

RESOLUTION NO. R-116 -2020

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

PREAMBLE

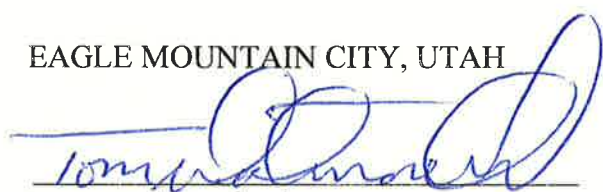
The City Council of Eagle Mountain City, Utah, finds that it is in the public interest to approve the First Amendment to the Water and Sewer Agreement with Stadion, LLC as set forth more specifically in Exhibit A.

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 First Amendment to the Water and Sewer Agreement with Stadion, LLC as set forth in Exhibit A.
2. The First Amendment to 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 7th day of July, 2020.

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 this 7 day of July, 2020.

Those voting aye:

Those voting nay:

Those excused:

Donna Burnham

Donna Burnham

Donna Burnham

Melissa Clark

Melissa Clark

Melissa Clark

Colby Curtis

Colby Curtis

Colby Curtis

Jared Gray

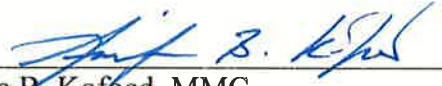
Jared Gray

Jared Gray

Carolyn Love

Carolyn Love

Carolyn Love



Fionnuala B. Kofced, MMC
City Recorder

Posted to City bulletin boards on 8/13/2020 by CP.

Exhibit A

FIRST AMENDMENT TO WATER AND SEWER AGREEMENT

This FIRST AMENDMENT TO WATER AND SEWER AGREEMENT (“**Amendment**”) is made and entered into as of the 12 day of August 2020 (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. The parties entered into that certain Water and Sewer Agreement, dated May 25, 2018, (the “**Agreement**”) whereby the parties set forth Customer’s rights to obtain water and sewer service to support the Project. Capitalized terms used but not otherwise defined herein shall have their respective meanings set forth in the Agreement.
- B. The City and Customer desire to enter into this Amendment to update the reserved water and sewer capacity for each Phase of the Project and provide for payment by Customer of additional One-time Development Charges for future use.

AMENDMENT

1. The Recitals set forth above are acknowledged by the Parties to be true and correct in all materials respects and are incorporated herein by this reference.
2. Subsection 1(c)(i) of the Agreement is hereby amended and restated in its entirety as follows:
 - (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 or apply Banked Water Credits (as defined in Subsection 1(c)(ii)) 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. Before June 30, 2018, Customer paid the City the One-time Development Charge for 250 acre-feet of water. Of the 250 acre-feet for which the One-time Development Charge was paid, 57.44 acre-feet has been applied to satisfy the Water Requirement for Phase 1 of the Project, and 192.56 acre-feet constitutes Banked Water Credits. 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 or apply Banked Water Credits 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.*

3. Subsection 1(c)(ii) of the Agreement is hereby amended and restated in its entirety as follows:

(ii) Customer may, in its sole and absolute discretion, elect to prepay the One-time Development Charge for use as provide in this subsection. 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. Subject to the provisions of this Subsection 1(c)(ii) and the discretion afforded Customer therein, Customer currently plans, but shall not be obligated, to prepay One-time Development Charges on or before June 30 of the listed years as follows:

<i>Year</i>	<i>Additional Prepaid Charges (AF)</i>	<i>Cumulative One-time Charges Paid (AF)</i>
<i>2022</i>	<i>50</i>	<i>300</i>
<i>2023</i>	<i>50</i>	<i>350</i>
<i>2024</i>	<i>50</i>	<i>400</i>
<i>2025</i>	<i>50</i>	<i>450</i>
<i>2026</i>	<i>50</i>	<i>500</i>

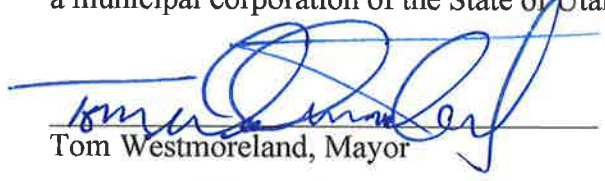
4. Exhibit B to the Agreement is hereby replaced in its entirety with Exhibit B-1 attached hereto.
5. This Amendment and the Agreement contain the entire agreement between the Parties relating to the matters contained within such documents. Any modifications to this Amendment and the Agreement shall be of no force or effect unless in writing and signed by all parties. Except as set forth in this Amendment, the terms and conditions of the Agreement remain in full force and effect. In the event of a conflict between this Amendment and the Agreement this Amendment shall control.
6. This Amendment may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and is intended to be binding when all parties have delivered their signatures to the other parties. The parties shall be entitled to electronically sign this Amendment and transmit a counterpart by electronic means (whether by facsimile, PDF, or other electronic transmission). All counterparts shall be deemed an original of this Amendment.

[Signature page follows.]

The Parties have executed this Amendment on the respective dates set forth below, to be effective as of the date first set forth above.

CITY

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




Tom Westmoreland, Mayor

Date: August 12, 2020

CUSTOMER

STADION LLC,
a Delaware limited liability company

By: 

Name: Bobby J. Lewis II

Title: Auth. Signatory

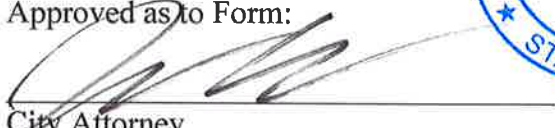
Date: 8/1/2020

ATTEST:



City Recorder



Approved as to Form:


City Attorney