

## WATER RIGHTS MANAGEMENT AGREEMENT

This WATER RIGHTS MANAGEMENT AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2018, by and between DX Lake Michigan Infrastructure, LLC ("DX"), Sam Townline Development Inc. ("Sam Townline"), and the City of Hammond Redevelopment Commission ("Commission") as follows:

WHEREAS, DX Hammond Opco, LLC ("DX Hammond Opco") is the developer of a specific data center known as the Digital Crossroads of America Data Center ("Data Center") to be located at 103 Lake Michigan Road, Hammond, Indiana, on a portion of the site commonly known as the former State Line Generating Plant on approximately 15 acres owned by the Commission and more particularly described in Schedule 1 (the "Site");

WHEREAS, in conjunction with transactions associated with the development of the Data Center, Sam Townline currently holds all right, title, and interest in Significant Water Withdrawal Facility (SWWF) Registration No. 45-01176-EP, previously owned by State Line Energy LLC, which includes a surface water intake with an approved baseline water withdrawal capacity of 910.08 MGD and a consumptive use of 18.202 MGD with no approved diversion ("Governmental Permit").

WHEREAS, as an important part of the development of the Data Center at the Site and as an inducement to DX Hammond Opco to undertake the development of the Data Center at the Site and to ensure a sufficient water supply to the Data Center for cooling purposes, processing and power generation purposes related to the Data Center, at or before Closing the water rights specified pursuant to I.C. 14-25-15 and 312 I.A.C. 6.2 and the subject of the Governmental Permit, are to be transferred from Sam Townline to DX, contemporaneous with the closing of all the other rights;

WHEREAS, DX has the means and resources to utilize the Governmental Permit for the purpose of planning, constructing, building and operating an energy-efficient cooling plant for use by the Data Center at the Site and other uses that would be related to the on-site operation and expansion of Sam Townline or successor owner(s) to land currently owned by Sam Townline on-site, neither of which uses involves or contemplates any transfer, transportation, or sale of water off-site;

WHEREAS, at Closing, DX will immediately grant a sole and exclusive license to DX Hammond Opco, LLC to draw water out of Lake Michigan pursuant to the Governmental Permit ("Opco License"), this Opco License to be the sole and exclusive license granted by DX at the Closing or any time thereafter, unless specifically allowed by this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. Definitions. Capitalized terms used herein shall have the meanings set forth below, unless otherwise indicated.

**“Applicable Law”** means the statutes and regulations implementing the Great Lakes Compact in the State of Indiana, including I.C. 14-25-15 and Rule 312 I.A.C. 6.2.

**“Closing Date”** means the date of execution of all documents required by the Commission, DX, and DX Opco under the Development Agreement, the Ground Lease Agreement and the Indiana Department of Natural Resources (“IDNR”), this Agreement, and any other document required by the parties for the completion of the Data Center development at the Site, including the recordation by the IDNR of the Governmental Permit.

**“Crib”** means the area and structure as reflected on Schedule 1 that is owned by the Commission and is marked as “Crib” that will provide DX Opco access to Lake Michigan water pursuant to the Governmental Permit and subject to the restrictions and rights under the Governmental Permit and this Agreement.

**“Permitted Use”** means water withdrawals by DX Opco solely for (1) the purpose of planning, constructing, building and operating an energy-efficient cooling plant for use by the Data Center at the Site and (2) other uses that would be related to the on-site operation and expansion of Sam Townline or successor owner(s) to land currently owned by Sam Townline on-site, neither of which permitted activities contemplates or involves any transfer, transportation, or sale of water off-site, and provided such uses are subject to the provisions of the Restrictions on Use portion of this Agreement.

2. **General Terms of Agreement.** In furtherance of the Permitted Use, at Closing, DX will have rights to the water available from the Crib generally and specifically under the Governmental Permit and as constrained by the terms of this Agreement.

3. **Restrictions on Uses.** In furtherance of the goals of both the Commission and DX, such that there will be an availability of water reserve for use by the City of Hammond, DX, and the other possible users of water at the Site, the parties agree to the following restrictions:

a. This Agreement is made such that the Parties will restrict any other Party from using the water in the Crib except in compliance with this Agreement.

b. Neither DX nor DX Opco shall transfer, transport or sell water off-site.

c. The Commission shall not permit any third party to withdraw any water from the Crib without the consent of DX, and DX will not permit any third party to use its Governmental Permit without the consent of the Commission.

e. DX shall not sell, assign, or transfer the Governmental Permit or any portion of rights under the Governmental Permit to any third party without the written, informed, and express consent of the Commission, said consent to be determined in the sole discretion of the Commission.

f. This paragraph shall be interpreted in the broadest possible manner to require the agreement of the Parties before any third party can in any manner benefit from the Governmental

Permit or the Crib, but this provision shall not operate as a restriction on the expansion or use of the present water facilities owned by or operated by the City of Hammond.

4. Adherence to the Obligations of the Government Permit. DX shall strictly adhere to the terms of this Agreement and shall, from and after the Effective Date, perform, observe and be bound by all of the obligations applicable to the Governmental Permit, including the limitations on water withdrawal capacity, as of the Effective Date. In the event there is an attempt by any third party, including any governmental entity, to invalidate or in any manner restrict the Governmental Permit in any manner, Commission shall assist DX in the defense of the Governmental Permit, but such assistance shall not include DX's attorney fees and related costs. All filings required by any government agency related to the Governmental Permit shall be the sole responsibility of DX, with any reasonable support from Commission.

5. Sam Townline Contingency Obligation. If, for whatever reason, the intended transfer of the Governmental Permit from Sam Townline to DX does not occur, Sam Townline agrees to be fully bound to all rights and obligations of DX under this Agreement with respect to the Governmental Permit vis-à-vis the Commission, as if Sam Townline's name were written in place of DX.

6. Governing Law and Consent to Jurisdiction. This Agreement and any agreement or instrument required hereunder (to the extent not expressly provided for therein) shall be governed by and construed in accordance with the laws of the State of Indiana applicable to contracts made and to be performed in such State (other than the conflicts of law principles thereof). The exclusive forum for any controversy relating to the interpretation or enforcement of this Agreement shall be the state and federal courts located in Lake County, Indiana, and the Northern District of Indiana.

7. Further Assurances and Warranties. All Parties warrant that, at Closing, they shall execute, acknowledge and deliver, as appropriate, any and all such other and additional instruments, notices, and other documents and to perform such other acts as may be reasonably necessary to accomplish the objectives of this Agreement. The Parties acknowledge that there shall be no requirement of any capitalization from Commission, nor shall the Commission be responsible for any services related to the terms of this Agreement without its consent.

8. Breach. In the event of breach of this Agreement by any Party, it is agreed that the rights and benefits of each of the Parties pursuant to this Agreement are unique and that no adequate remedy exists at law if any of the Parties shall fail to perform, or breaches, any of its obligations hereunder, that it would be difficult to determine the amount of damages resulting therefrom, and that such breach would cause irreparable injury to the non-breaching Party. Therefore, the non-breaching Party shall be entitled to injunctive relief to prevent or restrain any breach of this Agreement.

9. Counterparts and Headings. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Electronic delivery of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this

Agreement. The headings used in this Agreement have been inserted for convenience of reference only and do not define, limit, interpret or constitute a part of this Agreement.

10. Superseding Agreement. This Agreement supersedes all prior negotiations or understandings on the matters provided herein. There are no other oral or written agreements concerning the subject of water rights management.

11. Assignment Rights. No Party shall have the right to assign or subcontract any of its obligations or duties under this agreement, without the prior written consent of the other Parties, which consent shall be in the sole determination of the Party with the right to consent.

12. Successors and Assigns. This agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, legal or personal representatives, successors, and assigns.

13. Amendments. No amendment or modification of this Agreement shall be deemed effective unless made in writing and signed by the parties hereto.

14. Severability. Should any part of this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or against public policy, said offending section shall be void and of no effect, and shall not render any other section herein, nor this Agreement as whole, invalid. Those rights, interests, obligations, and duties hereunder, which by their nature should survive, shall remain in effect after termination, suspension, or expiration hereof.

15. Enforcement. The Parties shall have all powers in law and equity to administer the terms of this Agreement.

16. Attorneys' Fees. In the event any Party brings suit to construe or enforce the terms hereof, or raises this Agreement as a defense in a suit brought by another Party, the prevailing party is entitled to recover its attorneys' fees and expenses.

17. Waiver. The failure of any Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

18. Rights or Remedies. Failure of either Party to exercise any rights or remedies under this Agreement shall not be held to be a waiver of any right or obligation by either Party and shall not prevent either Party from pursuing a remedy at any future time.

19. Notices. All notices shall be in writing and shall be delivered personally, by United States certified or registered mail, postage prepaid, return receipt requested, or by a recognized overnight delivery service. Any notice must be delivered to the Parties at their respective addresses set forth below their signatures or to such other address as shall be specified in writing by the Party according to the requirements of this section. The date that notice shall be deemed to have been made shall be the date of delivery, when delivered personally; on written verification of receipt if

delivered by overnight delivery; or the date set forth on the return receipt if sent by certified or registered mail.

Hammond Redevelopment Commission  
Attn: Executive Director  
5925 Calumet Avenue, 3<sup>rd</sup> Floor  
Hammond, IN 46320

With a copy to:  
Westland & Bennett  
2929 Carlson Drive  
Hammond, IN 46323

DX Lake Michigan Infrastructure, LLC  
C/O Star America Infrastructure Partners  
Attn: Jennifer Miller  
165 Roslyn Road  
Roslyn Heights, NY 11577  
[Jmiller@staramericanagroup.com](mailto:Jmiller@staramericanagroup.com)

With a copy to:  
C/O Star America Infrastructure Partners  
Jahred Kallop  
165 Roslyn Road  
Roslyn Heights, NY 11577  
[Jkallop@starinfrapartners.com](mailto:Jkallop@starinfrapartners.com)

Sam Townline Development, Inc.  
Attn: Simon Beemsterboer  
3411 Sheffield Ave.  
Hammond, IN 46320

With a copy to:  
Curosh & Curosh  
Attn: Joseph Curosh III  
1532 – 119<sup>th</sup> Street  
Whiting, IN. 46394

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by one of its duly authorized officers as of the date first above written.

HAMMOND REDEVELOPMENT COMMISSION

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

\_\_\_\_\_  
(Printed Name)

Its: \_\_\_\_\_  
(Title)

DX LAKE MICHIGAN INFRASTRUCTURE, LLC

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

\_\_\_\_\_  
(Printed Name)

Its: \_\_\_\_\_  
(Title)

SAM TOWNLINE DEVELOPMENT, INC.

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

\_\_\_\_\_  
(Printed Name)

Its: \_\_\_\_\_  
(Title)

SCHEDULE 1  
LEGAL DESCRIPTION OF SITE  
[Attached]