**ACCESS AGREEMENT**

 **THIS ACCESS AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a **[*PROVIDE ENTITY TYPE AND STATE OF FORMATION, IF APPLICABLE*]** (the “Owner”); and PRINCE WILLIAM COUNTY SERVICE AUTHORITY, a body corporate and politic (the “Authority”).

**WITNESSETH:**

**RECITALS**

R-1. Owner is the owner of those certain parcels of real property located and situate in Prince William County, Virginia, being identified as GPINs \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (collectively, the “Property”), said Property being identified as on the exhibit entitled “PWCSA Access Agreement Exhibit”, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and prepared by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, attached hereto and made a part hereof (hereinafter “Exhibit A”).

R-2. Owner desires and intends to develop and operate the Property as a data center campus (the “Project”).

R-3. In conjunction with construction of the Project, Owner intends to install security gates, security checkpoints, and secured entrances within the Property, all approximately as set forth on Exhibit A.

R-4. The Authority is the beneficiary of certain easements encumbering the Property pursuant to deed(s) recorded among the land records of Prince William County, Virginia (the “Land Records”) as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[*INSERT INSTRUMENT NO. OR DEED BOOK AND PAGE*]** (the “Authority Easements”).

R-5. In order to maintain the Authority’s access to the Authority Easements, Owner and the Authority desire to enter into this Agreement, on behalf of themselves and their respective successors and assigns, to set forth their mutual rights and responsibilities with respect thereto.

**AGREEMENT**

 NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, Owner and the Authority, on behalf of themselves and their respective successors and assigns, hereby agree as follows:

1. **Access.** The Authority and any party benefitting under the Authority Easements (collectively, the “Authority Parties” and each an “Authority Party”) shall be provided access to the Authority Easements at all times, in accordance with the Authority Easements, and in accordance with the terms set forth on Exhibit B, attached hereto and made a part hereof (hereinafter “Exhibit B”).
2. **Access Route.** Except in the event of an Emergency (defined below), or in the event the Property becomes vacant, the Authority Parties shall access the Authority Easements on the Property by using the corresponding access route(s) shown and described on Exhibit A with color-coded arrows (each, an “Access Route”, and collectively, the “Access Routes”), and in accordance with the terms set forth on Exhibit B. For purposes of this Agreement, an “Emergency” is an unexpected situation that requires, in the Authority’s sole but reasonable determination, immediate action due to a legitimate threat or imminent danger to (a) human life, safety, health, or physical well-being, or (b) personal property, real property, or improvements located upon the Property, including any facilities constructed within the Authority Easements. Owner may revise Exhibit A and the Access Routes, or any part thereof, from time to time; provided, however, that Owner shall provide the Authority not less than thirty (30) days’ notice before implementing any such change, and further that changes to any Access Route shall not materially adversely affect the Authority Parties’ access to the Authority Easements. Owner shall provide the Authority with any keys, access codes, security passes, phone numbers, or similar means that are required in order to access the Authority Easements. Owner shall at all times maintain each Access Route in a reasonably safe and usable condition.
3. **Posting or Provision of this Agreement.** Owner shall ensure that a copy of this Agreement is posted at all times at each secured entrance controlled by security personnel stationed at the location of said entrance(s) appearing along the Access Route. Except in the event of an Emergency, the Authority shall ensure that a copy of this Agreement is provided to any of the Authority Parties attempting to access the Authority Easements. The Authority Parties will provide to security personnel stationed at the entrances along the Access Route either (a) a Prince William County Service Authority ID badge, or (b) for contractors, a photo identification and an executed letter of permission from the Prince William County Service Authority permitting such contractor to access the Authority Easements, in substantially the same form attached hereto and made a part hereof as Exhibit C.
4. **Points of Contact.** Owner shall provide the Authority’s Water and Wastewater Facilities Manager and Field Services Manage with a point of contact, including e-mail addresses and, if available, cell phone numbers, for the individual(s) responsible for operation and security of the Property.
5. **Release, Indemnity, and Hold Harmless.** Owner, on behalf of itself and its successors and assigns, does hereby agree to release, indemnify, defend, and hold harmless the Authority Parties from and against all lawsuits, third-party claims, losses, damages, penalties, judgments, expenses, and liabilities, including, without limitation, reasonable attorney’s fees and costs, whether sounding in tort, contract, statute, or otherwise (collectively, “Claims”), arising out of or in any way relating to the Authority Parties’ access to the Authority Easements on the Property pursuant to this Agreement and caused by the negligent acts or omissions of Owner, its agents, employees and contractors, except those Claims, arising out of or in any way relating to the willful misconduct or negligent acts or omissions of the Authority Parties. Owner shall not be liable to the Authority for punitive damages in all Claims or for special or consequential damages in contractual Claims.

The Owner further acknowledges that in the event of an Emergency, the Authority Parties will require immediate access to the Property, either by the Access Routes or such other suitable route as reasonably determined by the Authority Parties at that time in order to facilitate access and perform the work necessary to resolve the Emergency and restore the Authority’s facilities to normal working order. The Authority Parties are authorized to clear the point of entry as shown on Exhibit A or any portion of the Property (including but not limited to removing existing improvements, security fencing, gates and appurtenances - barbed wire, securing cameras, conduit, electrical reinforcement, etc.). The Owner and not the Authority Parties are responsible for securing the Property when the Authority Parties complete their work.

The Owner does release, indemnify, defend and hold harmless the Authority Parties from and against all Claims arising out of or in any way relating to the Authority Parties’ access to the Authority Easements on the Property in the event of an Emergency, except those Claims, arising out of or in any way relating to the willful misconduct or negligent acts or omissions of the Authority Parties.

1. **Miscellaneous**.
	1. **No Conflict.** Nothing herein shall be construed to amend, terminate, or nullify the Authority Easements, and in the event there is a conflict between the provisions of this Agreement and the Authority Easements, the Authority Easements will control.
	2. **Notice.** Any notices that are required to be given or that may be given under this Agreement may be delivered via electronic mail, except that notice of any default hereunder or change in the place or person for the sending of notice shall be delivered by certified mail, return receipt requested, or by a reputable courier service (e.g. Federal Express). All notices shall be deemed effective upon delivery or refusal of delivery. The parties shall deliver notices to the following addresses and to the following persons, provided that a party may amend their respective address and persons stated below from time to time by delivering notice of the same, as provided herein, to the other parties:

|  |  |
| --- | --- |
| Owner: |  |
| Prince William County Service Authority P.O. Box 2266, Woodbridge, VA 22195-2266Attention: Water and Wastewater FacilitiesDept. ManagerEmail:  O&M Supervisors@pwcsa.orgPhone: (703) 335-7977Prince William County Service Authority &P.O. Box 2266, Woodbridge, VA 22195-2266Attention: Field Services ManagerEmail:  abrunson@pwcsa.orgPhone: (703) 335-7979 | With copy to:Mark M. Viani, Esq.Bean, Kinney & Korman, P.C.2311 Wilson Boulevard, Suite 500Arlington, Virginia 22201Email:mviani@beankinney.comPhone: (703) 525-4000 |

* 1. **Memorandum of Agreement.** This Agreement is intended to be binding upon the parties, and their respective successors and assigns. Either party may record, at the recording party’s sole cost and expense, a memorandum of this Agreement among the Land Records.
	2. **Controlling Law.** This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia, without regard to conflicts of law principles.
	3. **No Partnership.** Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship among the parties hereto, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to such parties. Except as expressly provided herein, neither party is or shall act as or be the agent or representative of the other party.
	4. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
	5. **Amendment.** Except as otherwise set forth above, this Agreement may not be amended, except by the mutual written agreement of the Owner and the Authority.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**THE FOREGOING ACCESS AGREEMENT IS SEEN AND AGREED TO AS OF THE DATE FIRST APPEARING ABOVE.**

**Owner:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

 Name:

 Title:

**PRINCE WILLIAM COUNTY SERVICE AUTHORITY**, a body corporate and politic

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

 Name:

 Title:

**Exhibit A**

**“PWCSA Access Agreement Exhibit”**

**Exhibit B**

Steps to access the Authority Easements (at any time of day or night\*):

* Call the appropriate phone number set forth below prior to attempting to access the site, and provide the following information regarding the Authority Parties’ plan to access the site:
	+ Date and time of entry; and
	+ Purpose of entry and the scope of work to be performed.
* Upon proceeding to access the site, at the first gate, use the intercom to contact the security officers to announce the Authority Parties’ arrival.
* Park on the premises and all members of the Authority Parties’ team must enter the building to present identification required by this Agreement, which identification shall be either:
	+ A photo identification badge issued by the Prince William County Service Authority; or
	+ For contractors, a photo identification and an executed letter of permission in the form attached to this Agreement as Exhibit C.
* Security officers will escort the Authority Parties to the Authority Easements.
* Prior to exiting the site, the Authority Parties will return to the building, enter the lobby, and check out with the security officers.

\*Notwithstanding, in the event of an Emergency (as defined in the Agreement), the Authority Parties will attempt, where reasonably practicable, to follow the steps set forth in this Exhibit B to access the Authority Easements.

Phone Numbers:

**Exhibit C**

**Form of Letter of Permission**



Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To Whom It May Concern:

This letter services notice that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has been hired by the Prince William County Service Authority to perform work. Utilities may reside on your property in a water or sanitary sewer easement. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is acting as an agent of the Service Authority has been granted permission to utilize the prescribed easement rights for the purpose of conduct assigned work.

If you have any questions concerning these activities please call me at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_or email me at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title: