

RESOLUTION NO. R- 10 -2018

**A RESOLUTION OF EAGLE MOUNTAIN CITY, UTAH,
APPROVING A WATER AND SEWER AGREEMENT BETWEEN
EAGLE MOUNTAIN CITY, UTAH, AND STADION, LLC**

PREAMBLE

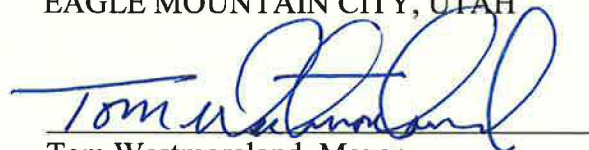
The City Council of Eagle Mountain City, Utah, finds that it is in the public interest to approve the Water and Sewer Agreement with Stadion, LLC as set forth more specifically in Exhibit A.

BE IT ORDAINED by the City Council of Eagle Mountain City, Utah:

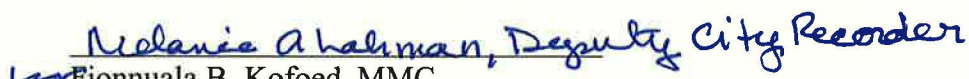
1. The City Council finds that all required notices and hearings have been completed as required by law to consider and approve the Water and Sewer Agreement with Stadion, LLC as set forth in Exhibit A.
2. The Water and Sewer Agreement with Stadion, LLC is hereby approved as set forth more specifically in Exhibit A.
3. This Resolution shall take effect upon its first publication or posting.

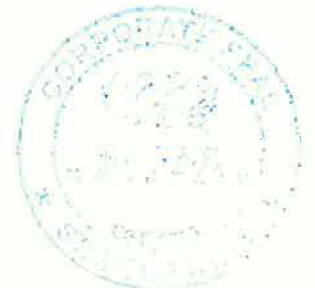
ADOPTED by the City Council of Eagle Mountain City, Utah, this 15th day of May, 2018.

EAGLE MOUNTAIN CITY, UTAH


Tom Westmoreland, Mayor

ATTEST:


Fionnuala B. Kofoed, MMC
City Recorder



CERTIFICATION

The above Resolution was adopted by the City Council of Eagle Mountain City, Utah, on the 15th day of May, 2018.

Those voting aye:

- Donna Burnham
- Melissa Clark
- Colby Curtis
- Stephanie Gricius
- Benjamin Reaves

Those voting nay:

- Donna Burnham
- Melissa Clark
- Colby Curtis
- Stephanie Gricius
- Benjamin Reaves

Melanie A. Lahman, Deputy Recorder
for Fionnuala B. Kofoed, MMC
City Recorder

Exhibit A

WATER AND SEWER AGREEMENT

THIS WATER AND SEWER AGREEMENT (this "Agreement") is made and entered into as of May 25, 2018 (the "Effective Date") by and between EAGLE MOUNTAIN CITY, a municipal corporation of the State of Utah (the "City") and STADION LLC, a Delaware limited liability company (together with its affiliates and their respective successors and assigns, "Customer"). The City and Customer are sometimes referred to herein collectively as the "Parties" and each individually as a "Party".

RECITALS

A. Customer has the right to acquire certain real property consisting of approximately 487.5 acres of undeveloped land located in the City of Eagle Mountain, County of Utah, State of Utah, as more particularly described on Exhibit A hereto (the "Property").

B. If Customer acquires the Property, it has proposed to establish on the Property a multi-year, large-scale project that may include multiple buildings (each such building, a "Phase", including those certain Phases referred to by Customer as "Phase I", "Phase II", "Phase III", "Phase IV", and "Phase V") extending over a period of years with the uses of one or more data centers and/or other facilities used to house, and in which are operated, maintained and replaced from time to time, computer systems and associated components, such as telecommunications and storage systems, cooling systems, power supplies and systems for managing property performance (including generators), and equipment used for the transformation, transmission, distribution and management of electricity (including substations), internet-related equipment, data communications connections, environmental controls and security devices, structures and site features, as well as certain accessory uses or buildings located on the Property and other related or associated uses, buildings or structures such as utility buildings, structures, improvements and appurtenants located on, adjacent or near the Property that are reasonably related to the data center(s) (collectively, the "Project").

C. The City finds developments such as the Project to be in the public interest of its citizens and thus desires to encourage and aid the Project in order to recruit the Project to the City.

D. Customer anticipates that the Project will require a substantial, long-term commitment of capital and resources of Customer, as well as the careful integration of public capital facilities, construction schedules and the phasing of the development of the Project, in order for the Project to be successful, both for Customer and the City. Customer is unwilling to risk such capital and resources without sufficient assurances from the City that adequate, reliable potable water ("Water") and sanitary and industrial sewer ("Sewer") service, provided at reasonable rates, will be available to the Project and that Customer will have primary priority in uninterrupted use of Water System and Sewer System (each as defined below).

E. The City owns and operates within its municipal limits (i) a potable water system consisting of multiple large municipal wells, water tanks and delivery systems (together with any repairs, improvements and additions thereto and updates and replacements thereof, the "Water System"), (ii) a 1.2 MGD aerobic waste water treatment facility with 2 clarifiers, a solids handling rapid infiltration basin and two evaporative ponds (together with any repairs, improvements and additions thereto and updates and replacements thereof, the "Wastewater Treatment Plant") and (iii) a municipal sanitary and industrial sewer system (together with any repairs, improvements and additions thereto and updates and replacements thereof, and together with the Wastewater Treatment Plant, the "Sewer System", and together with the Water System, the "Systems").

F. The City has acquired through transfer by third-parties water rights approved for municipal use within the Water System and within its municipal limits (the “Water Rights”). The City has the existing right to obtain water delivery pursuant to that certain Fourth Amended and Restated Water Supply Agreement Between Central Utah Water Conservancy District and Eagle Mountain City for Sale of CWP Municipal and Industrial Water (CWP FY2009 A), dated as of April 26, 2017, the Water Supply Agreement Between Central Utah Water Conservancy District and Eagle Mountain City for Sale of CWP Municipal and Industrial Water (CWP FY2010 A1), dated as of October 7, 2009, and the Amended and Restated Water Supply Agreement Between Central Utah Water Conservancy District and Eagle Mountain City for Sale of CWP Municipal and Industrial Water (CWP FY2010 A2), dated as of February 24, 2016 (together the “Water Agreement”).

G. The Parties have provided for the construction of certain improvements to, and expansions of, the Systems (the “New Infrastructure”) as identified in Exhibit C of that certain Development Agreement between the City and Customer, dated as of the Effective Date (the “Development Agreement”) that will enhance the Water and Sewer services provided to the Project.

H. The City desires to provide, and Customer desires to obtain, Water and Sewer service to the Project through the Systems, on the terms and conditions set forth herein. In addition, the Parties desire to confirm the availability of, and to reserve for Customer, Water and Sewer service for the Project, as the same may be expanded or modified, of a quantity and quality that will support continuous, uninterrupted operation of the Project, as more particularly described herein, so as to induce Customer to acquire the Property and develop the Project on the Property in reliance on such availability and reservation.

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

1. CURRENT AVAILABILITY; PERMITTED CAPACITY. The City represents, warrants and covenants to Customer as follows:

(a) Availability. Upon completion of the New Infrastructure, Water and Sewer service will be available to the Property, and such existing Water and Sewer service shall remain available to the Property during the entire period of construction of the Project. Except as to Customer’s payment of the One-time Development Charge (as defined in the Water Agreement) as provided in Subsection 1(c)(i) below, the City hereby waives any water right dedication requirement for the Project pursuant to the Eagle Mountain Municipal Code (the “Code”), including any such requirement under sections 13.20.250 and 13.20.260 thereof.

(b) Quality. The City has the ability to provide Water and Sewer services through the Systems to the Property of a quality (i) not less than that provided on average by the City during the five (5) calendar years prior to the Effective Date to its institutional customers and (ii) at least as is required by (a) all applicable local, state and federal laws and regulations (collectively, “Laws”) and (b) all permits issued to the City to provide Water and Sewer service (such quality, the “Required Quality”).

(c) Legal Water Supply. The City owns, through dedication by other developers or property owners, the Water Rights, which allow the City to divert from wells or other water sources up to approximately 14,000 acre-feet of Water per year (the “Permitted Intake”) for use as potable Water (the “Permitted Water Use”). The Water Agreement provides the City with an existing right and obligation to purchase 14,300 acre-feet of Water per year in accordance with the terms, conditions, and takedown schedules contained in the Water Agreement. The Water Rights and the Water Agreement together

provide a legal right to take water substantially in excess of existing and committed demands for water from the Water System. The City agrees to preserve a legal water supply in excess of existing and committed demands for water from the Water System by requiring dedication of water rights or purchase of water through the Water Agreements as a precondition to development as provided in sections 13.20.250 and 13.20.260 of the Code.

(i) Customer agrees as a condition of City's issuing a certificate of occupancy for a particular Phase to pay the City the One-time Development Charge for the quantity of water necessary for such Phase (such quantity defined as the "Water Requirement"). The City has calculated that the aggregated Water Requirement for Phase I, Phase II, and Phase III is 172.32 acre-feet ("Initial CWP Purchase") based on the size and total projected demand for Phase I, Phase II and Phase III provided by the Company. On or before June 30, 2018, Customer agrees to pay City the One-time Development Charge of \$8,000 per acre-foot for a total payment of \$1,378,560. The Parties acknowledge and agree that if the average Water use per Phase is 10% more or less than 57.44 (i.e., one third of the Initial CWP Purchase), Customer shall have Banked Water Credits (as defined in Subsection 1(c)(ii)) to the extent that the average Water use is less or shall be required to pay additional One-time Development Charges to the extent that the average Water use is more. City further agrees that if the Reclaimed Water System (as defined in Section 6 below) is implemented, Customer will receive Banked Water Credits in an amount equal to the average Processed Cooling Water (as defined in Section 6 below) City delivers per year from the Reclaimed Water System. For avoidance of doubt, if on average, ten (10) acre-feet of Processed Cooling Water from each existing Phase can be delivered from the Reclaimed Water System each year for use, then the Banked Water Credits from the Initial CWP Purchase would be thirty (30) acre-feet (10 acre-feet/year * 3 Phases). The City shall, in reviewing building permits for each Phase after Phase III, evaluate the Water Requirement. For future Phases, the Water Requirement shall be based on average net water use (i.e., delivered Water less Processed Cooling Water delivered from the Reclaimed Water System for use) for existing Phases.

(ii) Customer may, in its sole and absolute discretion, elect to prepay the One-time Development Charge for additional Phases. On or before June 30, 2018, and for a maximum of an additional two Phases (114.88 acre-feet) beyond the Initial CWP Purchase, the One-time Development Charge shall be \$8,000 per acre-foot. For any additional prepayments, the One-time Development Charge shall be equal to the City's best One-time Development Charge rate under the Water Agreement that is applicable at the time of prepayment. Upon payment of the One-time Development Charge for which Customer is not presently seeking a certificate of occupancy, the City shall credit to Customer legal water supply in the number of acre-feet for which the One-time Development Charges have been paid but not applied to a Phase ("Banked Water Credits"). Customer may apply the Banked Water Credits on an acre-foot to acre-foot basis to any future Phase in satisfaction of the One-time Development Charge payment requirements of Subsection 1(c)(i). Customer may alternatively assign, without restriction, all or any portion of the Banked Water Credits to a developer of property within the municipal boundaries of the City. Such assignment of Banked Water Credits shall be accomplished by Customer's delivering to the City an assignment signed by Customer and the assignee that identifies the number of acre-feet of Banked Water Credits assigned. Thereafter, the City shall reduce Customer's Banked Water Credits by the number of acre-feet assigned, and the assignee may use the assigned Banked Water Credits in satisfaction of the water right dedication requirements in sections 13.20.250 and 13.20.260 of the Code (or any similar or successor water right dedication provisions) up to the number of acre-feet assigned by Customer.

(d) Water System. The City owns and operates within its municipal limits the Water System, which has existing capacity that is not being used or reserved for use by others and is in excess of existing and projected demands for Water service from the Water System. The Water System is presently operated in compliance with the requirements of Law, including rules and regulations of the Utah

Division of Drinking Water. The City has no knowledge of any fact, circumstance or pending law, rule, regulation, order or directive that would or might cause a reduction in the Permitted Intake or limit the Permitted Water Use. The City does not cap the amount of Water usage for its institutional customers under normal operating conditions.

(e) Sewer System. The City owns and operates within its municipal limits the Sewer System, which has existing capacity that is not being used or reserved for use by others and is in excess of existing and projected demands for Sewer service from the Sewer System. The City has the existing legal right pursuant to a valid Utah Operating Permit (General Permit No. UTOP00308) issued to the City by the Utah Division of Water Quality to operate the Sewer System. The current Wastewater Treatment Plant has the design capacity and capability to treat up to 1.2 million gallons of water-carried wastes (including treatable wastes, "Wastewater") per day (the "Permitted Throughput"). The City has reviewed sufficient information about Customer's proposed Water and Sewer use and the nature and volume of Customer's proposed discharge to the Sewer System, and the City has determined that Sewer System has the design capacity and capability to receive industrial discharges of the type generated by the evaporative cooling system that Customer currently anticipates using at the Project and other substantially similar industrial discharges. The City agrees to accept Wastewater discharges from the Project pursuant to section 13.20.580 of the Code and agrees that no pretreatment (including any pretreatment required by Utah's Water Quality Act (Utah Code section 19-5-101 et seq.) or the Clean Water Act) of such types of discharges shall be required. Any prohibitions or requirements of the Code to the contrary, including sections 13.20.490 through 13.20.550 thereof, are hereby waived. The City has no knowledge of any fact, circumstance or pending law, rule, regulation, order or directive that would or might cause a reduction in the Permitted Throughput. For the avoidance of doubt, all references herein to Sewer service shall include the discharge and treatment of Wastewater. If pretreatment of Wastewater is required because Customer changes its operations at the Project such that there is a material change to the quality of any discharged Water from the Project, or as the result of a material change in Laws, other than Laws promulgated by the City, governing pretreatment of Wastewater discharges from the Project, then Customer and the City shall meet and confer to reasonably determine if modifications to this Agreement are required. If the Parties cannot reach an agreement on whether modifications are needed to this Agreement, the Parties shall (within ten (10) days after such meet and confer) appoint a mutually agreeable independent third party with the requisite technical expertise to determine whether Customer is, in fact, subject to any pretreatment obligation. The Parties shall meet with such third party within ten (10) days after his/her selection.

(f) Fire Capacity. Upon Completion of the New Infrastructure, the Water System will have, and shall have at all times during the Term (as defined below), the capacity to deliver a minimum of 3000 gallons of Water per minute to the Project for the duration of no less than 3 hours to supply Water to load the Project's sprinkler system and to supply Water to the Project in the event of a fire.

(g) General. The City Council, after conducting a duly-noticed public meeting, adopted Resolution No. R-10-2018 on May 15, 2018, effective immediately upon adoption, which resolution (i) confirmed the City Council's approval of this Agreement and (ii) authorized the execution of this Agreement. The City has the full power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement is a valid and binding obligation, enforceable against the City in accordance with the terms hereof. The execution and delivery of this Agreement has been validly authorized by all necessary governmental or other action and does not conflict with any other agreements entered into by the City.

2. CAPACITY RESERVATIONS. To ensure that the Systems will have sufficient capacity to provide Water and Sewer service to, and receive Wastewater from, the Project as the Project develops,

thus ensuring that Customer may operate and expand the Project as it sees fit from time to time, the City guarantees and reserves for Customer's continuous use the Water Capacity Reservation and the Sewer Capacity Reservation, each as set forth and defined in Exhibit B (collectively, the "Reservations"). The City hereby allocates the Reservations for Customer's exclusive use and shall subtract the Reservations from its calculations of available capacity. The Reservations and the Water and Sewer services provided hereunder shall at all times meet or exceed the Required Quality. The Parties agree that this Agreement constitutes notice of Customer's intent to proceed with construction of, and Water and Sewer service to, Phase I and Phase II. Thereafter, if Customer determines to proceed with future Phases of the Project (e.g., Phase III, Phase IV and Phase V), Customer shall provide the City with at least eighteen months advance written notice of the completion of such Phases to provide City sufficient time to construct additional capacity if necessary to service such Phases. The Reservations shall be continuously available to Customer at all times from and after the Effective Date. The Parties shall review the Reservations after completion of Phase I and Phase II, and every five (5) years thereafter during the Term, to determine whether a reduction or increase in the Reservations is appropriate and to plan services for the Project; provided, however, that no reduction in the Reservations shall be made without the prior written consent of Customer, which consent may be granted or withheld in Customer's sole discretion. For the avoidance of doubt, Customer shall not be obligated to use or take any portion of the Reservations or to construct any Phase or portion of the Project.

3. REDUNDANT SYSTEMS; CONTINGENCY PLANS. The City acknowledges and agrees that Customer requires an uninterrupted supply of Water and Sewer service to the Project. Subject to the terms and conditions of this Agreement, Customer may establish, at Customer's cost, redundant and/or back up Water, Sewer and Wastewater resources to serve the Project in accordance with applicable Laws, and the City hereby consents to the same.

(a) Water Wells and Rainwater Redundancy. If Customer elects to establish redundant and/or backup Water sources for use solely in the Project by (i) drilling wells on the Property or in connection with the Project or (ii) collecting rainwater on the Property or in connection with the Project, the City shall not protest any water right change applications or other activities pertaining to such establishment, including the installation, construction or maintenance of infrastructure and equipment in connection therewith, subject to Customer's compliance with applicable Laws.

(b) On-Site Wastewater Treatment. If Customer elects to establish redundant and/or back up Sewer and Wastewater treatment resources, the City shall not object to such establishment, including the installation, construction and maintenance of infrastructure and equipment in connection therewith, subject to Customer's compliance with applicable Laws.

4. WATER SUPPLY AND SEWER SERVICE PRIORITY.

(a) Nature of Operation of Project. The City acknowledges and agrees that the nature of the operation of the Project requires continuous and uninterrupted evaporative cooling to protect sensitive equipment required for essential operations. Upon issuance of a building permit for a Phase, the Reservations applicable to that Phase shall be irrevocably allocated to the Phase (the "Allocated Capacity"). In the event of a Water shortage, the City agrees to meet and consult with Customer to discuss the impact of such Water shortage on the Project and to determine options for providing continuous and uninterrupted use by the Project of the Allocated Capacity. No consumption measures or limitations arising from such shortages shall apply to the Project, unless required by clear and critical public health conditions and applicable Law. If any Water shortage or Sewer curtailment is declared, the City will prioritize Water supply for indoor culinary use and services affecting public health, welfare and safety, including hospitals and booster stations ("Priority Uses"). The City shall prioritize Water supply and Sewer service to Customer above all uses except Priority Uses, and the City shall adopt all necessary rules

and regulations to limit uses other than Priority Uses and uses associated with the Project. The City represents and warrants to Customer that Customer's use of Water in connection with the Project does not violate any requirements of the Code. Because the Project would not be located in the municipal limits of the City without the agreements set forth in this Agreement and because Customer currently intends to lawfully expend substantial funds in reliance on the Reservations, the City covenants that (i) the monthly allocation of Water to Customer shall not be lowered except as set forth below; (ii) the City shall not limit or otherwise reduce or discontinue the flow of Water to the Project unless necessary to provide sufficient potable drinking water for the imminent protection of the health and safety of the citizens served by the Systems, and then only upon reasonable notice to Customer; (iii) if the City enacts or amends any Water shortage or Sewer curtailment ordinances and such ordinances create classifications of Water and Sewer customers, the Project shall receive the classification with no lower priority for Water usage than any other customer of the Water System (other than Priority Uses); (iv) any pro rata curtailment of Water usage shall apply to Customer on the basis of the total quantity (and the associated maximum flow rate calculated in accordance with the Water Agreement) of water for which Customer has paid the One-time Development Charge as opposed to any other measure of water requirements to the Project; and (v) to the extent that the New Infrastructure provide excess and redundant system capacity for which the Company may not be fully reimbursed through impact fee credits (the "Excess System Capacity"), City shall in the event of shortage in capacity in the Systems (including both lack of system capacity or acute shortages caused for any reason, including, but not limited to, mechanical or system failures, drought or changing environmental conditions, changes in state or federal water or wastewater regulations, legal disputes, or contamination) allocate and utilize all Excess System Capacity in the New Infrastructure to the Project, including, if necessary and possible, disconnecting the Infrastructure Improvements from the Systems.

(b) Repairs: Maintenance. Due to the critical, twenty-four (24) hours per day, seven (7) days per week operation of the Project, the City shall, at its sole cost and expense (other than the charges for actual services used by the Project), keep and maintain the portions of the Systems that serve the Project and related supporting infrastructure in good working condition and repair. Notwithstanding anything to the contrary set forth herein, the City shall within twenty-four (24) hours following the commencement of any Service Interruption (as defined below) identify the cause of such Service Interruption and commence appropriate repair, restoration and maintenance measures to restore full Systems operations and service to the Project. The City shall diligently pursue such repair, restoration and maintenance measures until the Service Interruption is remedied and full Systems operations to the Project are restored. The City shall at all times have access to an inventory of spare components, parts, facilities, infrastructure and related appurtenances necessary for the City to fulfill its obligations hereunder. The City shall cause suitably trained employees or third party maintenance contractors to be available and on call to provide critical repair, restoration and maintenance services twenty-four (24) hours per day, seven (7) days per week. To the extent that full repair, restoration or maintenance of a Service Interruption shall not be completed within twenty-four (24) hours following the commencement of such Service Interruption, the City shall promptly, but in any event not more than forty-eight (48) hours following the commencement of the Service Interruption, coordinate with Customer to establish temporary alternative systems to restore Water and Sewer service to the Project, which alternative systems shall remain fully operational until such time as a full repair, restoration or maintenance of the Systems is effectuated. The City shall maintain maintenance and repair records for the Systems, and upon Customer's reasonable request therefor, make such records promptly available for review by Customer or its employees, agents or representatives. A "Service Interruption" means (i) with respect to the Water System, a failure of the Water System to supply to the Project the volume of Water reserved under the Allocated Capacity for any period of time, or (ii) with respect to the Sewer System, a failure of the Sewer System to maintain the capacity reserved under the Allocated Capacity for any period of time.

(c) Future Permitted Capacity. The City shall deliver to Customer written notice of any facts or circumstances that could result in a reduction in the Permitted Intake or the Permitted

Throughput within five (5) days following learning of such facts or circumstances or that a reduction in Water or Sewer service might result therefrom. The City shall within thirty (30) days following issuance of any new or renewed permits relating to the Systems deliver to Customer copies of such permits. The City shall make available copies of its then-current permits relating to the Systems promptly upon Customer's request therefor.

(d) **Future Operations.** The City shall operate the Systems in compliance with all applicable Laws and permits and shall use appropriate best management practices for Systems operations. The City shall promptly provide to Customer any notice of violation, directive or order issued to the City in connection with the City's operation or management of the Systems (an "**Enforcement Notice**"), but not later than five (5) days following receipt thereof by the City. The City shall inform Customer within five (5) days following the City's learning of any enforcement actions taken by the State of Utah or any agency thereof or the United States Government or any federal agency against the City in connection with the City's operation or management of the Systems. If the City receives an Enforcement Notice that contains a demand, requirement or deadline that could result in a Service Interruption for the Project, then the City shall promptly, but in no event later than five (5) days following its receipt of such Enforcement Notice, coordinate with Customer to establish temporary, alternative mechanisms to provide Water and Sewer services until the applicable Service Interruption, if any, is repaired or restored. In the case of such a Service Interruption, the City shall use reasonable efforts under the circumstances to restore Water and Sewer services at the levels required under the Allocated Capacity. The City shall comply with all applicable federal and state public notification requirements regarding any Enforcement Notice.

5. **FEES AND RATES FOR CONNECTIONS AND SERVICES.** The Parties acknowledge and agree that standard fees, rates or other charges for the use of the Water System (collectively, the "**Water Rate**") and the standard fees, rates or other charges for the use of the Sewer System (collectively, the "**Sewer Rate**"), and collectively with the Water Rate, the "**Rates**") are set forth in Eagle Mountain City Resolution No. R-11-2017. The Rates are subject to periodic adjustment, but any increases or decreases to the Rates must be approved by the City Council of the City of Eagle Mountain, Utah. The current Rates applicable to Customer are as follows:

Water Rate		
Base Rate		\$20.00
Tier 1	Low (1000s of gallons)	0
	High (1000s of gallons)	500
	Cost per 1000 gallons	\$0.80
Tier 2	Low (1000s of gallons)	500
	High (1000s of gallons)	750
	Cost per 1000 gallons	\$0.85
Tier 3	Low (1000s of gallons)	750
	High (1000s of gallons)	-
	Cost per 1000 gallons	\$0.90

Sewer Rate	
Usage Rate	\$15.25 per ERU, per month
Treatment Fee	\$25.89 per ERU, per month

(a) **No Discrimination.** The City shall not discriminate against Customer in connection with the setting of the Rates. The City shall set the Water Rate and the Sewer Rate for the Project no higher than the lowest institutional Water Rate and Sewer Rate, respectively, then-being charged by the City for Customers within the same service area. For example, because wastewater in the

northern portion of the City is delivered to and treated by Timpanogos Special Service Area, Customers in that service area may have a different rate than Customers in the southern portion of the City where the City operates its own sewer treatment facility. Customer shall not be charged for use of, or otherwise obligated to pay amounts in connection with, the Systems, other than (i) charges (at the Water Rate) attributable to the Water actually consumed or used by the Project and (ii) charges (at the Sewer Rate) attributable to the number of gallons actually discharged into the Sewer System by the Project as determined by a separate discharge meter.

(b) Reasonable Fees and Rates. The City shall comply with the requirements of applicable Laws in connection with setting the Rates, and the Rates shall be reasonable. The Water Rate shall be based only upon the City's actual operating, maintenance and capital outlay expenses and the cost of capacity purchases from third parties and similar expenses for the Water System. The Sewer Rate shall be based only upon the City's actual operating, maintenance and capital outlay expenses and the cost of capacity purchases from third parties and similar expenses for the Sewer System. Customer acknowledges that a public hearing must be held prior to any adjustment to the Rates. The City shall not charge Customer any additional fees or rates solely applicable to the Project, the Property or the data center industry or with the express or inferred intent to specifically or inequitably target the Project, the Property or the data center industry.

(c) Effect of Non-Payment for Service. The City reserves the right to disconnect Water or Sewer service for non-payment of undisputed amounts to the extent set forth in the Code; provided, however, that prior to any disconnection, the City shall provide Customer a minimum of ten (10) Business Days (as defined below) after the date on which the unpaid invoice was due to pay such invoice and shall provide Customer with notification of termination at the Property at least forty-eight (48) hours before any service is disconnected.

(d) Additional Fees. Customer's payment obligations with respect to the New Infrastructure under the Development Agreement shall wholly cover, and Customer shall not be required to separately pay, any application fees, project improvement fees or any other fees in connection with receiving services from the Systems. In addition, any connection fee charged by the City shall only cover the actual physical costs to connect to the City's water or sewer systems (i.e meters, piping, etc.) and shall not be duplicative of the costs of the New Infrastructure paid for by Customer. Customer's obligation, if any, to pay Impact Fees (as defined in the Development Agreement) shall be governed by the Development Agreement. This Section 5(d) shall not impact or relieve Customer from paying Rates for Water and Sewer services.

6. PROCESSED COOLING WATER. Customer has proposed to City the construction of a reclaimed water system (the "Reclaimed Water System") to reclaim and dispose of some or all of the water processed through Customer's evaporative cooling system (the "Processed Cooling Water") instead of discharging the Processed Cooling Water into the Sewer System. Neither the City nor Customer has any obligation to construct, or cause the construction of, the Reclaimed Water System unless both the City and the Customer elect in their respective sole discretion to proceed with construction of the Reclaimed Water System. If the Parties both elect to proceed, the Parties agree to cooperate in good faith to implement the Reclaimed Water System consistent with the following conditions and limitations:

(a) Customer Not Liable. Upon approval and acceptance of the Reclaimed Water System by the City, which approval and acceptance shall not be unreasonably refused, conditioned, or delayed, the City agrees that Processed Cooling Water will be provided to the City at the City's sole risk, and Customer makes no representation or warranty as to the condition, quality, content, suitability or safety of the Processed Cooling Water. Customer shall have no liability whatsoever for, and the City hereby releases Customer from, any and all losses, costs, damages, liabilities, claims, demands and

expenses, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise from or are in any way connected with or related to the Processed Cooling Water or the City's use of it.

(b) Depletion Management and Permitting. Before construction and implementation of the Reclaimed Water System, permits and authorizations from, among others, the Utah Division of Water Rights and Central Utah Water Conservancy District ("CUWCD") may be required. The Parties will cooperate in seeking any required authorizations. The Parties further acknowledge that the Water Agreement, absent prior written consent of CUWCD to the contrary, restricts water reuse and limits depletion of water delivered under that agreement to 50% of the delivered water. If Customer elects to proceed with the Reclaimed Water System, the City will manage its Water Rights to not exceed the 50% depletion threshold such that any use of the Processed Cooling Water occurs under the Water Rights rather than the Water Agreement. Alternatively, the City may seek written consent from CUWCD to allow higher depletion rates under the Water Agreement.

(c) Net Metering. If the Reclaimed Water System is completed and implemented, then, consistent with Subsection 5(b) above, the Customer's monthly Water Rate shall be the lesser of (i) the Water Rate based on the Water delivered to Customer, and (ii) the Water Rate based on the Water delivered to the Project less the Processed Cooling Water delivered from the Reclaimed Water System (i.e., the net water usage) plus the City's average monthly cost during the previous calendar year to treat and store the Processed Cooling Water.

7. TERM. The term of this Agreement (the "Term") shall commence on the Effective Date and continue as follows: (a) for Sections 2, 8, 9, and the provisions Section 6 regarding construction of the Reclaimed Water System, a period of forty (40) years; (b) for Sections 1, 3, 4, 5, 10, 11, and the provisions of Section 6 regarding ongoing management of the Reclaimed Water System, an initial period of twenty (20) years and automatic, successive renewal periods of ten (10) years as long as Customer remains a customer of the Systems.

8. ADDITIONAL PROPERTY. This Agreement is hereby adopted and approved by the City to apply to any real property within the municipal limits of the City that is adjacent and contiguous to the Property (or that is separated from the Property only by roads, public rights of way, easements, or similar land rights or uses) that Customer or an affiliate of Customer may from time to time acquire following the Effective Date (whether in one or more parcels, "Additional Property"). If Customer or an affiliate of Customer acquires Additional Property, then automatically upon notice thereof to the City, this Agreement shall apply with respect to, and the definition of "Property" hereunder shall include, such Additional Property regardless of whether the legal description of such Additional Property is actually attached hereto.

9. ADDITIONAL PHASES. Customer anticipates that it may develop Phases on the Property in addition to, and similar in size and scope to, Phase I, Phase II, Phase III, Phase IV, and Phase V (each, an "Additional Phase", including those certain Additional Phases referred to by Customer as "Phase VI", "Phase VII" and "Phase VIII"). The City agrees to provide additional Water and Sewer service to the Project sufficient to accommodate the Additional Phases in the same amounts per Phase as the Reservations (the "Additional Reservations"), with the understanding that if the City's water resources are insufficient to provide the Additional Reservations, the City may require Customer to pay to the City the proportionate share of the reasonable costs of any construction necessary to expand the Systems that is attributable to such Additional Phases.

10. DEFAULT AND REMEDIES.

(a) Generally. In the event of a default of this Agreement, the non-defaulting Party may provide written notice of the default to the defaulting Party and specify a period of not less than fifteen (15) days during which the defaulting Party shall have the right to cure such default; provided, however, that such cure period may be extended if (i) the default cannot reasonably be cured within the cure period provided in such notice, (ii) the curing Party notifies the non-defaulting Party of such fact by no later than the end of the cure period provided in the notice, (iii) the curing Party has theretofore been diligent in pursuing the cure and (iv) the curing Party in such extension notice covenants to (and thereafter actually does) diligently pursue the cure to completion. If the defaulting Party fails to cure the default within such cure period, the non-defaulting Party may either (a) terminate this Agreement or (b) enforce this Agreement by the additional remedies set forth below.

(b) Customer's Additional Remedies Upon Default by City. Customer's sole and exclusive remedy under this Agreement for a default by the City shall be specific performance of the rights granted in this Agreement and the City's obligations under this Agreement.

(c) CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, ITS SUCCESSORS OR ASSIGNS, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES.

11. MISCELLANEOUS.

(a) Force Majeure. If due to the occurrence of a Force Majeure Event (as defined below) a Party is unable to meet any obligation hereunder, then the deadline for performing such obligation shall be automatically extended by one (1) day for each day of such Force Majeure Event; provided that such Party shall diligently and in good faith act to the extent within its power to remedy the circumstances of such Force Majeure Event affecting its performance or to complete performance in as timely a manner as is reasonably possible. "Force Majeure Event" means a matter beyond the reasonable control of the Party to perform (excluding unfavorable economic conditions), including: acts of God, including 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; discovery of hazardous materials; and acts of the United States of America or the State of Utah. A water shortage shall not constitute a Force Majeure Event, and the Parties' respective obligations in the event of a water shortage shall be governed by Section 5(a).

(b) Recitals. The recitals of this Agreement are material terms hereof and shall be binding upon the Parties.

(c) Notice. Whenever any notice is required or permitted under this Agreement, it shall be in writing and shall be delivered personally, with acknowledgment of receipt being obtained by the delivering Party, or by U.S. Certified Mail, return receipt requested, or by overnight delivery service by a reliable company, such as Federal Express or United States Parcel Service. Until further notification by written notice in the manner required by this Section 12(c), notices to the Parties shall be delivered as follows:

City: Eagle Mountain City
Attn: City Recorder
1650 E. Stagecoach Run
Eagle Mountain, UT 84005

Customer: Stadion LLC
1 Hacker Way
Menlo Park, CA 94025
Attn: IDC (Data Centers)

with a copy to: Stadion LLC
1 Hacker Way
Menlo Park, CA 94025
Attn: Data Center Counsel

If notice is given by U.S. Certified Mail, then the notice shall be deemed to have been given on the second (2nd) Business Day after the date the envelope containing the notice is deposited in the U.S. Mail, properly addressed to the Party to whom it is directed, postage prepaid. Notice made by personal delivery or overnight delivery shall be deemed given when received.

(d) Assignment. Customer may assign its rights and obligations under this Agreement to any (i) affiliate controlling, controlled by or under common control with Customer (and upon such assignment the assigning entity shall be relieved of its covenants, commitments and obligations hereunder) or (ii) subsequent owner of all or any portion of the Property. If Customer sells the Property in its entirety and assigns its rights and obligations hereunder to its successor in title to the Property, then Customer shall be relieved of all of its covenants, commitments and obligations hereunder.

(e) Run with the Land. This Agreement shall run with the Property and any portion thereof as it may be subdivided or recombined. Customer may record in the Official Records of Utah County, Utah a memorandum of this Agreement setting forth the existence of this Agreement.

(f) Entire Agreement. This Agreement, including all Exhibits attached hereto, contains the entire agreement between the Parties regarding the provision of Water and Sewer service to the Project, and all prior or contemporaneous communications or agreements between the Parties or their respective representatives with respect to the subject matter herein, whether oral or written, are merged into this Agreement and extinguished. Except for Customer's right to modify the description of the Property from time to time as set forth in Section 9, no agreement, representation or inducement shall be effective to change, modify or terminate this Agreement, in whole or in part, unless in writing and signed by the Party or Parties to be bound by such change, modification or termination. If any term or provision of this Agreement or any application thereof shall be unenforceable, the remainder of this Agreement and any other application of any such term or provision shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Law. The Parties acknowledge and agree that this Agreement represents a negotiated agreement, having been drafted, negotiated and agreed upon by the Parties and their respective legal counsel. Therefore, the Parties agree that the fact that one Party or the other Party may have been primarily responsible for drafting or editing this Agreement shall not, in any dispute over the terms of this Agreement, cause this Agreement to be interpreted against such Party. It is the Parties' collective intention to encourage, promote and aid the Project so that the opportunities and positive community impacts of the Project are fully realized by the City, its citizens and Customer.

(g) Waivers. Neither Party may waive any condition or breach of any representation, term, covenant or condition of this Agreement, except in a writing signed by the waiving Party and specifically describing the condition or breach waived. The waiver by either Party of any condition or breach of any representation, term, condition or covenant contained in this Agreement shall not be deemed to be a waiver of any other representation, term, condition or covenant or of any subsequent breach of the same or of any other representation, term, condition or covenant of this Agreement.

(h) Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the State of Utah.

(i) Interpretation. The section headings of this Agreement are for convenience of reference only and shall not be deemed to modify, explain, restrict, alter or affect the meaning or interpretation of any provision hereof. Whenever the singular number is used, and when required by the context, the same includes the plural, and the masculine gender includes the feminine and neuter genders. All references herein to "Section" or "Exhibit" reference the applicable Section of this Agreement or Exhibit attached hereto; and all Exhibits attached hereto are incorporated herein and made a part hereof to the same extent as if they were included in the body of this Agreement. The use in this Agreement of the words "including", "such as" or words of similar import when used with reference to any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific terms, statements or matters, unless language of limitation, such as "and limited to" or words of similar import are used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such term, statement or matter.

(j) Counterparts. This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the Parties in separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. A scanned or photocopy signature on this Agreement, any amendment hereto or any notice delivered hereunder shall have the same legal effect as an original signature.

(k) Business Days. As used herein, the term "Business Day" shall mean a day that is not a Saturday, Sunday or legal holiday in the State of Utah. All other references to "days" hereunder shall mean calendar days. If the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday in the State of Utah, then the date for performance thereof shall be extended to the next Business Day.

(l) Effect on Other Vested Rights. This Agreement does not abrogate any rights established or preserved by any applicable Law, or by the Development Agreement or by any other agreement or contract executed by the City and Customer in connection with the Project, or that have vested or may vest pursuant to common law or otherwise.

(m) Confidential Information. Customer may designate any trade secrets or confidential business information included in any report or other writing delivered to the City pursuant to or in connection with this Agreement by any method intended to clearly set apart the specific material that Customer claims to be either its trade secrets or confidential business information that, if released, would give an advantage to competitors or result in unfair competitive injury to Customer (such information, collectively, "Confidential Business Information"). For the avoidance of doubt, data and information related to Customer's actual or projected consumption or usage of all or any portion of the Reservations shall be deemed Confidential Business Information. The City shall redact or delete any Confidential Business Information from any records it makes available for inspection or of which it provides copies. Within two (2) Business Days following the City's receipt of any request to inspect or obtain copies of public records relating to this Agreement or the Project, the City shall provide written notice of the same to Customer a copy of the request, which notice shall include a copy of such request. The City shall not allow inspection or provide copies of any such records until Customer shall have had not less than ten (10) Business Days (following and excluding the day on which Customer receives such notice) to determine whether to contest the right of any party to inspect or receive copies of such records. Any such action to enjoin the release of Confidential Business Information may be brought in the name of Customer or the City. The costs, damages, if any, and attorneys' fees in any proceeding commenced by Customer or at its request by the City to prevent or enjoin the release of Confidential Business Information in any public records relating to this Agreement or the Project shall be borne by Customer.

(n) Attorneys' Fees. If any action is brought by either Party against the other Party, relating to or arising out of this Agreement or the enforcement hereof, the prevailing Party shall be entitled to recover from the other Party the reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 12(n) shall survive the termination of this Agreement and the entry of any judgment and shall not merge, or be deemed to have merged, into any judgment.

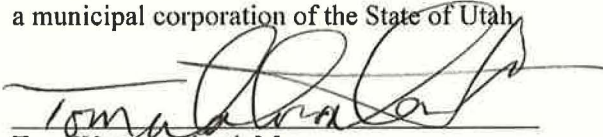
(o) Further Assurances. Upon the request of the other Party, each Party agrees to (i) furnish to the other Party such requested information, (ii) execute and deliver to the other Party such requested documents and (iii) do such other acts and things reasonably required for the purpose of carrying out the intent of this Agreement.

(p) Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT EITHER PARTY MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS EVIDENCE OF SUCH WAIVER.

[Signatures appear on following page]


CITY:

EAGLE MOUNTAIN CITY,
a municipal corporation of the State of Utah



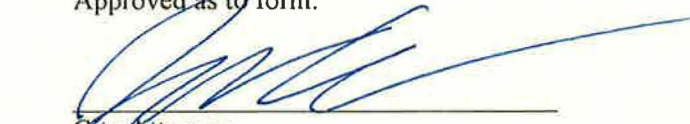
Tom Westmoreland, Mayor

ATTEST:

for 

Melanie Lehman, Deputy City Recorder
City Recorder

Approved as to form:



City Attorney



CUSTOMER:

STADION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

CITY:

EAGLE MOUNTAIN CITY,
a municipal corporation of the State of Utah

Tom Westmoreland, Mayor

ATTEST:

City Recorder

CUSTOMER:

STADION LLC,
a Delaware limited liability company


By: 
Name: Matthew R. VanderZanden
Title: Authorized Agent

EXHIBIT A

PROPERTY

Serial number: 59:057:0003

Legal Description: NW 1/4 AND W 1/2 OF NE 1/4, SEC. 25, T6S, R2W, SLB&M. ALSO DESCRIBED AS:: COM FR W 1/4 COR. SEC. 25, T6S, R2W, SLB&M.; N 0 DEG 20' 51" E 2676.06 FT; S 88 DEG 58' 33" E 2671.21 FT; S 88 DEG 58' 30" E 1335.59 FT; S 0 DEG 54' 3" W 2663.6 FT; N 89 DEG 9' 8" W 3980.95 FT TO BEG. AREA 244.782 AC.

Serial number: 59:057:0004

Legal Description: SW 1/4 AND W 1/2 OF SE 1/4, SEC. 25, T6S, R2W, SLB&M. ALSO DESCRIBED AS:: COM FR W 1/4 COR. SEC. 25, T6S, R2W, SLB&M.; S 89 DEG 9' 8" E 3980.95 FT; S 0 DEG 55' 59" W 2657.55 FT; N 89 DEG 24' 13" W 1367.89 FT; N 89 DEG 21' 28" W 2582.02 FT; N 0 DEG 15' 59" E 2672.94 FT TO BEG. AREA 242.655 AC.

EXHIBIT B

RESERVATIONS

1. Water Capacity Reservation. The Water capacity reservation for each Phase of the Project is 0.58 acre-feet per day, with a maximum flow rate of 500 gallons per minute, and within the range of 65 to 85 pounds per square inch (the "Water Capacity Reservation"), which Customer anticipates will become necessary in the following Phases of the Project: Phase I, Phase II, Phase III, Phase IV, and Phase V.

2. Sewer Capacity Reservation. The Sewer capacity reservation for each Phase of the Project is 0.20 acre-feet per day, with a maximum flow rate of 250 gallons per minute (the "Sewer Capacity Reservation"), which Customer anticipates will become necessary in the following Phases of the Project: Phase I, Phase II, Phase III, Phase IV, and Phase V.