

DEPOSIT AGREEMENT
BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
INNOVATION COMMONS OWNER LLC
PREAMBLE

This Deposit agreement ("Agreement"), deposit and reimbursement for services outlined herein, is by and between Innovation Commons Owner, LLC, a Delaware limited liability company, with its principal place of business located at 4995 Patrick Henry Drive, Santa Clara, CA ("Customer"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050, doing business as Silicon Valley Power (the "City" or "SVP"). SVP and Customer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

The City and Customer agree as follows:

- I. Customer requires Engineering Design services from SVP ("Services") as is further outlined in Exhibit A – Scope of Services and Cost Estimate attached hereto this Agreement and incorporated herein by reference, and City agrees to perform or cause to perform Services in conformance with that Exhibit. Customer shall pay the actual costs of the Services and related costs and expenses, including, but not limited to labor, materials, subcontracted services, permits, right-of-way procurement, taxes, fees, and overhead that may be identified by City required to complete Services ("Cost of Services"). SVP and Customer shall cooperate with each other and use good faith efforts in the timely processing of the Services. Customer shall have the opportunity to review the design of the substation (described in Exhibit A), including its location, budget and construction schedule, provided that final design is subject to the sole discretion of the SVP.
- II. Customer agrees to deposit \$787,500 ("Deposit") with the City.
 - A. Deposit shall be equal to the estimated Cost of Services plus a twenty-five percent (25%) contingency.
 - B. Customer understands that such Deposit is a retainer based on estimated Cost of Services and is not a fixed fee for required services.
 - C. Deposit must be received by City before Services are initiated by City.
 - D. City shall maintain accounting for Deposit using a process that will permit City to provide routine reporting to Customer upon request. Customer understands that periodic reporting will be based on invoices and other information received as of the time of the report and there may be

additional costs that have not yet been invoiced to City.

- E. Customer shall have reasonable access to SVP records to confirm the accuracy of the reconciliation and SVP shall provide reasonable details for the reconciliation.
- F. Upon completion or termination of Services, City shall reconcile Cost of Services against Deposit
 - 1. If, after reconciliation, City determines that Deposit was greater than Cost of Services, City shall refund remaining funds to Customer within sixty (60) days of the conclusion of invoicing by any third parties performing work associated with Services.
 - 2. If, after reconciliation, City determines that Cost of Services exceeded Deposit, City shall invoice Customer for any outstanding amounts. Customer shall make payment within thirty (30) days of invoice.

III. Changes to Deposit or changes to Services:

- A. Customer is responsible for all actual costs of services even if City does not notify the customer of changes to the Cost of Services. City will endeavor to notify Customer, in writing, of the updated cost estimate as soon as practicable to the extent the aggregate costs exceed the Deposit.
- B. In the event that it becomes known to the City that the Exhibit A cost estimate will be exceeded and those additional costs do not exceed the total Deposit, those additional costs may be passed through to Customer and deducted from Deposit without additional notification.
- C. In the event that it becomes known to the City that the Cost of Service estimate must be revised such that the Deposit is insufficient to complete the Services, City shall notify Customer, in writing, of the updated cost estimate with reasonable detailed explanation for such cost increase as soon as practicable. The Parties shall accept such updated estimates through execution of an Amendment to this Agreement including an update to Exhibit A.
 - 1. If Customer agrees for City to continue Services, Customer shall remit additional deposit funds as required by City (Additional Deposit). Upon execution of an Amendment to this Agreement and receipt of such Additional Deposit, City shall resume Services.
 - 2. Should Customer decide not to authorize costs exceeding initial estimates and discontinue work, Customer shall be responsible for all costs up to the halt of Services. This may also include costs associated with cancelling or terminating services requested from

others such as cancellation of materials purchases or other termination charges that may be incurred by City. In the event of cancellation under this provision, City shall complete accounting for Cost of Services as defined in Section II.

IV. Term

The term of this Agreement shall begin on the last date listed on the signature page and shall end six months after completion of the Services and Customer's fulfillment of its payment obligations hereunder, unless earlier terminated under the provisions of Section V of this Agreement.

V. Termination of Services:

- A. In the event that either Party determines that it does not wish to continue Services, that Party will provide written notice to the other Party.
- B. Upon receipt of such written notice from Customer, City will stop all work associated with the Services as soon as practicable and not more than thirty (30) days from the date of the notice from Customer.
- C. Cost of Services shall be reconciled against Deposit as outlined in Section II.

VI. The performance of Services by SVP does not constitute conditional approval by the City of any portion of the Customer's project or a commitment by SVP to serve the Customer's anticipated electric load. Nothing in this Agreement shall be construed as a commitment by City to grant or issue any preliminary or final approvals in connection with provision of electric service or capacity, project planning, construction, including for General Plan Amendments, Rezoning, Development Plans, Subdivision Maps, Development Agreements, Environmental Impact Reports, and building permits. Customer acknowledges and agrees that nothing in this Agreement limits City's discretion. Customer agrees that it shall remain obligated to pay all costs for all work performed by SVP, regardless of whether any aspect of the Customer's project is ultimately approved.

VII. Hold Harmless/Indemnification

- A. To the extent permitted by law, Customer agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with this Agreement – including claims of any kind by Customer's employees or persons contracting with Customer to perform any portion of

this Agreement– and shall expressly include passive or active negligence by City connected with the Agreement. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

- B. Customer's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Customer against City (either alone, or jointly with Customer), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

VIII. Notices

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Silicon Valley Power
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at svpcontracts@santaclaraca.gov, and
manager@santaclaraca.gov

And to Customer addressed as follows:

Innovation Commons Owner, LLC.
4995 Patrick Henry Drive
Santa Clara, CA 95054
and by e-mail to Baoshan Han at Baoshan@kylli.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

IX. Force Majeure

- A. For the purpose of this Agreement, "Force Majeure" shall be defined as any cause beyond the control of the Party affected, and which by exercise of reasonable due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor.
- B. Force Majeure includes Acts of God, flood, drought, earthquake, storm, tornado, fire, explosion, lightning, epidemic, public emergency, war, riot, civil disobedience, labor strike, labor dispute, labor or materials shortage (however labor or materials shortage does not include the mere inability to

obtain that labor or material at a particular price), sabotage, restraint by court order, restraint by public authority, or action or non-action by governmental authority or accident.

- C. No Party shall be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or due to the removal of remediable causes which it fails to take reasonable efforts to remove or remedy within a reasonable time, or due to mere fluctuations in market prices. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of Force Majeure shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

Office of the City Attorney
City of Santa Clara


Office of the City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

INNOVATION COMMONS OWNER, LLC.

A Delaware limited liability company

Dated: 2/21/2023

By (Signature): 

Name: Ou Sun

Title: Chief Executive Officer

Principal Place of
Business Address: 4995 Patrick Henry Drive, Santa Clara, CA

Telephone: (559) 349-8488

"CUSTOMER"

**DEPOSIT AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA AND
INNOVATION COMMONS OWNER LLC
EXHIBIT A – SCOPE OF SERVICES AND COST ESTIMATE**

1. Background:

- 1.1. Project Description: The proposed Project (Project), (PLN: 2018-13400) includes 3,000,000 square feet of office, 100,000 square feet of retail, 1800 housing units and a 37,000 square-foot substation on a 48.6 acres site.
- 1.2. A general distribution substation, to be known as Democracy Substation, with a capacity of 94.5 MVA, is required to provide electric service to the Customer's Project located within the North-West District of the City of Santa Clara.
- 1.3. City will hire and collaborate with an engineering contractor, known as the Engineer-of-Record (EOR), to perform the services outlined in Section 2 to support Customer's submittal to the Project Clearance Committee (PCC) and information needed for Environmental Impact Report (EIR) for the Customer's Project.

2. Services to be Performed:

- 2.1. Gas Insulated Substation (GIS Substation) Operations Report. EOR shall perform a GIS Substation Operations Report which will include:
 - 2.1.1. Information about indoor GIS Substation compared to Air-Insulated Substation (AIS) such as, but not limited to, equipment differences, life cycle, maintenance requirements, operating requirements, yearly and lifetime cost difference including construction and ongoing operations and maintenance.
 - 2.1.2. Access and training requirements of an indoor GIS substation.
- 2.2. On-site layout. EOR shall design an on-site layout that includes the following:
 - 2.2.1. Responsibility Matrix outlining responsibilities of Customer and City for design and construction elements.
 - 2.2.2. General arrangement of the equipment and room for GIS equipment both inside and outside the substation building, trench locations, transmission line interconnection location, ingress, egress, building height and clearances, pull boxes and manholes, indoor parking, feeder getaways, and easement requirements.
 - 2.2.3. Review Customer's general arrangement drawing for accuracy.

2.3. Budget: EOR will prepare a full budget for design and construction, including: costs of engineering design and preparation of specifications, procurement of equipment, easement and land acquisition costs, and construction costs.

2.4. Preliminary Transmission Line Trench Alignment: EOR will prepare the following:

2.4.1. Preliminary design of transmission line trench alignment for reservation of space in the Public Right-of-Way (ROW) including dimensions of ROW, location of existing utilities, clearance requirements, and easements.

2.4.2. Exterior dimensions of transmission line trench

2.5. Project Schedule: City will prepare a preliminary Project Schedule containing estimated durations for design, procurement, and construction.

Cost Estimate

Interconnection Requirements	Customer Cost	Notes
City's Contractor - Engineer of Record	\$550,000	Includes GIS Substation Operations Report, on-site layout, budget for design and construction, and preliminary transmission line trench alignment
SVP Staff Time	\$50,000	Staff time to support and collaborate with EOR based on rates in City of Santa Clara Municipal Fee Schedule at time of activity.
Subtotal	\$600,000	
25% Contingency	\$150,000	
5% Contribution in lieu	\$37,500	
Total Cost	\$787,500	