

**FUNDING AGREEMENT
BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
1220 SANTA CLARA PROPCO, LLC**

PREAMBLE

This agreement ("Agreement"), regarding Engineering Funding, is by and between 1220 Santa Clara PropCo, LLC, a Delaware limited liability company, with its principal place of business located at 300 N. LaSalle Street, Suite 1875, Chicago, IL 60654 ("Applicant"), 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 Applicant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

The City and Applicant agree as follows:

- A. Applicant is proposing to develop and construct a data center in the City of Santa Clara, which will require additional electrical service through a substation.
- B. Applicant has requested SVP to perform the predesign of the substation, the substation's control building and off-site transmission facilities ("Engineering") on Applicant's property located at 1230 Memorex Drive, Santa Clara, CA ("Project"). The Project is intended to be performed in parallel with the Applicant's data center development and construction approval process, including but not limited to review under the California Environmental Quality Act (CEQA). The performance of the Engineering by SVP does not constitute conditional approval by the City of the Applicant's project.
- C. Applicant has agreed to pay SVP \$400,000.00 for the Engineering Funding for the Project, which must be paid in full to SVP prior to the start of the Project.
- D. If the Applicant gives thirty (30) days written notice to the City that it will not require the Project, SVP will stop all work associated with the Project. All payments made by Applicant under this Agreement shall be reconciled against the actual costs incurred by SVP up to the effective date of termination. Applicant shall have reasonable access to the books and records of SVP to confirm the accuracy of the reconciliation. Any overpayment above actual costs shall be refunded promptly to Applicant.

- E. If SVP anticipates that additional funds are required, SVP will provide the Applicant with a minimum of thirty (30) days written notice requesting additional funds. If Applicant does not provide SVP with the additional funds within fifteen (15) days of SVP's written notice, SVP shall stop all work on the Project until such payment is made.
- F. Nothing in this Agreement shall be construed as a commitment by City to grant or issue any preliminary or final approvals in connection with Project planning, construction, including for General Plan Amendments, Rezoning, Development Plans, Subdivision Maps, Development Agreements, Environmental Impact Reports, and building permits. Developer acknowledges and agrees that nothing in this Agreement limits City's discretion. Developer agrees that it shall remain obligated to pay all costs for all work performed by SVP, regardless of whether any aspect of the Project is ultimately approved.

G. Hold Harmless/Indemnification

- a. To the extent permitted by law, Applicant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents (collectively, the "City Indemnitees") 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 Applicant's employees or persons contracting with Contractor 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 a City Indemnitee.

Applicant'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 Applicant, against City (either alone, or jointly with Applicant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

- H. 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 to Applicant addressed as follows:

1220 Santa Clara PropCo, LLC
Attention: Sean Ivery
300 N. LaSalle Street, Suite 1875
Chicago, IL 60654

With a copy to: Skybox Datacenters, LLC
3131 Turtle Creek Boulevard, Suite 310
Dallas, TX 75219

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.

[SIGNATURES ON FOLLOWING PAGE]

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:

Approved as to Form:

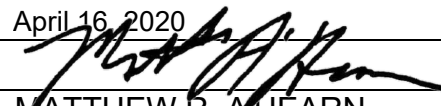
Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

1220 SANTA CLARA PROPCO, LLC
a Delaware limited liability company

Dated: April 16, 2020
By (Signature): 
Name: MATTHEW R. AHEARN
Title: Vice President
Principal Place of Business Address: 300 N. LaSalle Street, Suite 1875
Chicago, IL 60654
Telephone: (312) 796-2201
"APPLICANT"