 1 Solution or the Day N Solution, as the case may be;
- v. By either Party, if the other Party ceases to carry on its business;
- vi. By either Party, if the other Party (i) is adjudged bankrupt, (ii) becomes insolvent, (iii) makes a general assignment for the benefit of its creditors; or (iv) has a receiver, assignee, or trustee, appointed on account of its insolvency; or
- vii. By either Party, upon a default beyond all applicable notice and cure periods, by the other Party as described in the following Section.

9. Default. If either Party is in default as to any material term or condition of this Agreement at the time or in the manner provided for, the non-defaulting Party may provide written notice detailing the default to the defaulting Party and the defaulting Party must remedy the default within thirty (30) days of its receipt of the written notice, provided, however, that if the default cannot be remedied within thirty (30) days using commercially reasonable efforts, the defaulting Party must promptly commence efforts to remedy the default and diligently pursue such remedy until the default has been remedied; provided, however, the cure period will not be extend more than ninety (90) days following the non-defaulting Party's receipt of the written notice of default. The written notice must set forth with specificity the nature of the alleged default the items to be cured. If the defaulting Party does not remedy the default as provided in the foregoing sentence, then the non-defaulting Party may terminate this Agreement and pursue such other remedies as it may have available to it at law or in equity.

10. No Requirement for Future Business Relationship. Except as required under Section 2 and Section 4 of this Agreement, nothing herein shall be construed as obligation the Parties to enter into any future contract, agreement, relationship, or venture.



11. Intentionally Omitted.

12. Immigration Reform and Control Act Of 1986. Owner represents and warrants it does not and will not during the performance of this Agreement employ unauthorized alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986 or any other federal law regarding the employment of unauthorized aliens or undocumented workers.

13. Independent Contractors. The Parties are independent contractors and are not agents, partners, or joint venturers. Neither Party shall have the ability to bind the other to any contract with a third party and neither Party shall hold itself out to any third party as having the right to bind the other Party to any contract.

14. No Third-Party Beneficiaries. The Parties covenant and agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than Utility and Owner; (iii) no other individual or entity shall obtain any right to make any claim against Utility or Owner under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

15. Legal Compliance. The Parties will comply with all federal, state and local statutes, ordinances, and regulations, now in effect or hereafter adopted, that apply to this Agreement or the provision of water and wastewater for the Project.

16. Notices. All notices and communications required or permitted to be given pursuant to this Agreement shall be in writing and (i) hand delivered, (ii) mailed by United States Postal Service, certified or registered mail, return receipt requested and postage prepaid or (iii) sent by recognized overnight carrier that provides proof of delivery such as Federal Express, with delivery charges prepaid, addressed as follows:

Owner: Helio Capital LLC
1001 Haxall Point, 15th Floor
Richmond, VA 23219
Attn: Carl Bivens
Telephone: 804.697.1314
Email: carl.bivens@troutman.com

Utility: Western Virginia Water Authority
Attention: Executive Director
601 S. Jefferson Street
Roanoke, VA 24011
Telephone: 540-853-5700
Email: michael.mcevoy@westernvawater.org

With a Copy to: Spilman Thomas & Battle
Attention: Jeremy E. Carroll
310 First Street, Suite 1100
Roanoke, VA 24011
Telephone: 540-512-1800
jcarroll@spilmanlaw.com



Notices shall be effective upon receipt or refusal. The telephone numbers listed above are for purposes of providing the same to overnight delivery services and are not to be otherwise used for notice purposes. A Party may change the address or addresses to which notices to such Party must be sent by giving notice of such new address or addresses to the other Party in accordance with this Section.

17. Assignment. Neither Party shall assign any of its rights, duties, or obligations under this Agreement without prior written consent of the other Party. If Utility consents to an assignment, the assignment will not in any way release or relieve Owner from any of the covenants, obligations, or undertakings contained in this Agreement and Owner will remain liable for compliance with the terms of this Agreement for the entire term of the Agreement. Notwithstanding this prohibition, any Party may assign its rights and obligations hereunder to an affiliate or, in the case of Utility, a governmental entity succeeding to substantially the same powers and functions as the Utility with respect to this Agreement without the consent of the other Party.

18. Successors; Permitted Assigns. The Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective executors, administrators, heirs, successors-in-title, successors, and permitted assigns.

19. Severability. If any term, provision, clause, sentence or paragraph of this Agreement or its exhibits or the application thereof to any person or circumstance, shall be unenforceable in any respect as written, such term, provision, clause, sentence or paragraph shall be modified or limited so as to render it valid and enforceable to the fullest extent allowed by law. Any such provision that is not susceptible of such reformation shall be ignored so as to not affect any other term or provision thereof, and the remainder of this Agreement shall be enforced to the fullest extent permitted by law.

20. Non-Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, nor shall any such waiver be a continuing waiver. A Party's failure to insist upon strict performance of any of the terms, covenants, conditions or agreements contained in this Agreement shall not be deemed a waiver of any rights or remedies that said Party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained in this Agreement by the same Party. Except as expressly provided in this Agreement, no waiver shall be binding on any Party to this Agreement unless executed in writing by the Party making such waiver.

21. Recitals. The Parties incorporate the Recitals contained in this Agreement as material terms of this Agreement that are binding on the Parties.

22. Headings. The Section headings contained in this Agreement are inserted only as a matter of convenience and for reference, and they do not define, limit, or modify the scope or intent of any provisions of this Agreement, nor do they in any way affect this Agreement.

23. Interpretation/Entire Agreement. This writing, and any and all exhibits attached hereto, constitutes the entire understanding and agreement of the Parties concerning the subject matter hereof, and no other terms, conditions, promises, undertakings, statements or representations, express or implied relating to the subject matter of this Agreement, but not contained in this Agreement, shall have any force or effect. This Agreement was drafted with input by Owner and Utility, and no presumption shall exist against any Party.

24. Governing Law; Forum Selection. This Agreement shall be construed, governed, and enforced in accordance with the laws of the Commonwealth of Virginia. Any litigation between the parties



arising under this Contract shall be brought in a court of competent jurisdiction in the City of Roanoke, Virginia.

25. Construction. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

26. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgment pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this Agreement. In order to expedite the transaction contemplated herein, facsimile or electronic signatures, including, without limitation, by DocuSign, may be used in place of original signatures on this Agreement, as allowed by applicable Laws. The Parties hereto intend to be bound by the signatures on the facsimile or electronic document, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the use of a facsimile or electronic signature; provided, however, that the Parties hereby agree to execute and provide to each other original signatures, upon the request made by either Party to the other.

27. Amendment. This Agreement may be amended, altered or supplemented only by an instrument in writing signed by both Parties or their respective successors in interest. This Agreement may be terminated only in accordance with the terms of this Agreement or by an instrument in writing signed by both Parties.

28. Exhibits. All of the exhibits attached to this Agreement are incorporated herein as a part of this Agreement.

29. Force Majeure. Neither Party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this Agreement due to an event outside the reasonable control and not the fault of the affected Party (a "Force Majeure Event"). Examples of a Force Majeure Event include, but are not limited to, natural disasters, acts of God, terrorism, war, civil disorder, fire, flood, explosion, riot, insurrection, labor disputes or strikes, any act or order of any governmental authority, failures of sources of supply for needed improvements, other impacts on the supply chain, lockouts or work stoppages of any kind, unavailability of labor, facilities or materials, moratoriums, theft, windstorm, earthquakes, lightening, landslides, hurricanes, tornadoes, storms, droughts, water, vandalism, failure of power or utilities, pandemics, epidemics, or other similar causes, beyond the reasonable control of the affected Party which actually delays or prevents the performance of this Agreement. It is understood that both Parties shall exercise due care and prudence to avoid a Force Majeure Event. A Force Majeure Event shall not constitute a default under this Agreement. If either Party is prevented, wholly or in part, from performing its obligations under this Agreement as a result of a Force Majeure Event, then that Party shall promptly give notice to the other Party of the Force Majeure Event and take reasonable steps to mitigate the impact of Force Majeure Event on contract performance. Upon such notice, all obligations of the affected Party under the Agreement which are reasonably related to the Force Majeure Event shall be suspended as long as the affected Party takes reasonable steps to mitigate the impact of Force Majeure Event on contract performance until the Force Majeure Event no longer exists.

30. Remedies Cumulative. In addition to the remedies set forth in this Agreement, each Party shall have all other remedies provided by law or equity to the same extent as if fully set forth in this Agreement word for word except as specifically limited by this Agreement. No remedy available to any Party shall exclude any other remedy available to such Party under this Agreement or provided by law or equity. All remedies shall be cumulative.



31. Confidential Information. To the extent permitted by applicable law, including without implied limitation the Virginia Freedom of Information Act, §§ 2.2-3700 through 2.2-3715 of the Code of Virginia (the “Act”), all confidential and proprietary information and documentation shared between Owner and Utility, whether verbally or in writing (the “Confidential Information”), shall to the maximum extent allowable at law, be treated as proprietary records and trade secrets under Virginia Code § 59.1-336, et seq., and shall be kept confidential and shall not be released to or shared with any other person or entity, whether verbally or in writing, without the prior approval of both Owner and Utility (other than as may be required by law or compelled by judicial order, and other than to their attorneys, lenders, engineers, CPA, brokers, and other advisors who shall also be automatically subject to this confidentiality requirement and shall be so advised prior to furnishing information to them). Should Utility receive any public records request implicating the Confidential Information, Utility will (1) promptly notify Owner in writing of the request and provide Owner with copies of all relevant documents related to the request; (2) cooperate with Owner, at Owner’s cost and expense, if Owner requests that Utility assert an exemption from disclosure under the Act, in asserting any applicable exemptions from disclosure under the Act, including, but not limited to, the proprietary records and trade secrets exemption provided by Va. Code § 2.2-3705.6(3); and (3) allow Owner to take any and all actions Owner deems necessary and appropriate to protect its Confidential Information, including, but not limited to, intervening in any legal proceedings related to the disclosure of the Confidential Information. Proprietary and confidential information contained in the PER, WSP, and FSCC shall, to the extent permitted by applicable law, including the Virginia Freedom of Information Act, be treated by the Parties as Confidential Information. Owner will indemnify, defend, and hold Utility harmless from any damages, losses, claims, penalties, or fines, including attorneys’ fees and costs, associated with Utility’s cooperation with Owner set forth in item (2) above in this section, including but not limited to Utility’s withholding the production of any records requested under the Act at Owner’s request.

32. Mutual Non-Disclosure Agreement. The Parties executed a Mutual Non-Disclosure Agreement on or about March 11, 2024, concerning the Project. The Parties agree that all proprietary and confidential information and trade secrets exchanged pursuant to the Mutual Non-Disclosure Agreement shall be considered Confidential Information under Section 31 of this Agreement. The Mutual Non-Disclosure Agreement is superseded by Section 31 of this Agreement for protection of Confidential Information from and after the Effective Date, except to the extent it constitutes a promise of confidentiality under Virginia Code § 2.2-3705.6(3).

33. Attorneys’ Fees. Should any claim, action, or proceeding (including, for the avoidance of doubt, any alternative dispute resolution procedure, if any; and including any appeals of a claim, action, or proceeding) be commenced between the Parties concerning any provision of this Agreement or the rights or duties of any person or entity in relation thereto, the American Rule shall apply and each Party shall bear its own fees and costs (including, without limitation, attorneys’ fees, accounting fees, expert witness fees, consulting fees, court costs, and all other costs) to the extent incurred in prosecuting or defending such claim, action, or proceeding against the other Party. There shall be no fee shifting under this Agreement.

34. WAIVER OF CONSEQUENTIAL AND OTHER DAMAGES. EXCEPT DUE TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, FRAUD OR WILLFUL MISCONDUCT, IN NO EVENT SHALL OWNER OR UTILITY BE LIABLE TO THE OTHER PARTY FOR OWNER’S OR UTILITY’S INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST INCOME, LOST REVENUES, BUSINESS INTERRUPTION, OR LOST BUSINESS ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT OR TO UTILITY’S PROVISION OF WATER OR WASTEWATER SERVICES TO OWNER, REGARDLESS OF WHETHER THE OTHER PARTY SEEKS DAMAGES UNDER ANY THEORY OF LAW AND EVEN IF THE OTHER PARTY ADVISES OF THE POSSIBILITY OF SUCH DAMAGES. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.



NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE FOREGOING WAIVER DOES NOT PRECLUDE OR LIMIT RECOVERY OF ANY DIRECT DAMAGES.

[SIGNATURE PAGES FOLLOW]



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth under the signatures of the Parties below.

WESTERN VIRGINIA WATER AUTHORITY

By  Michael McEvoy

Its Executive Director

Date of execution: 10/14/2025



HELIO CAPITAL LLC

By ^{Signed by:} *Aaron McGarry* Aaron McGarry
A2N74EE383FD47E...

Its Aaron McGarry

Date of execution: 10/14/2025

