

CONTINGENCY AND DEVELOPMENT AGREEMENT

VM Accel

THIS AGREEMENT is made and entered into by and between Laramie County, Wyoming (“County”), and Vaultminer Technologies Corp. d/b/a VMAccel, a Delaware corporation, (“the Company”), collectively referred to as the “Parties.”

WHEREAS, the purpose of the Business Ready Community Program (“BRC Program”) is to promote economic development at the city, town, and county level in order to create additional economic health and a stronger state economy; and

WHEREAS, the BRC Program allows for grants to defray the costs of communication and electrical utilities to encourage the development, recruitment or expansion of data generation and information technology storage operations; and

WHEREAS, the County is an eligible applicant to the Wyoming Business Council for BRC Managed Data Center Grants; and

WHEREAS, the County desires to facilitate the establishment of the Company, which plans to operate a data center business at a renovated site in Laramie County (the “Project”) and further desires to procure funds to defray the cost of communication and electrical utilities of the Company; and

WHEREAS, the Company will contribute economically to the community by creating jobs, investing in development of existing facilities, and broadening the County’s economic and tax bases.

NOW, THEREFORE, in consideration of the promises and agreements contained herein, the Parties agree as follows:

I. PURPOSE AND PROJECT DESCRIPTION

The purpose of this Agreement is to facilitate the award of BRC Managed Data Center Grant funds to the County to fund the Company’s Project by reducing operating costs at the Company’s data center facility. It is anticipated by the Parties that these reduced costs will provide public benefits by allowing the Company to generate revenues, increase employment, make investments, and otherwise expand the beneficial impact of its operations in Laramie County and the State of Wyoming.

II. TERM

This Agreement shall commence upon the date the last signature is affixed hereto, and shall remain in full force and effect until all BRC Managed Data Center Grant funds have been expended or five years from the date of first payment of BRC Managed Data Center Grant funds from the County, whichever is longer.

III. THE COUNTY'S RESPONSIBILITIES

The County shall:

- A. Apply for a BRC Managed Data Center Grant in the amount of Two Million Two Hundred Fifty Thousand dollars (\$2,250,000.00) for the construction of the Project.
- B. Contingent upon award of the BRC Managed Data Center Grant and receipt from the Company of invoices substantiating communication and electrical utility costs incurred by the Company, including, without limitation, any such costs incurred in the commissioning of its facility, and upon receipt by the County or its agent from the Company of evidence towards meeting public benefit requirements set forth below, the County shall seek reimbursement of 100% of these costs from the BRC Managed Data Center Grant as provided under guidance from the Wyoming Business Council. The Company shall provide the County with detailed invoices.
- C. Funds received by the County from the BRC Managed Data Center Grant will be paid to the Company and in consideration for its performance as described in this Agreement and the terms and conditions of all other agreements required to be entered into by and between the Wyoming Business Council and the County. The County shall not be obligated to proceed with the Project if it does not receive the requested funding from the Wyoming Business Council, nor shall the County be obligated to expend funds for the Project in excess of the funds received from the Wyoming Business Council.
- D. Accept or decline, at the County's discretion, the Company's offer for cloud acceleration and information technology services in accordance with Article IV, subsection B below.

IV. THE COMPANY'S RESPONSIBILITIES

The Company shall:

- A. Abide by all terms and conditions set out in the grant agreement if funded and will assist the County in performing all duties of the Company set out in the grant agreement between the County and the Wyoming Business Council. Once the grant agreement is received and signed by the Laramie County Commissioners, County will forward a copy to the Company.
- B. Provide in consideration for the BRC Managed Data Center Grant, the following public benefits:
 - a. Expand its data center operation in Laramie County by operating as a Tier II – Tier III data center.

- b. Pay or invest no less than \$2,812,500.00 of combined wages and capital expenditures within five years of first receiving Grant funds. No less than \$1,406,250.00 of this amount shall be wages. The wages counted toward these amounts must be paid to positions with wage rates that exceed \$30.50 per hour (150% of most recently announced average weekly wage for Laramie County Per the Wyoming Department of Employment).
 - c. Extend an offer to the County for cloud acceleration and information technology services at a discounted rate from the fair market value of the services, to be accepted or declined at the discretion of the County.
- C. Provide the County an annual certification of payroll and investment evidence towards meeting the public benefit requirements set forth above for a period of five (5) years. Furthermore, the Company understands that additional documentation or evidence of payrolls and investment or other public benefits may be required by the Wyoming Business Council and the Company agrees to provide such additional documentation or evidence as may be reasonably required to substantiate the amount of wages and capital expenditures paid or invested by the Company.
- D. Promptly repay all BRC Managed Data Center Grant funds paid to it by the County with a 2% rate of return during the elapsed term of the BRC Managed Data Center Grant in the event that it relocates from the political subdivision or ceases operating the Project within five years from the date of first payment of BRC Managed Data Center Grant funds from the County. Temporary cessations of operations arising out of casualty damage, or repairs, maintenance, server migrations, or renovations/upgrades shall not be considered ceasing operations for purposes of this Subsection C. Repayment of such BRC Managed Data Center Grant funds including the rate of return shall be the exclusive remedy of the County for any failure by the Company to perform its obligations under this Article IV.
- E. Provide information, assistance, and consultation to the County in the preparation and submission of the BRC Managed Data Center Grant application.
- F. Maintain any and all records, documents, and data pertaining to job creation, wages paid, capital investment and other consideration provided in exchange for BRC Managed Data Center Grant funds and, subject to the Company's reasonable confidentiality requirements, provide these records to the County upon request by the County.
- G. Comply with all other requirements of the BRC Managed Data Center Grant, to the extent approved by the County at the time of the BRC Managed Data Center Grant award.

V. PARTIES COMMON AGREEMENTS

- A. The Parties acknowledge and agree that the period of payments from the BRC Managed Data Center Grant is approximately five years from the date of the BRC Managed Data Center Grant agreement between the Wyoming Business Council and the County. Both Parties acknowledge and agree that the performance period of the Company to provide public benefit is five years from the date of the first payment of BRC Managed Data Center

Grant funds to the Company.

- B. The Parties agree that this Agreement is contingent upon the receipt of BRC Managed Data Center Grant funds by the County and is intended to meet the first level of convincing evidence of development and public benefit as required by the BRC Program.
- C. The parties agree that in the event that the County does not receive an award of the BRC Managed Data Center Grant funds from the Wyoming Business Council by June 01, 2021 neither Party has any obligations under this Agreement and that this Agreement is void unless extended in writing by the Parties.
- D. The Parties agree to comply with all applicable local, state, and federal laws, rules, and regulations.

VI. GENERAL PROVISIONS

- A. Acceptance Not Waiver: County approval of the reports, and work or materials furnished hereunder shall not in any way relieve any party of responsibility for the technical accuracy of the work. County approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- B. Termination: This Agreement may be terminated (a) by any party at any time for failure of another party to comply with the terms and conditions of this Agreement, after the non-compliant party has been provided ten (10) days' notice and an opportunity to cure its non-compliance; (b) by either party, with thirty (30) days prior written notice to the other party or (c) upon mutual written agreement by all Parties.
- C. Entire Agreement: This Agreement represents the entire and integrated agreement and understanding between the Parties relating to the subject matter hereof and supersedes all prior negotiations, statements, representations, and agreements, whether written or oral.
- D. Assignment: Neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of all other Parties.
- E. Modification: This Agreement shall be modified only by a written agreement, duly executed by all Parties hereto.
- F. Invalidity: If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the Parties that the provisions of this Agreement are fully severable.
- G. Applicable Law and Venue: The Parties understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming without regard to its conflicts of laws principles. If any dispute arises between the Parties from or

concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the Parties to be a material inducement to all Parties in executing this Agreement. This provision is not intended nor shall it be construed to waive the County's governmental immunity as provided in this Agreement.

- H. **Contingencies:** All Parties certify and warrant that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement.
- I. **Discrimination:** All Parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.
- J. **ADA Compliance:** All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.
- K. **Governmental/Sovereign Immunity:** The County does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including Wyo. Stat. §§ 1-39-101 *et seq.*, by entering into this Agreement, except to the extent necessary for the Parties to pursue a contract action to clarify or enforce the written terms of this Agreement. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. Any actions or claims against the County under this Agreement, to the extent that the same are permissible under the terms of this Section and/or applicable law, must be brought in accordance with the requirements of the Wyoming Governmental Claims Act. Further, the Parties fully retain any and all immunities and defenses provided by law with regard to any action, whether in tort, contract, or any other theory of law, based on this Agreement.
- L. **Indemnification:** To the fullest extent permitted by law, the Company agrees to indemnify and hold harmless the County, its elected and appointed officials, employees and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with the Project, except to the extent liability is caused by the sole negligence or willful misconduct of the County, its elected and appointed officials, employees and volunteers. To the extent caused by Company's negligence or willful misconduct, the Company shall indemnify, defend, and hold the County harmless from and against any and liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with the Project.
- M. **Third Parties:** The Parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only

between the Parties to the Agreement and shall inure solely to the benefit of the Parties to this Agreement.

- N. **Force Majeure:** No party hereto shall be liable to perform under this Agreement if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.
- O. **Limitation on Payment:** The County's payment obligation is conditioned upon the availability and receipt of BRC Managed Data Center Grant funds for the payment of this obligation. If sufficient funds are not granted and available, in the fiscal judgment of the County, this Agreement may be terminated by the County at the end of the period for which funds are available. No penalty shall accrue to the County in the event this provision is exercised, and the County shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision.
- P. **Notices:** All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such address listed below, or when delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party. Notices shall be delivered as follows:

<i>If to Laramie County:</i> Laramie County Commissioners 310 W. 19 th St. Suite 300 Cheyenne, WY 82001	<i>With copies to:</i> Laramie County Attorney 310 W. 19 th St. Suite 320 Cheyenne, WY 82001
<i>If to the Company:</i> Vaultminer Technologies Corp. d/b/a VMaccel 607 E. Lincolnway Cheyenne, WY 82001	<i>With copies to:</i> Hathaway & Kunz, LLP ATTN: Matthew Kaufman 2515 Warren Avenue, Suite 500 P.O. Box 1208 Cheyenne, WY 82003

- Q. **Counterpart Signatures:** For the convenience of the Parties, this Agreement may be executed in one or more counterparts and each executed counterpart shall for all purposes be deemed an original and shall have the same force and effect as an original, but all of which shall together constitute in the aggregate one and the same instrument.

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IN WITNESS WHEREOF the parties have caused this Agreement to be executed as of the date of the last signature affixed below.

VAULTMINER TECHNOLOGIES CORP. D/B/A VMACCEL

BY: *Darriek Horton*
TITLE: President
DATE: 5/11/2021

LARAMIE COUNTY, WYOMING


BY: _____
GUNNAR MALM, CHAIRMAN

DATE: _____

ATTEST:

_____, DEBRA LEE, COUNTY CLERK

Reviewed and Approved as to Form:

, Mark Voss County Attorney