ORDINANCE NO. 24-2412

AN UNCODIFIED ORDINANCE OF THE CITY OF CARSON, CALIFORNIA: (1) ADOPTING MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM WITH RESPECT TO APPROVAL OF DEVELOPMENT AGREEMENT NO. 32-22; AND (2) APPROVING DEVELOPMENT AGREEMENT NO. 32-22 BETWEEN THE CITY OF CARSON AND AVOCET ENERGY STORAGE, LLC FOR A PROPOSED BATTERY ENERGY STORAGE SYSTEM (BESS) PROJECT AT 23320 ALAMEDA STREET (APN 7315-020-022).

WHEREAS, California Government Code Sections 65864 *et seq*. authorize the City of Carson ("City") to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property in order to establish certain development rights, for the purpose of strengthening the public planning process, encouraging private participation and comprehensive planning, and identifying the economic costs of such development.

WHEREAS, on November 21, 2021, the Department of Community Development received an application from Avocet Energy Storage, LLC ("Developer") for certain entitlements for the development of a battery energy storage system (BESS) facility located at 23320 Alameda Street upon the real property legally described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), as well as certain project-related offsite improvements, to the extent within the City's legal jurisdiction.

More specifically, the proposed use and development is an approximately 200-megawatt BESS consisting of lithium-ion batteries installed in racks, inverters, medium-voltage transformers, switchgear, a collector substation, and other associated equipment to interconnect into the Southern California Edison (SCE) Hinson Substation. The enclosures will have battery storage racks, with relay and communications systems for automated monitoring and management of the batteries to ensure design performance. A battery management system will be provided to control the charging/discharging of the batteries, along with temperature monitoring and control of the individual battery cell temperature with an integrated cooling system. Power inverters to convert between AC and DC, along with transformers to step up the voltage, will also be included.

A single 220kV generation transmission line (gen-tie line) will interconnect the BESS facility site to the existing SCE Hinson Substation to transfer power. The proposed gen-tie route will extend approximately 1.1 miles from the Property, crossing three jurisdictions: the City of Carson, the City of Los Angeles, and the City of Long Beach. The overhead portion of the gen-tie line will span from the Property to the east for approximately 0.45-mile, crossing over the Dominguez Channel, a City of Carson right-of-way known as Intermodal Way (for which Developer will be granted an easement from the City in exchange for fair market value compensation pursuant to aerial easement agreement, the form of which is attached to the Development Agreement) and Union Pacific Railroad properties to reach the transition point, from which it will run underground to the SCE Hinson Substation. Two on-site transmission poles up

to 75 feet in height, as well as additional off-site transmission poles up to 175 feet in height, will be required for the overhead portion.

The project will provide a service to the regional electric grid by receiving energy (charging) from the SCE electric transmission system, storing energy on site, and then later delivering energy (discharging) back to the point of interconnection (SCE Hinson Substation).

WHEREAS, Developer's requested entitlements consist of the following: (i) Development Agreement (DA) No. 32-22, to grant specified development rights in exchange for provision of specified community benefits; (ii) Site Plan Review and Design Review (DOR) No. 1887-22, to approve the development plan for the project; and (iii) Conditional Use Permit (CUP) No. 1115-21, to approve the proposed use of the project.

WHEREAS, Developer also requested that City, as lead agency pursuant to the California Environmental Quality Act ("CEQA"), adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program ("MND") for the project. The MND includes a Mitigation Monitoring Program ("MMRP"). Following an initial study, the City, as lead agency, prepared and made available a Draft MND (State Clearinghouse #2024040695) for public review and comment pursuant to CEQA Guidelines Section 15070. The public review period was from April 16, 2024, through May 16, 2024. Subsequently, the City prepared a Final MND incorporating text changes to the Draft MND pursuant to comments received on the Draft MND during the public comment period. The City also provided written responses to all such comments in the Final MND, inclusive of the Errata thereto.

WHEREAS, the application for DA No. 32-22, which, if approved by the City, would approve a Development Agreement between City and Developer ("Agreement"), was submitted pursuant to Government Code Sections 65864 through 65869.5.

WHEREAS, after notice of the time, place and purpose of a public hearing was duly given, the City's Planning Commission held a public hearing on July 9, 2024, to consider Developer's applications for the project, and heard testimony and considered all factors both oral and written. Following such public hearing, the Planning Commission adopted Planning Commission Resolution No. 24-2871: (1) recommending City Council adoption of the MND and DA No. 32-22 subject to the conditions of approval attached to said resolution as Exhibit "B" ("Conditions"); and (2) approved DOR No. 1887-22 and CUP No. 1115-21 contingent upon City Council adoption of the MND and approval of DA No. 32-22 and subject to the Conditions.

WHEREAS, after notice of the time, place and purpose of a public hearing was duly given, the City Council held a public hearing on August 6, 2024, to consider Developer's applications for the Project, including the Agreement, and heard testimony and considered all factors both oral and written. By this Ordinance, based on the findings set forth herein and the administrative record as a whole, the City Council sees fit and intends to adopt the MND (including the MMRP) and approve DA No. 32-22 for the project, subject to the Conditions.

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated into this Ordinance as findings of fact.

Section 2. CEQA.

The City Council further: (1) finds pursuant to CEQA Guidelines Section 15074(b), after consideration of the whole of the administrative record, including the MND and all comments received, with the imposition of mitigation measures, there is no substantial evidence that the Project will have a significant effect on the environment; (2) finds the MND has been prepared and considered in compliance with CEQA and contains all required contents pursuant to CEQA Guidelines Section 15071; (3) finds the MND reflects the independent judgment and analysis of the City; (4) finds the mitigation measures identified in the MND have been made enforceable conditions on the Project (per Condition No's. 21-23); and (5) adopts the MND and the Mitigation Monitoring Program prepared for the MND, which are available for public review at https://ci.carson.ca.us/CommunityDevelopment/AvocetBESS.aspx and are incorporated herein by this reference.

A Notice of Intent was prepared and issued in compliance with CEQA Guidelines Section 15072 on April 16, 2024. The Draft MND was published, circulated, and made available for public review in accordance with the requirements of CEQA, including CEQA Guidelines Section 15073 on April 16, 2024. During the 30-day public comment period that concluded on May 16, 2024, two (2) public comment letters were received on the Draft MND, both from interested public agencies. Although the CEQA Guidelines do not require a Lead Agency to prepare written responses to public comments received, the City, via its Planning staff and environmental consultant, prepared written responses in the interest of conducting a comprehensive and meaningful environmental review of the project. An Errata to the Draft MND was included in the Final MND, incorporating text changes resulting from public comments on the Draft IS/MND, or additional information received during the public review period. The text changes merely provide clarification, amplification, and/or insignificant modifications to the Draft MND. The public comments did not warrant, and the text changes do not constitute, substantial revisions to the Draft IS/MND, and therefore did not require Draft IS/MND recirculation pursuant to CEQA Guidelines Section 15073.5.

The location and custodian of the documents or other material which constitute the record of proceedings upon which the City Council's decision set forth in this Section 2 is based is as follows: City of Carson Planning Division, 701 E. Carson St., Carson, CA 90745. City Planning staff is hereby directed to file a Notice of Determination pursuant to CEQA.

Section 3. Based upon all oral and written reports and presentations made by City staff, Developer, and members of the public, including any attachments and exhibits, the City Council hereby finds that:

(a) The Agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.

(b) The Agreement is consistent with the General Plan. The Property is located in the Heavy Industrial Land Use designation, which as stated in the General Plan Land Use Element is intended to provide for the full range of industrial uses that are acceptable within the community, but whose operations are more intensive and may have nuisance or hazardous characteristics, which for reasons of health, safety, environmental effects, or general welfare, are best segregated from other uses, and uses handling hazardous materials would be permitted only with proper safeguards and a conditional use permit. The project, which involves hazardous materials, has been subjected to a conditional use permit requirement and Conditions imposing the proper safeguards, and Section 3.4 of the Agreement provides that to ensure protection of the public health and safety against potential risks associated with fires, explosions, and hazardous materials, Developer shall comply with the health and safety-related requirements set forth in the Conditions, including but not limited to those related to battery enclosure setbacks, heat and gas detection and alarm systems, perimeter blast containment walls, and disposal of batteries. Said Section 3.4 also provides that for the avoidance of doubt, the Parties agree that no conflict exists between Section 3.4 or any other provision of the Agreement or the MND and the health and safety-related requirements set forth in the Conditions. The Agreement also advances the following General Plan goals and policies, without limitation: LUR-G-1, LUR-G-15, LU-6, LU-7, CIR-G-5, CSES-P-27, CSES-P-33, CSES P-34, SAF-4, and SAF-5.

(c) The Agreement provides for a project that is located within an area suitable for the proposed use. The Property is approximately 7 acres. This is large enough to accommodate the project with none of the battery enclosures being location within 25' of any property line, which is a requirement pursuant to the Conditions for health and safety purposes. The Property is also located in a heavy industrial area, and has no adjacency to existing or planned residential areas. The project will have direct access to Alameda St., a major truck route. However, the project in operation will not involve heavy trucking or a significant amount of traffic trips, because the operation will be remotely monitored and will only require intermittent on-site maintenance. As a result, there will be very few employees on-site (and frequently none).

(d) The Agreement provides for a public convenience through significant monetary benefits which will contribute directly or indirectly to programs and services designed to provide for the health, safety, and welfare of the public, thereby exhibiting good land use practices. The Agreement specifies the Community Benefits in Article 3. These include the following:

(1) **CFD**. In lieu of annexing the property into the Citywide CFD, and based on an analysis of the Citywide CFD services needed for the project and the project's impacts on those services, the Developer will pay the City a lump sum amount of $137,825 for the full acreage of the Property (6.96 acres) at the Maximum Annual Special Tax Rate for the "Industrial – All Other" Land Use Category ($630.17 per acre for FY 2024-25). Payment is due prior to issuance of building permits and the amount is subject to incremental annual increases if not paid during FY 24-25.

(2) DIF. Developer will make a DIF payment to the City, if paid during FY 2024-25, in the lump sum amount of $372,227.20, calculated at $3.56 per square

foot for all square footage of the battery enclosures (approximately 114,920 square feet), inclusive of a credit of $36,888 calculated at $3.18 per square foot at 11,600 square feet for demolition of the existing 11,600 square foot building on the property. Payments shall be made consistent with and in satisfaction of the City's IDIF ordinance. Payment is due prior to issuance of building permits, and the amount is subject to (i) incremental annual increases based on CPI if not paid during FY 24-25, and (ii) adjustment based on any changes made to the project gross square footage of the battery enclosures.

(3) **Battery Fee.** Developer will pay the City a Battery Fee in an amount that could be anywhere from $100,000 to $3,067,400, depending on whether and to what extent the project batteries are purchased in a way that generates sales tax revenue (including applicable Bradley Burns sales and use tax and City transaction and use tax) for the City. If the project battery purchase generates no sales tax revenue for the City, the Battery Fee amount will be the maximum $3,067,400 amount. For each dollar of sales tax revenue that the project battery purchase actually generates for the City, the applicable Battery Fee amount will be reduced by one corresponding dollar, down to the minimum amount of $100,000. For example, if the project battery purchase generates $3,067,400 in sales tax revenue for the City (which is anticipated based on the projected cost of project batteries), the City would receive an applicable Battery Fee amount of $100,000 in addition to retaining the $3,067,400 in sales tax revenue.

The Project will also provide additional health & safety features as outlined in Section 3.4 of the Agreement and detailed in the Conditions. Additionally, the project is expected to generate 70 to 100 good-paying jobs for construction of the project, and to generate significant property tax revenue for the City in addition to providing a service to the local or regional electric grid.

(e) The Agreement will not be detrimental to public health, safety, or general welfare, nor will it adversely affect the orderly development or property values for the Property or areas surrounding it.

(f) The Agreement is in compliance with the procedures established by the City as required by Government Code Section 65865(c).

(g) The Agreement in Article 6 provides for an annual review to ensure good faith compliance with the terms of the Agreement, as required in Section 65865.1 of the Government Code.

(h) The Agreement specifies the contents required by Government Code Section 65865.2, including without limitation the 20-year term of the Agreement in Section 2.1 (subject to tolling as provided in Section 2.6) and other project details in Recital D.

(i) The Agreement includes conditions, terms, restrictions, and requirements for development of the Property in Articles 3 and 4 (without limitation) and as permitted in Section 65865.2 of the Government Code.

(j) The Agreement contains provisions in Article 7 for termination of the Agreement prior to expiration of its term.

(k) The Agreement provides for amendment or cancellation in whole or in part, by mutual consent of the parties to the Agreement or their successors in interest, as required in Section 65868 of the Government Code.

(l) The Agreement is in the best public interest of the City and its residents.

(m) The Agreement is consistent with the General Plan, as detailed above. There is no applicable specific plan.

Section 4. Based on the aforementioned findings, the City Council hereby approves the Agreement, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, and authorizes its execution by the Mayor and all action necessary to comply with its terms. The Conditions shall apply to the Agreement as provided in the Agreement.

Section 5. This Ordinance shall take effect on the 30th day following its adoption by the City Council. However, if and when the Agreement should terminate pursuant to Article 7 thereof, this Ordinance will automatically terminate concurrently therewith without any action needing to be taken by the City Council.

Section 6. Pursuant to Government Code Section 65868.5, the City Clerk shall record a copy of the Agreement with the Los Angeles County Recorder's office within 10 days after execution thereof.

Section 7. The City Council declares that, should any provision, section, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 8. The Mayor, City Manager, and City Clerk, or their respective designees, are authorized and directed to take such actions and execute such documents and certifications as may be necessary to implement and effect execution, recordation and enforcement of this Ordinance and the Agreement.

Section 9. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance or a summary of this Ordinance to be published in a newspaper of general circulation in the City of Carson in accordance with Section 314 of the City's Charter.

PASSED, APPROVED and **ADOPTED** this _____ day of _____, 2024.

_____
Lula Davis-Holmes, Mayor

ATTEST:

_____
Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM

_____
Sunny K. Soltani, City Attorney

EXHIBIT “A”

PROPERTY LEGAL DESCRIPTION

[to be attached]

Exhibit A

File No.: NCS-1171056-NRG

The Land referred to herein below is situated in the City of Carson and City of Los Angeles, County of Los Angeles, State of California, and is described as follows:

PARCEL 1: (APN: 7315-020-021)

THE NORTHEASTERLY 640.00 FEET OF THAT PORTION OF LOT 1 OF TRACT NO. 10844, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 301 PAGES 37, 38, AND 39 OF MAPS, RECORDS OF SAID COUNTY, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF THE LAND AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 9, 1998 AS INSTRUMENT NO 98-1608470, OFFICIAL RECORDS.

EXCEPT THEREFROM THAT PORTION OF SAID LAND LYING SOUTHWESTERLY OF A LINE PARALLEL WITH AND DISTANT 348.00 FEET, AS MEASURED AT RIGHT ANGLES, FROM SAID SOUTHWESTERLY LINE OF SAID INSTRUMENT NO. 98-1608470, AND LYING SOUTHWESTERLY OF A LINE PARALLEL WITH AND DISTANT 87.00 FEET, AS MEASURED AT RIGHT ANGLES, FROM THE NORTHEASTERLY LINE OF SAID LOT 1.

SAID LAND IS ALSO SHOWN AS PARCEL 1 ON CERTIFICATE OF COMPLIANCE NO. 210-06, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 27, 2006 AS INSTRUMENT NO. 2006-2876653 OF OFFICIAL RECORDS

PARCEL 2: (APN: 7315-020-022)

THAT PORTION OF THE NORTHEASTERLY 640.00 FEET OF THAT PORTION OF LOT 1 OF TRACT NO. 10844, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 301 PAGES 37, 38, AND 39 OF MAPS, RECORDS OF SAID COUNTY, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF THE LAND AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 9, 1998 AS INSTRUMENT NO 98-1608470, OFFICIAL RECORDS, AND LYING SOUTHWESTERLY OF A LINE PARALLEL WITH AND DISTANT 348.00 FEET, AS MEASURED AT RIGHT ANGLES, FROM SAID SOUTHWESTERLY LINE OF SAID INSTRUMENT NO. 98-1608470, AND LYING SOUTHWESTERLY OF A LINE PARALLEL WITH AND DISTANT 87.00 FEET, AS MEASURED AT RIGHT ANGLES, FROM THE NORTHEASTERLY LINE OF SAID LOT 1.

SAID LAND IS ALSO SHOWN AS PARCEL 2 ON CERTIFICATE OF COMPLIANCE NO. 210-06, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 27, 2006 AS INSTRUMENT NO. 2006-2876653 OF OFFICIAL RECORDS

PARCEL 3: APN: 7315-011-903

THAT PORTION OF THE MARIA DOLORES DOMINGUEZ DE WATSON 3365.95 ACRE ALLOTMENT IN THE RANCHO SAN PEDRO, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, IN BOOK 1 PAGES 119, 120 AND 121 OF PATENTS, AS SHOWN ON CLERKS FILED MAP NO. 145, FILED IN CASE NO. 3284 OF SUPERIOR COURT, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WITHIN A STRIP OF LAND 250 FEET WIDE, 125 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

BEGINNING AT A POINT IN THE WESTERLY LINE OF THAT CERTAIN STRIP OF LAND, 120 FEET WIDE, DESCRIBED IN THE SECOND PARCEL OF A DEED TO THE PACIFIC ELECTRIC RAILWAY COMPANY, RECORDED IN BOOK 1835 PAGE 251

EXHIBIT "B"

DEVELOPMENT AGREEMENT NO. 32-22

[to be attached]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Carson
701 E Carson Street
Carson, CA 90745
Attn: Planning Manager

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**") is entered into on the ____ day of _____, 2024 ("**Execution Date**"), by and between the City of Carson, a municipal corporation of the State of California ("**City**"), and Avocet Energy Storage, LLC, a Delaware limited liability company (together with its successors and assigns, collectively, "**Developer**"). The City and Developer shall be referred to jointly within this Agreement as the "**Parties**" and individually as a "**Party**".

RECITALS

A. *The Development Agreement Statute.* California Government Code § 65864 *et seq*. ("**Development Agreement Law**") authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purpose of strengthening the public planning process, encouraging private participation, and comprehensive planning and identifying the economic costs of such development.

B. *Orderly Development; Public Benefits.* The City Council finds that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan. This Agreement and the proposed Project (as defined herein) will achieve a number of City objectives, including the orderly development of the Property (as defined herein) and the provision of public benefits, or funds therefor, to the City and its residents.

C. *The Property.* The 6.96-acre property is currently developed as a recycling center on an unpaved area and is surrounded by other mixed industrial uses, and is located at 23320 Alameda Street in the City of Carson, County of Los Angeles, State of California (Assessor's Parcel Number 7315-020-022), legally described and depicted in Exhibit "A" and Exhibit "B" attached hereto and incorporated herein (the "**Property**"). The General Plan land use designation for the Property is Heavy Industrial and the Property is zoned MH-D (Manufacturing Heavy – Design Overlay). The Southern California Edison (SCE) Hinson Substation is located approximately 0.62 miles northeast of the Property, in the City of Long Beach. Developer holds an option to lease the Property, as further set forth in Recital L below.

D. *The Project.* Developer proposes to demolish the existing recycling facility and construct a 200-megawatt battery energy storage system ("**BESS**"), which will include lithium-ion batteries installed within racks, inverters, medium-voltage transformers, switchgear, a collector substation, and other associated equipment, and which will connect into the

existing SCE Hinson Substation (point of interconnection) through a single 220 kilovolt (kV) generation tie ("**Gen-Tie**") line that will travel from the Property, through the City of Los Angeles, to the SCE Hinson Substation in the City of Long Beach, using the route shown in Exhibit "C", to transfer power between the SCE Hinson Substation and the Project. The Gen-Tie line will require associated transmission poles of the number and height shown in Exhibit "C", and City will grant Developer an aerial easement for the Gen-Tie line to traverse the City-owned property known as Intermodal Way on terms and in a form substantially similar to Exhibit "D" attached hereto and incorporated herein. Developer shall be responsible for obtaining any necessary easements or license agreements from other property owners along the Gen-Tie line route. The other dimensions and design of the poles shall be as set forth in the Development Plans. Within the BESS, the battery packs will be housed in enclosures that will consist of modular battery units (the "**Battery Enclosures**"). Within the Battery Enclosures, the batteries will be arranged on battery storage racks, with relay and communications systems for automated monitoring and managing of the batteries to ensure design performance. A battery management system will be provided to control the charging/discharging of the batteries, along with temperature monitoring and control of the individual battery cell temperature with an integrated cooling system. Batteries operate with direct current (DC) electricity, which must be converted to alternating current (AC) for compatibility with the existing electric grid. Power inverters to convert between AC and DC, along with transformers to step up the voltage from 34.5kV to 220kV, will be included. The proposed facility will receive energy (charging) from the SCE Hinson Substation, storing energy, and then later delivering energy (discharging) back to the point of interconnection. As a part of construction, demolition of the existing building, excavation, and grading of the Property (requiring City-issued demolition and grading permits) will occur, and BESS-related infrastructure will be developed/installed. Trenching will be required for placement of underground electrical and communication lines. After preparation of the site, the pads for enclosures, equipment enclosures, and equipment vaults will be prepared per geotechnical engineer recommendations. The switchyard area will include a grounding grid that will be covered with aggregate surfacing for safe operation. Additional details on the project description are provided in Section 1 of the MND (as defined herein) and are incorporated by reference herein (collectively, the "**Project**").

E. On November 21, 2021, Developer filed a development permit application with the City (Master Redevelopment Project No. PL10101) seeking Conditional Use Permit No. 1115-21 (the "**CUP**"), Design Overlay Review No. 1887-22 (the "**DOR**") and Development Agreement No. 32-22 (the "**DA**"), along with a project description for applicable CEQA (as defined herein) review (collectively, the "**Development Application**").

F. City finds and determines that all actions required of City precedent to approval of this Agreement have been duly and regularly taken. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000 *et seq*. ("**CEQA**")), appropriate studies, analyses, reports, and documents were prepared and considered by the City's Planning Commission and the City Council. The Planning Commission, after a duly noticed public hearing on July 9, 2024, recommended City Council approval of a Mitigated Negative Declaration (the "**MND**") for the Project in accordance with CEQA, pursuant to CEQA Guidelines Section 15074. On the same day, the Planning Commission, after giving notice pursuant to Government Code §§ 65090,

65091, 65092 and 65094, held a public hearing on the Development Application for approval of this Agreement, the CUP, and the DOR (collectively, together with the MND, the "**Entitlements**"), and adopted Resolution No. 24-2871 recommending that the City Council conditionally approve the Entitlements.

G. On _____, 2024, the City Council, after provision of the public notice required by law, held a public hearing to consider the Development Application and the Planning Commission's recommendation for approval of the Entitlements. The Planning Commission and the City Council have found on the basis of substantial evidence based on the entire administrative record, that this Agreement is consistent with all applicable plans, rules, regulations, and official policies of the City.

H. *Adoption of DIF Program.* On April 16, 2019, the City Council adopted Ordinance No. 19-1931 to implement the City's Interim Development Impact Fee Program ("**DIF Program**") to establish an interim Development Impact Fee ("**DIF**") schedule applicable to new development within the City. DIFs are valuable tools to fund infrastructure needs associated with new/additional development within the City pursuant to Government Code § 66000 *et seq*. DIFs serve the purpose of allowing the City to recover from each new development project a reasonable and proportional share of the cost of public facilities and infrastructure improvements that serve or will benefit that development.

I. *Agreed-Upon Payment of DIF Amount.* City staff and its rate consultants have analyzed the draft "Development Impact Fee Study" and currently-available fee study data, and potential impacts upon public facilities and infrastructure attributable to the Project, in order to accurately estimate the DIFs that would be applicable to the Project. DIF amounts in this Agreement were estimated by reviewing the individual Project and its direct relationship to the impacts created by the Project, and the fees collected, and it was determined that the amounts of the fees are roughly proportional to the Project's specific impacts. Based on such analyses, the Parties mutually agree that Project impacts warrant a one-time DIF payment of the amount set forth in Section 3.1 below, which amount is to be paid prior to issuance of Project building permits and is subject to adjustment as set forth in Section 3.1 depending on the timing of payment. All payments for DIFs pursuant to this Agreement are hereinafter referred to as the "**DIF Amount**". The Parties agree that such DIF Amount is (1) directly related to the impacts of the Project and (2) roughly proportional to the specific impacts upon public facilities and infrastructure attributable to the Project.

J. *CFD Formation.* On November 7, 2018, the City formed a Master CFD entitled City of Carson Community Facilities District No. 2018-01 (Maintenance and Services) (the "**Citywide CFD**") for the purpose of funding the maintenance of public infrastructure within the area of the Citywide CFD, which is within the City's jurisdictional boundaries (the "**Services**"). More specifically, the Services may include the provision of general City services and the maintenance of sidewalks, roadways, and parks to enhanced service levels. Additionally, the Citywide CFD may also fund any other public services as authorized under Government Code § 53313. The Citywide CFD contemplates that the City will annex properties from time to time into the Citywide CFD to fund Services by unanimous written consent or as otherwise permitted by the Mello Roos Community Facilities Act of

1982 (the "**Act**"), which properties may be annexed as a "Zone" or otherwise with special taxes related to such properties to be assessed on the property owner pursuant to the Act.

K. *CFD Payment.* By entering into this Agreement, in lieu of annexing the Property in the Citywide CFD, Developer has agreed to pay City the CFD Payment as defined in Section 3.2, which is a lump sum amount for the full acreage of the Property (6.96 acres) at the tax rate applicable to "Industrial – All Other," to help finance on-going Services associated with the Project.

L. *Developer's Interest in the Property*. Developer has entered into a contract giving Developer an option to lease the Property for a period of twenty (20) years from the time the option is exercised, and as such, Developer possesses the requisite legal or equitable interest in the Property under Government Code § 65865 that allows the Parties to enter into this Agreement. However, this Agreement will not go into effect until after Developer exercises its option and secures a leasehold interest in the Property, except as otherwise provided herein.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals ("**Recitals**") and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. GENERAL DEFINITIONS.

In addition to those terms defined within the above Recitals and elsewhere within this Agreement, the following terms shall bear the meanings set forth below:

1.1 "**Adopting Ordinance**" means Ordinance No. _____ approving this Agreement, introduced on _____, 2024 and adopted on _____, 2024.

1.2 "**Agreement**" shall have the meaning set forth in the opening paragraph of this Agreement.

1.3 "**Annual Review**" shall have the meaning set forth in Section 6.1.

1.4 "**Applicable Laws**" means, collectively, the following:

a. The Project Development Approvals (including the Conditions of Approval).

b. The Existing Land Use Regulations**.**

c. Subsequent Development Approvals.

d. Those Subsequent Land Use Regulations to which Developer has agreed in writing.

1.5 "**Approval Date**" means the date on which the City Council conducted the second reading of the Adopting Ordinance. That date is _____, 2024.

1.6 "**CDTFA**" means the California Department of Tax & Fee Administration.

1.7 "**City**" shall have the meaning set forth in the opening paragraph of this Agreement.

1.8 "**Citywide CFD**" shall have the meaning set forth in Recital J.

1.9 "**City Council**" means the City Council of the City of Carson.

1.10 "**CMC**" means the Carson Municipal Code.

1.11 "**Conditions of Approval**" means all conditions imposed in the Project Entitlements.

1.12 "**Confirmed Sales Tax Revenue**" means all Sales Tax revenue collected by City from the purchase or sale of Project batteries that City can reasonably confirm, pursuant to Section 3.3 of this Agreement, was generated for and collected by the City.

1.13 "**Developer**" shall have the meaning set forth in the opening paragraph of this Agreement.

1.14 "**Developer's Vested Right**" means Developer's right to complete the Project in accordance with, and to the full extent of, the Project Development Approvals in accordance with the Existing Land Use Regulations.

1.15 **"Development"** means the improvement of the Property for the purposes of completing the structures, improvements, and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping and other facilities and improvements necessary or appropriate for the Project, and the maintenance, repair, or reconstruction of any building, structure, improvement, landscaping or facility after the construction and completion thereof.

1.16 "**Development Plan**" means Developer's plan for completion of the Project in compliance with and to the full extent of the Project Development Approvals and Applicable Laws.

1.17 **"DIF"** shall have the meaning set forth in Recital H.

1.18 "**Director**" means the City's Community Development Director, or his or her designee.

1.19 "**Effective Date**" means the date on which the Adopting Ordinance becomes effective, typically thirty (30) days after the second reading of the Adopting Ordinance, or after Developer acquires the legal leasehold interest in the Property described in Recital L, whichever occurs later. If Developer fails to or otherwise does not acquire the leasehold interest in the Property by the deadline provided in Section 7.8, this Agreement shall automatically and retroactively become ineffective, null, and void, as further set forth in (and except as otherwise provided in) Section 7.8.

1.20 "**Entitlements**" shall have the meaning set forth in Recital F.

1.21 "**Exhibit**" means an exhibit to this Agreement, unless otherwise specifically referenced to a different agreement or document. The following exhibits are incorporated into the Agreement by reference as though set forth in full:

Exhibit "A"	Legal description of the Property
Exhibit "B"	Depiction of the Property
Exhibit "C"	Detail of Gen-Tie Line Route and Number and Height of Associated Transmission Poles
Exhibit "D"	Form of Easement

1.22 "**Existing Land Use Regulations**" means (i) all Land Use Regulations in effect on the Vested Rights Date (which Land Use Regulations include the Carson 2040 General Plan adopted on April 4, 2023) and (ii) any changes to Land Use Regulations enacted on or after the Vested Rights Date which Developer has provided its written consent to allow those changes to apply to the Project.

1.23 "**Land Use Regulations**" are laws and regulations enacted through legislative actions of the City Council. Land Use Regulations include ordinances, laws, resolutions, codes, rules, regulations, policies, requirements, guidelines or other actions of City, including but not limited to the City's General Plan and the CMC (including the Carson Zoning Ordinance, Chapter 1 of Article IX of the CMC), which affect, govern or apply to the development and use of the Property, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, and construction standards and specifications applicable to the Project. "Land Use Regulations" do not include (i) Project Development Approvals, (ii) regulations relating to the conduct of business, professions, and occupancies generally, (iii) taxes and assessments, (iv) regulations for the control and abatement of nuisances, (v) health and safety regulations, or (vi) any other matter reserved to City pursuant to Article 5.

1.24 "**Mortgage**" means a mortgage, deed of trust, or other security instrument encumbering the Property.

1.25 "**Mortgagee**" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security device, a lender, or any party providing tax equity financing in connection with the Project, and each of their respective successors and assigns.

1.26 "**Project**" shall have the meaning set forth in Recital D.

1.27 "**Project Development Approvals**" means all Project-specific approvals, including, but not limited to, the Entitlements (minus this Agreement), the Conditions of Approval, project-specific plans, maps, permits, site plans, design guidelines, variances, conditional use permits, grading, building, and other similar permits, environmental assessments, including environmental impact reports and negative declarations, and any amendments, addenda or modifications to those matters, which were applied for by Developer and are required or permitted by the Applicable Laws in order to complete the Project, provided that those Project Development Approvals are consistent with Developer's Vested Right, this Agreement, and the

Applicable Laws. The Entitlements (minus this Agreement), as examples of Project Development Approvals, have been or are anticipated to be approved, subject to the Conditions of Approval, prior to or in conjunction with the approval of this Agreement. "Project Development Approvals" do not include (i) rules, regulations, policies, and other enactments of general application within the City (ii) legislative enactments, including this Agreement, or (iii) Land Use Regulations.

1.28 "**Property**" shall have the meaning set forth in Recital C.

1.29 "**Reservation of Authority**" means the limitations, reservations, and exceptions to Developer's Vested Right set forth in Article 5.

1.30 "**Sales Tax**" means and includes both (i) the sales and use tax referenced in Chapter 1 of Article VI of the CMC and (ii) the transaction and use tax referenced in Chapter 1.5 of Article VI of the CMC.

1.31 "**Subsequent Land Use Regulations**" means those Land Use Regulations which are both adopted and effective on or after the Vested Rights Date.

1.32 **"Subsequent Development Approvals"** means all Project-specific approvals issued subsequent to the Effective Date in connection with development of the Project, which shall include, without limitation, any changes to the Project Development Approvals.

1.33 "**Term**" shall have the meaning ascribed to it in Section 2.1, unless earlier terminated as provided in this Agreement.

1.34 "**Vested Rights Date**" means May 29, 2024, which is the date the CUP development application was deemed complete.

2. TERM & GENERAL COVENANTS.

2.1 **Term**. The term of this Agreement (the "**Term**") starts on the Effective Date and shall expire twenty (20) years after City's approval of the last of the Entitlements, subject to (i) any early termination provisions described in this Agreement and (ii) extension as set forth in Section 2.6.

2.2 **Project Completion**. Developer shall complete the Project, including passing final inspection, by no later than five (5) years from the Effective Date, subject to extension as set forth in Section 2.6.

2.3 **Binding Effect of Agreement**. From and following the Effective Date, actions by the City and Developer with respect to the development of the Property for completion of the Project, including actions by the City on applications for Subsequent Development Approvals affecting the Property shall be subject to the terms and provisions of this Agreement.

2.4 **Agreement Runs with the Land**. This Agreement shall be recorded and shall run with the land. Pursuant to Government Code § 65868.5, the burdens of this Agreement and each of its provisions shall be binding upon, and the benefits of this Agreement shall inure to,

all successors in interest to the Parties, including, but not limited to, all parties that enter into lease agreements with Developer for possession of any part of the Property.

2.5 Covenant Against Discrimination. Developer covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry in the performance of this Agreement. Developer shall take affirmative action to ensure that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry.

2.6 Tolling. Notwithstanding anything to the contrary contained in this Agreement, the time periods set forth in Sections 2.1, 2.2, and 7.8, shall be tolled and extended on a day-for-day basis for the duration of any (i) third party litigation against the Project Development Approvals or this Agreement, (ii) delay in commencement or performance of construction or operation of the Project occasioned by a moratorium on the issuance of any of the Project Development Approvals, (iii) delay in commencement or performance of construction or operation of the Project occasioned by an event of Force Majeure (as defined in Section 13.10), or (iv) delay in commencement or performance of construction or operation of the Project occasioned by an Additional Regulation effective after the Vested Rights Date (each, a "**Tolling Event**"). If, and each time, a Tolling Event occurs or ends, Developer shall deliver written notice to the City in accordance with Section 13.2 as soon as reasonably practical after Developer receives actual notice of the occurrence or cessation of the Tolling Event, specifying the date of the occurrence or cessation of the Tolling Event. Notices of occurrence of Tolling Events shall be subject to approval of the Director, not to be unreasonably withheld, conditioned, or delayed, in order for the tolling associated with the Tolling Event to be effective (although such tolling may take effective retroactively upon such Director approval).

3. DEVELOPER'S OBLIGATIONS & EXTRAORDINARY BENEFITS.

As extraordinary benefits consideration for the granting of Developer's Vested Right in accordance with Article 4 below, and subject to the City's Reservation of Authority set forth in Article 5 below, Developer shall do the following:

3.1 Development Impact Fees. Developer shall make a one-time payment to the City for the DIF Amount of $372,227.20, calculated at $3.56 per square foot for all square footage of Battery Enclosures (approximately 114,920 square feet), inclusive of a credit of $36,888 calculated at $3.18 per square foot at 11,600 square feet for demolition of the existing 11,600 square foot building on the Property, which DIF Amount shall be adjusted as described in Section 3.1(a)–(b) below depending on the timing of payment. The Parties agree that the DIF Amount is (1) directly related to the impacts of the Project and (2) roughly proportional to the specific impacts upon public facilities and infrastructure attributable to the Project. Developer agrees to release, defend, indemnify, and hold the City harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, which may arise, directly or indirectly, from the City's determination, calculation, or imposition of, or Developer's agreement to pay, the DIF Amount.

a. **Timing of Payment of DIF Amount**. The DIF Amount is payable in full prior to the issuance of building permits for the Project, and is a condition precedent thereto.

b. **DIF Amount Adjustments**. All DIF Amounts shall be adjusted annually in accordance with the State of California Construction Cost Index (prior March to current March adjustment) on July 1st of each year. The DIF Amount figures specified in Section 3.1 above apply to payments made from July 1, 2024 through June 30, 2025.

3.2 CFD Payment. Developer acknowledges that there is an impact of the Project on the ongoing services provided by the City that benefit the Property, financing for which would ordinarily be provided via annexation of the Property into the Citywide CFD and payment of the applicable Citywide CFD annual special taxes therefor (the rates of which increase annually by set percentages or by CPI). In lieu of annexing the Property into the Citywide CFD, and based on an analysis of the Citywide CFD services needed for the Project and the Project's impacts on those services, Developer agrees to pay City a lump sum amount of $137,825 (the "CFD Payment") for the full acreage of the Property (6.96 acres) at the Maximum Annual Special Tax Rate for the "Industrial – All Other" Land Use Category ($630.17 per acre for FY 2024-25) (the "**Tax Rate**"). Notwithstanding the foregoing, if the CFD Payment is made after June 30, 2025, the Tax Rate shall be adjusted as described in Section 3.2(b) below, and the total amount of the CFD Payment shall be adjusted accordingly. Developer agrees the CFD Payment represents Developer's fair share of the costs of the ongoing CFD services for the Property as impacted by the Project.

a. **Timing of CFD Payment**. Developer shall make the CFD Payment in one lump sum to City prior to issuance of any building permits for the Project, and such payment is a condition precedent to such permit issuance.

b. **Tax Rate Adjustments.** On each July 1st, commencing on July 1, 2025, and thereafter, the Tax Rate shall automatically increase for purposes of this Agreement by the percentage change in the November annualized Consumer Price Index for Los Angeles-Long Beach-Anaheim for all Urban Consumers.

3.3 Battery Fee. Developer shall pay City a "**Battery Fee**" in an amount equal to the sum of $3,067,400 (the "**Maximum Battery Fee Amount**") less the total amount of Confirmed Sales Tax Revenue collected by City; provided, however, that the Battery Fee shall in no event be less than a minimum of $100,000 (the "**Minimum Battery Fee Amount**"). Within thirty (30) days of the Effective Date, Developer shall pay City the Minimum Battery Fee Amount in cash. Prior to the issuance of any demolition, grading or building permits, Developer shall provide City with a bond, on a form reasonably acceptable to the Director and City Attorney, securing payment of the Battery Fee, in an amount equal to the Maximum Battery Fee Amount less the $100,000 Minimum Battery Fee Amount (the "**Bond**"), and the issuance and effectiveness of such Bond shall be a condition precedent to such permit issuance. The Bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. The Bond shall be unconditional and remain in force during the entire term of this Agreement until released

pursuant to Section 3.3(a), below, and shall be binding on the successors-in-interest of the obligor/principal (i.e., Developer) and surety. The Bond shall be issued by a company qualified to do business in California, rated "A" or better in the most recent edition of Best's Rating Guide, The Key Rating Guide or in the Federal Register, and having a financial category Class VII or better, and shall provide for the City to receive at least 30 days' prior notice from the surety, via the means specified in Section 13.2, of any impending cancellation or lapse in effectiveness of the Bond due to nonpayment of premiums or any other reason.

a. **Confirmed Sales Tax Revenue; Effect on Battery Fee**. No later than sixty (60) days after the expiration of time for Developer to provide City comments on the Confirmed Sales Tax Revenue Determination pursuant to subsection (b) below, City shall calculate the amount of the Battery Fee by subtracting the Confirmed Sales Tax Revenue from the Maximum Battery Fee Amount (except that in no event shall the Battery Fee be reduced below the Minimum Battery Fee Amount) and notify Developer in writing of same (the "**Battery Fee Notice**"). If the Battery Fee in the Battery Fee Notice is equal to the Minimum Battery Fee Amount, then no later than thirty (30) days following the date the Battery Fee Notice is delivered to Developer and Developer's subsequent written request, City shall release or authorize cancellation of the Bond. If the Battery Fee in the Battery Fee Notice is greater than the Minimum Battery Fee Amount, within sixty (60) days of receipt of the Battery Fee Notice, Developer shall pay to City the amount of the Battery Fee less the Minimum Battery Fee Amount. Notwithstanding any other provision of this Agreement, in the event Developer fails to timely pay said amount, City shall have the right to immediately call and receive the proceeds of the Bond. No final Certificate of Occupancy shall issue until the Battery Fee has been paid in full. A temporary Certificate of Occupancy ("**TCO**") may issue prior to the Battery Fee being paid in full provided (without limitation as to other applicable requirements for issuance of a TCO or payment of the Battery Fee) Developer demonstrates to the satisfaction of the Director that the Bond is and will be effective and binding on Developer and any premiums are paid for at least one year beyond the date of issuance of the TCO. If a TCO issues prior to the Battery Fee being paid in full pursuant to this paragraph, then the maximum cumulative term (i.e., total duration) of effectiveness of the TCO shall not exceed one year; if one year of cumulative effectiveness of the TCO elapses without issuance of a final Certificate of Occupancy and the Battery Fee has not been paid in full, then (i) the City may immediately revoke Developer's business license and not reinstate it until the Battery Fee is paid in full, and (ii) the TCO will immediately and automatically lapse and terminate and full payment of the Battery Fee shall be required as a pre-requisite to any further, extended or renewed effectiveness of the TCO or any issuance of a final Certificate of Occupancy. No later than thirty (30) days following such payment by Developer and Developer's written request, City shall release or authorize cancellation of the Bond.

b. **Tracking of Battery Fee**. No later than forty-five (45) days following the filing with the CDTFA of the Sales Tax return that reports sales tax on the

sale of the Project batteries to Developer, Developer will provide City with copies of all information that Developer considers relevant to determining the Confirmed Sales Tax Revenue, which shall include, without limitation, (i) invoices for the purchase of the Project batteries reflecting the amount of Sales Tax charged, (ii) evidence of payment of the invoice amount to the retailer of the Project batteries, (iii) all Sales Tax returns filed with the CDTFA related to the sale and purchase of Project batteries, (iv) identification of the accounts that are or will be reporting the Sales Tax related to the sale and purchase of the Project batteries, and (v) evidence of remittance to the CDTFA of the amount reflected as due on the Sales Tax Returns (provided Developer shall have the right to first redact any portions of such documents which are privileged or which are not relevant to determining the Confirmed Sales Tax Revenue). Within one hundred eighty (180) days of receipt of such information from Developer, City, with cooperation from Developer as may be reasonably requested by City, will undertake a reasonable and good faith analysis of the Sales Tax returns and other information provided by Developer, together with any other information reasonably deemed relevant by City, and will thereby ascertain the Confirmed Sales Tax Revenue and notify Developer in writing of such determination (the "**Confirmed Sales Tax Revenue Determination**"). In the event the Confirmed Sales Tax Revenue is less than the Maximum Battery Fee Amount, such Confirmed Sales Tax Revenue Determination shall describe in detail the information relied upon by the City in calculating the Confirmed Sales Tax Revenue and, upon request by Developer, City shall provide such information to Developer (to the extent such information was not provided to City by Developer and such disclosure is not prohibited by law). Developer shall have thirty (30) days following the later of (i) receipt of the Confirmed Sales Tax Revenue Determination, or (ii) receipt of the information requested from City pursuant to this subjection (b), to provide any comments or additional information to City regarding the determination of the Confirmed Sales Tax Revenue, which information the City shall consider in good faith.

c. For the avoidance of doubt, the foregoing relates only to the determination of the amount of the Battery Fee; in all circumstances, in addition to the Battery Fee, City shall be entitled to all Sales Tax revenue generated to City from the Project, irrespective of the amount of Confirmed Sales Tax Revenue and/or the amount of the Battery Fee.

3.4 Health and Safety Features. To ensure protection of the public health and safety against potential risks associated with fires, explosions, and hazardous materials, Developer shall comply with the health and safety-related requirements set forth in the Conditions of Approval, including but not limited to those related to Battery Enclosure setbacks, heat and gas detection and alarm systems, perimeter blast containment walls, and disposal of batteries. For the avoidance of doubt, the Parties agree that no conflict exists between this Section 3.4 or any other provision of this Agreement or the MND and the health and safety-related requirements set forth in the Conditions of Approval.

4. DEVELOPMENT OF THE PROPERTY.

4.1 Scope of Developer's Vested Right. Subject to the Reservation of Authority set forth in Article 5, Developer shall have the vested right to develop the Project to the full extent permitted under the Applicable Laws and this Agreement ("**Developer's Vested Right**").

4.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings and structures, and the design, improvement and construction standards and specifications applicable to the Development of the Property, shall be as set forth in the Existing Land Use Regulations which were in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

4.3 Rights under State and Federal Law. Developer shall retain all rights it has under state and federal law, including, but not limited to, Developer's rights under Government Code § 65865.2, which provides that subsequent discretionary actions shall not prevent development of the Property for the uses and to the density or intensity of development set forth in the Project Development Approvals.

4.4 Apportionment. Developer shall have the right to apportion the uses, intensities, and densities of the Project between itself and any subsequent owners, upon the sale, transfer, or assignment of all or any portion of the Property, so long as such apportionment is consistent with the Applicable Laws and this Agreement.

4.5 Lesser Development. Without amending this Agreement, Developer shall have the right to elect to develop and construct upon all or any portion of the Property a Project of lesser height or building or structure size than that permitted by the Project Development Approvals provided that the Project otherwise complies with the Project Development Approvals and this Agreement.

4.6 Project Development Approvals; Subsequent Development Approvals. The Project Development Approvals for the Project may require the processing of Subsequent Development Approvals. Subject to the provisions of Section 4.7 below, the City shall accept for processing, review, and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters in accordance with the Existing Land Use Regulations. The parties acknowledge that subject to the Existing Land Use Regulations, under no circumstances shall City be obligated in any manner to approve any Subsequent Development Approval, or to approve any Subsequent Development Approval with or without any particular condition. However, unless otherwise requested by Developer, City shall not, without good cause, amend or rescind any Subsequent Development Approvals respecting the Property after such approvals have been granted by the City. Processing of Subsequent Development Approvals or changes in the Project Development Approvals made pursuant to Developer's application shall not require an amendment to this Agreement. This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Existing Land Use Regulations.

4.7 Role of Project Development Approvals. Except as provided within this Agreement, the Project Development Approvals shall exclusively control the uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings or structures, the provisions for reservation or dedication of land for public purposes, and the design, improvement, and construction standards and specifications applicable to the Project.

4.8 Moratorium. Notwithstanding any other provision of this Agreement, no future amendment of any existing City ordinance or resolution or any subsequent ordinance, resolution, or moratorium, enacted either by the City Council or by voter approved initiative, that purports to impose or result in a limitation on the Project, imposed by City, shall apply to govern, or regulate the Project or development or use of the Property during the Term. In the event of any such subsequent action by City, Developer shall continue to be entitled to apply for and receive Subsequent Development Approvals in accordance with the Existing Land Use Regulations, subject only to the exercise of the City's Reservation of Authority set forth herein.

4.9 Maintaining Property. The Property must at all times be maintained and generally kept in a clean condition, in accordance with the City's Code Enforcement regulations.

5. CITY'S RESERVATION OF AUTHORITY.

Notwithstanding Developer's Vested Right, the Project is subject to the following Subsequent Land Use Regulations:

5.1 City's Discretion Under Applicable Rules. In considering future applications, if any, for a Subsequent Development Approval, the City may exercise its regulatory discretion to the extent permitted by the Applicable Rules.

5.2 Uniform Codes. Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, or other such Uniform Codes, and also adopted by City as Subsequent Land Use Regulations, but only if applicable City-wide.

5.3 Emergencies. Emergency rules, regulations, laws, and ordinances within the City's police power that would limit the exercise of Developer's Vested Right ("**Conflicting Emergency Regulations**"), provided that the Conflicting Emergency Regulations:

a. Result from a sudden, unexpected emergency declared by the President of the United States, Governor of California, County Board of Supervisors and applicable to incorporated areas, including the City, or the City Council;

b. Address a clear and imminent danger, with no effective reasonable alternative available that would have a lesser adverse effect on Developer's Vested Right;

c. Do not primarily or disproportionately impact the development of the Project; and

d. Are based upon findings of necessity established by a preponderance of the evidence at a public hearing.

5.4 Laws of Other Jurisdictions. Other public agencies not subject to control by City may possess authority to regulate aspects of the Project. This Agreement does not limit the authority of such other public agencies. Therefore:

a. Federal, state, county, and multi-jurisdictional laws and regulations (the "**Additional Regulations**"), including regional impact fees, which City is required to enforce against the Property or the Project, except if the Additional Regulations are for the purpose of mitigating a significant or potentially significant impact that has already been mitigated pursuant to the Project's Mitigated Negative Declaration.

b. If an Additional Regulation is enacted after the Vested Rights Date and prevents or precludes compliance with one or more of the provisions of this Agreement, those provisions shall be modified or suspended as may be necessary to comply with the Additional Regulation. In that event, this Agreement shall remain in full force and effect to the extent it is not inconsistent with the Additional Regulation and to the extent that the suspension or modification necessitated by the Additional Regulation does not deny one of the Parties its primary benefits under this Agreement.

c. Developer shall apply in a timely manner for such other permits and approvals that are lawfully required by other governmental or quasi-governmental agencies in order to allow the Project to be constructed. City shall provide Developer reasonable cooperation in Developer's efforts to obtain such permits and approvals. The Parties shall cooperate and use reasonable efforts in coordinating the implementation of the Development with other public agencies, if any, having jurisdiction over the Property or the Project.

5.5 Modification or Suspension by Federal or State Laws. In the event that Federal or State laws or regulations, enacted after the Vested Rights Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce.

5.6 Energy Efficient and Sustainable Building Design. All Project buildings shall promote sustainable and energy efficient practices through compliance with California Code of Regulations, Title 24.

5.7 Employment Outreach for Local Residents. A goal of the City with respect to this Project and other major projects within the City is to foster employment opportunities for Carson residents. To that end, Developer covenants that with respect to the construction, operation and maintenance of the Project, Developer shall make reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction,

operation, and maintenance of the Project to be advertised in such a manner as to target local City residents and shall make other reasonable efforts at local employment outreach as the City shall approve. Developer shall also notify the City of jobs available at the Project such that the City may inform City residents of job availability at the Project. Developer will inform its purchasers and lessees of the provisions of these requirements. Nothing in this paragraph shall require Developer to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 5.7 are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.

5.8 Prevailing Wages. Developer's cost of developing the Project and constructing all of the on-site and off-site improvements, if any, at or about the Property required to be constructed for the Project shall be borne by Developer. Developer is aware of the laws of the State governing the payment of prevailing wages on public projects and will comply with same and will defend, hold harmless, and indemnify City in the event Developer fails to do so. As the City is not providing any direct or indirect financial assistance to Developer, the Project should not be considered to be a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code § 1720. Accordingly, it is believed by the parties that Developer is not required to pay prevailing wages in connection with any aspect of the Development or the construction of the Project. However, to the extent that (contrary to the parties' intent) it is determined that Developer was required to pay prevailing wage and has not paid prevailing wages for any portion of the Project, Developer shall defend, indemnify, and hold the City (which, for purposes of this Section 5.8, shall include its related agencies, officers, employees, agents and assigns) harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that Developer failed to pay prevailing wages in connection with the construction of the Project. City shall reasonably cooperate with Developer regarding any action by Developer hereunder challenging any determination that the Project is subject to the payment of prevailing wages. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without Developer's consent as to the City's liabilities or rights only, but should it do so, City shall waive the indemnification herein provided such waiver occurs prior to the issuance of any judgment in the matter.

5.9 Fees, Taxes, and Assessments.

a. **Processing Fees**. Developer shall pay all processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Project Development Approvals, including but not limited to, actual City Attorney fees incurred by City for the review, preparation and negotiation of the Entitlements, inclusive of this Agreement, and for monitoring compliance with any Project Development Approvals granted or issued, in accordance with the Reimbursement and Indemnification Agreement entered into by and between the Parties effective April 6, 2023, and as the same may be amended from time to time by mutual agreement of the Parties.

b. **Permit Fees**. Except as expressly provided in this Agreement, Developer shall pay all standard permit fees and other fees and charges which are standard and uniformly-applied to similar projects in the City, which may be increased from time-to-time in accordance with cost of living or cost of construction indices or other current schedules or by other incremental means in accordance with applicable law. If any standard permit fee or other fee or charge does not exist as of the Execution Date, then Developer shall be obligated to pay such fee or charge only if it is a processing fee or charge, and in no event shall Developer be obligated to pay any new type of development impact fee as defined in Government Code Section 66000(b) for the Project during the Term of this Agreement, except as provided in subsection (c) below.

c. **General Charges**. Nothing herein shall prohibit the application of the following, if lawfully imposed upon the Property, excluding the Citywide CFD special taxes (but not the CFD Payment) and excluding any new type of development impact fee or increase to the rate of any existing development impact fee as defined in Government Code Section 66000(b), other than an incremental scheduled or indexed increase to the rate of an existing development impact fee:

(i) Additional Taxes, Fee, and Charges. Developer, or Developer's Project occupants, shall pay all normal and customary taxes, fees, and charges applicable to all permits necessary for the Project, and any lawful increases in such taxes, fees, and charges hereafter imposed by City, which are standard and uniformly-applied to similar properties in the City;

(ii) Developer, or Developer's Project occupants, shall be obligated to pay any fees or taxes, and lawful increases thereof, imposed on a City-wide basis such as business license fees or taxes, sales or use taxes, transient occupancy taxes, utility taxes, and public safety taxes;

(iii) Developer, or Developer's Project occupants, shall be obligated to pay any types of fees or assessments imposed on an area-wide basis (such as landscape and lighting assessments and community services assessments other than Citywide CFD special taxes) and lawful increases thereof;

(iv) Developer, or Developer's Project occupants, shall be obligated to pay any fees imposed pursuant to any Uniform Code, as adopted by the City; and

(v) Developer, or Developer's Project occupants, shall be obligated to pay any utility service fees and charges, including amended rates thereof, for City services such as electrical utility charges, water rates, and sewer rates.

5.10 Inconsistencies. It is expressly agreed that in the event of any clear and explicit conflict between the provisions or conditions of the MND, the Existing Land Use Regulations, this Agreement, and the Project Development Approvals (other than the MND), then the provisions or conditions of the following shall prevail in this order:

a. MND;

b. this Agreement;

c. Project Development Approvals (other than the MND); and

d. Existing Land Use Regulations that are subject to Developer's Vested Right.

For the avoidance of doubt, the Parties agree that, when determining whether a clear and explicit conflict exists between the provisions or conditions of the documents listed above in this Section 5.10, the fact that one provision or condition may be more detailed than another provision or condition relating to the same subject matter, or that a provision or condition related to a given subject matter may be contained in one document whereas another document is silent on the subject matter, does not, on its own, create a clear and explicit conflict.

6. ANNUAL REVIEW.

6.1 Timing of Annual Review. Pursuant to Government Code § 65865.1, at least once during every twelve (12) month period of the Term, City shall review the good faith compliance of Developer with the terms of this Agreement ("**Annual Review**"). No failure on the part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement, nor shall it be deemed a breach on the part of City or Developer. The cost of the Annual Review shall be borne by Developer and Developer shall pay the actual and reasonable costs incurred by the City for such review.

6.2 Special Review. The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any time at City's sole cost ("**Special Review**"). Developer shall cooperate with the City in the conduct of such Special Reviews.

6.3 Standards for Annual Review. During the Annual Review, Developer shall demonstrate good faith compliance with the terms of this Agreement. "**Good faith compliance**" shall be established if Developer is in substantial compliance with the material terms and conditions of this Agreement.

6.4 Procedure. Each Party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other Party a justification of its position on such matters. The procedure for an Annual Review or Special Review shall be as follows:

a. As part of either an Annual Review or Special Review, within ten (10) days of a request for information by the City, the Developer shall deliver to the City all information and supporting documents reasonably requested by City (i) regarding the Developer's performance under this Agreement

demonstrating that the Developer has complied in good faith with the terms of this Agreement, and (ii) as required by the Existing Land Use Regulations.

b. The City Manager, or his/her designee, shall prepare and submit to Developer a written report on the performance of this Agreement and identify any perceived deficiencies in Developer's performance of this Agreement. The Developer may submit written responses to the report and Developer's written response shall be included in the City Manager's report. The City Manager may then meet and confer with the Developer regarding the Developer's written response. If the City Manager determines, in light of Developer's response and/or the meet and confer, that the Developer has substantially complied with the terms and conditions of this Agreement, the Annual or Special Review shall be concluded.

c. If the City Manager, following review of Developer's written responses and a meet and confer between City Manager and Developer, continues to perceive any deficiencies in Developer's performance of this Agreement, then a public hearing shall be held before the City Council at which the Council will review the City Manager's report. The report to Council shall be made at a regularly-scheduled City Council meeting occurring as soon as possible, subject to the requirements of the Brown Act, after the commencement of the Annual or Special Review process outlined in this Section 6.4. If the City Council finds and determines, based on substantial evidence, that the Developer has not substantially complied with the terms and conditions of this Agreement for the period under review, the City may declare a default by the Developer in accordance with Article 7.

d. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "force majeure" as defined in, and subject to the provisions of, Section 13.10.

6.5 Certificate of Agreement Compliance. If, at the conclusion of an Annual Review or a Special Review, Developer is found to be in compliance with this Agreement, City shall, upon written request by Developer, issue a Certificate of Agreement Compliance ("**Certificate**") to Developer stating that after the most recent Annual Review or Special Review and based upon the information known or made known to the City Manager, Planning Commission, and City Council that (i) this Agreement remains in effect and (ii) Developer is in compliance. The Certificate, whether issued after an Annual Review or Special Review, shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer shall at its cost record the Certificate with the County Recorder. Additionally, Developer may at any time request from the City a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Property, or any lot or parcel within the Property.

6.6 Review Process Not a Prerequisite to Declaring a Default. Neither the Annual Review nor Special Review procedure is a prerequisite to either party declaring a default and initiating the default and cure procedure in Article 7. In other words, either Party may

declare a default at any time without first undertaking the Annual Review or Special Review process.

6.7 Public Hearings. The public hearing prescribed by Section 6.4 is independent of, and in addition to, any further hearing procedures relating to defaults and remedies prescribed in Article 7 below. Thus, if the City Council finds that the Developer has not substantially complied with the terms and conditions of this Agreement as part of a review process pursuant to Section 6.4 and determines to declare a default, the City Council is still required to follow the notice/cure process (Section 7.2) and the termination hearing process (Section 7.4) before terminating this Agreement.

7. DEFAULTS AND REMEDIES.

7.1 Remedies Available. The parties acknowledge and agree that other than the termination of this Agreement pursuant to this Article 7, specific performance, injunctive and declaratory relief are the only remedies available for the enforcement of this Agreement and knowingly, intelligently, and willingly waive any and all other remedies otherwise available in law or equity. Accordingly, and not by way of limitation, and except as otherwise provided in this Agreement, each Party shall not be entitled to any money damages from the other Party by reason of any default under this Agreement (other than specific performance, injunctive and declaratory relief to perform any monetary obligation hereunder). Further, Developer shall not bring an action against City nor obtain any judgment for damages for a regulatory taking, inverse condemnation, unreasonable exactions, reduction in value of property, delay in undertaking any action, or asserting any other liability for any matter or for any cause which existed or which Developer knew of or should have known of prior to the time of entering into this Agreement, Developer's sole remedies being as specifically provided above. Likewise, City shall not bring an action against Developer nor obtain any judgment for damages for any action or for asserting any other liability for any matter or cause related to the Project and within the scope of this Agreement which existed or which the City knew of or should have known of prior to the time of entering into this Agreement, City's sole remedies being as specifically provided above. City and Developer each acknowledge that such remedies are adequate to protect their respective interests hereunder and the waiver made herein is made in consideration of the obligations assumed by the respective Parties hereunder.

7.2 Declaration of Default & Opportunity to Cure.

a. Rights of Non-Defaulting Party after Default. The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default or to enforce any covenant or agreement herein except as provided in Section 7.1. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the Party seeking relief ("**Non-Defaulting Party**") shall comply with the notice and cure provisions of this Section 7.2.

b. Notice and Opportunity to Cure. A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party ("**Defaulting Party**") to perform any material duty or obligation of the Defaulting Party under the terms of this Agreement. However, the Non-

Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure (the "**Default Notice**"). The Defaulting Party shall be deemed in Default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within thirty (30) days after the date of such Default Notice or ten (10) days for monetary defaults (or such lesser time as may be specifically provided in this Agreement). If such non-monetary Default cannot be cured within such thirty (30) day period, then the Defaulting Party shall not be deemed in breach of this Agreement if the Defaulting Party does each of the following:

(i) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

(ii) Notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the default;

(iii) Promptly commences to cure the default within the thirty (30) day period;

(iv) Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

(v) Diligently prosecutes such cure to completion.

7.3 Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Non-Defaulting Party may seek termination of this Agreement, in which case the Non-defaulting Party shall provide the Defaulting Party with a written notice of intent to terminate this Agreement ("**Termination Notice**"). The Termination Notice shall state that the Non-Defaulting Party will elect to terminate this Agreement within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default or a copy of the Default Notice) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Non-Defaulting Party's election to terminate this Agreement will only be rescinded if so, determined by the City Council pursuant to Section 7.4 and if Developer is the Defaulting Party. If City is the Defaulting Party, Developer can rescind its Termination Notice to City without a City Council determination.

7.4 Hearing Opportunity Prior to Termination. If Developer is the Defaulting Party pursuant to Section 7.3, then the City's Termination Notice to Developer shall additionally specify that Developer has the right to a hearing prior to the City's termination of any Agreements ("**Termination Hearing**"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code §§ 54950–54963. At said Termination Hearing, Developer shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence

presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:

a. Decide to terminate this Agreement; or

b. Determine that Developer is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or

c. Impose conditions on a finding of default and a time for cure, such that Developer's fulfillment of said conditions will waive or cure any default.

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has caused or will cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, or such other interests that City and public may have in the Project.

7.5 Rights and Duties Following Termination. Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, or (iii) the indemnification provisions of Article 8. Termination of this Agreement shall not affect either Party's rights or obligations with respect to any Development Approval granted prior to such termination.

7.6 Waiver of Breach. By not challenging any Development Approval within ninety (90) days of the action of City enacting the same, Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement.

7.7 Interest on Monetary Default. In the event Developer fails to perform any monetary obligation under this Agreement, Developer shall pay interest thereon at the rate of six and one-half percent (6.5%) per annum from and after the due date of said monetary obligation until payment is actually received by City.

7.8 Developer's Failure to Acquire Property. In the event Developer should fail to or otherwise does not acquire the legal leasehold interest to the Property as described in Recital L on or before the date (the "**Adopting Ordinance Anniversary**") occurring one (1) year after the effective date of the Adopting Ordinance, then this Agreement shall automatically and retroactively become ineffective, null, and void as of the Execution Date; provided, however, Developer's option to lease the Property as described in Recital L remains in effect throughout such one- (1) year period (unless such option has been exercised); provided further, such one- (1) year period shall be subject to extension as set forth in Section 2.6. Notwithstanding the foregoing, any such retroactive ineffectiveness shall not extend to the indemnification or insurance provisions of this Agreement, which shall continue to apply with respect to activities of Developer and performance of this Agreement that occurred prior to the Adopting Ordinance Anniversary. If this Agreement becomes ineffective pursuant to this Section 7.8, all other Entitlements shall automatically terminate and become invalidated concurrently. Where

automatic tolling does not apply, Developer may request an administrative extension of up to one (1) year from the Adopting Ordinance Anniversary from the Director. The Director shall grant such one- (1) year extension if Developer can demonstrate to the reasonable satisfaction of the Director that it is making active and good faith progress towards acquiring legal title to the Property.

8. THIRD PARTY LITIGATION.

8.1 Indemnity Obligations on Third-Party Claims.

a. Developer hereby agrees to indemnify, defend, and hold City, its officers, agents, employees, members of its City Council and any commission, partners and representatives (collectively, "**City Indemnitees**") harmless from any and all claims, actions, suits, damages, liabilities, and any other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature) (collectively, "**Claims**"), asserted against City or City Indemnitees arising out of or in connection with this Agreement, including, without limitation, (i) City's approval of this Agreement and all documents related to any of the Project Development Approvals, Conditions of Approval, permits, or other entitlements for the Project and issues related thereto (including, City's determinations regarding CEQA compliance and/or any other development incentives granted to the Project), (ii) the development of the Project, (iii) liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from, or are attributable to, Developer's (or Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf ("**Developer's Representatives**")) performance of its obligations under this Agreement and/or the negligence or misconduct of Developer or of Developer's Representatives which relate to the Project or the Property; and (iv) City's agreement in Section 11.1 to maintain as confidential and withhold from public disclosure the information identified by Developer as exempt from public disclosure pursuant to Section 11.2(a). Nothing herein shall be construed to mean that Developer shall indemnify the City for any Claims to the extent arising from, or alleged to arise from, the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors, or subcontractors.

b. The City shall provide Developer with notice of the pendency of such Claims within ten (10) days of being served or otherwise notified of such Claims and shall request that Developer defend such action. Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. In all cases, City shall have the right to utilize the City Attorney's office in any legal action. Upon City's notification to Developer of the pendency of the claim or suit, Developer shall make a minimum deposit sufficient to pay all of Developer's indemnification obligations for the following ninety (90) days, which includes legal costs and fees anticipated to be incurred as

determined by City in its sole discretion (not to exceed One Hundred Thousand Dollars ($100,000)). Developer shall make deposits required under this Section 8.1 within fifteen (15) days of receipt of City's written request. At no point during the pendency of such claim or suit, shall the minimum balance of the deposit fall below Twenty Thousand Dollars ($20,000). City shall endeavor to provide Developer written notice when City determines the minimum balance is approaching Twenty Thousand Dollars ($20,000).

c. If Developer fails to provide the deposit, and after compliance with the provisions of this Section 8.1, the City may abandon the action and Developer shall pay all costs resulting therefrom (including but not limited to any attorneys' fees and other costs for which City may be liable as result of such abandonment), and City shall have no liability to Developer. It is expressly agreed that City shall have the right to utilize the City Attorney's Office or use other legal counsel of its choosing. Developer's obligation to pay the defense costs of City shall extend until final judgment, including any appeals. City agrees that it shall fully cooperate with Developer in the defense of any matter in which Developer is defending and/or holding the City harmless. City shall discuss litigation strategy with Developer in good faith but shall retain absolute discretion to make strategy decisions for the City. City may make all reasonable decisions with respect to its representation in any legal proceeding, including its inherent right to abandon or to settle any litigation brought against it in its sole and absolute discretion, and City's reasonable decision to settle or abandon a matter, including but not limited to following an adverse judgment or failure to appeal, shall not cause a waiver of the City's indemnification rights. Notwithstanding the foregoing or anything stated herein or in prior written agreements between Developer and City, unless such settlement is approved by Developer, Developer (i) shall not be required to pay any settlement amount over Five Hundred Thousand Dollars ($500,000.00) and (ii) shall not be bound by such settlement except with respect to its obligation to pay the settlement amount as to City up to $500,000.00.

8.2 Hold Harmless: Developer's Construction, and Other Activities. Developer shall defend, save and hold the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Developer's or Developer's agents, contractors, subcontractors, agents, or employees' Project construction activities and operations under this Agreement, whether such Project construction activities and operations be by Developer or by any of Developer's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for Developer or any of Developer's agents, contractors or subcontractors. Nothing herein shall be construed to mean that Developer shall hold the City harmless and/or defend it from any claims to the extent arising from, or alleged to arise from, the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors, or subcontractors.

8.3 Loss and Damage. City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness, or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature. Nothing herein shall be construed to mean that Developer shall bear liability for the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors of subcontractors.

8.4 Non-liability of City Officers and Employees. No official, agent, contractor, or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or to its successor, or for breach of any obligation of the terms of this Agreement.

8.5 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.

8.6 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than a default by City.

9. INSURANCE.

9.1 Types of Insurance.

a. **General Liability Insurance**. Prior to commencement and until completion of construction of improvements by Developer on the Property, Developer shall, at its sole cost and expense, keep or cause to be kept in force, for the mutual benefit of City and Developer, commercial general liability insurance against claims and liability for bodily injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property or for property damage. Such policy shall provide protection of at least $5,000,000 per occurrence, and $10,000,000 in the general aggregate. Limits can be met by a combination of primary and excess policies.

b. **Workers' Compensation / Employer's Liability**. To the extent Developer and its contractors utilize employees for any portion of the Project, Developer and such contractors shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that Developer and any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers' compensation insurance as required by law. Employer's Liability policy shall provide limits of $1,000,000 bodily injury by accident-each accident,

$1,000,000 bodily injury by disease-each employee, and $1,000,000 bodily injury by disease-policy limit.

c. **Automobile Liability Insurance**. Developer shall ensure that all contractors with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder maintains automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Developer arising out of or in connection with work to be performed under this Agreement, including coverage for any owned (if any), hired, non-owned or rented vehicles, in an amount not less than $5,000,000 for each accident. Limits can be met by a combination of primary and excess policies.

d. **Pollution Liability Insurance**. Environmental Impairment Liability Insurance shall be written on a Contractor's Pollution Liability form or other form reasonably acceptable to City providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than $5,000,000 dollars per claim and $5,000,000 in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

e. **Builder's Risk Insurance**. Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions or provisional limit provisions. The policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the project; (4) ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with reasonable commercially available sub-limits to insure the replacement value of any key equipment item; and (6) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the project site or any staging area. The City shall be included as Loss Payee, to the extent applicable, for its respective insurable interest.

f. **Professional Liability Insurance**. To the extent exposure exists, Professional liability insurance may be obtained by Developer or its Contractors/Subcontractors that is appropriate to the profession for any Project design work, with limits no less than $5,000,000 per claim and $5,000,000 general aggregate. This coverage will be written on a "claims made" basis, and must include coverage for contractual liability. The

professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of the services or the termination of this Agreement. During this additional 5-year period, Developer shall annually and upon request of the City submit written evidence of this continuous coverage.

g. **Other Insurance**. Developer may procure and maintain any Project-related insurance not required by this Agreement, but all such insurance shall be subject to all of the provisions hereof pertaining to insurance and shall be for the benefit of City and Developer.

h. **Contractors/Subcontractors**. Developer shall ensure that all contractors and sub-contractors maintain the required minimum insurance coverages and include the City and Developer as additional insured, as applicable, or shall include the contractors and subcontractors under its insurance.

9.2 Insurance Policy Form, Sufficiency, Content, and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed and admitted to do business by California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be non-assessable and shall contain language, to the extent obtainable, to the effect that: (i) any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance; (ii) the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the General Liability and Automobile Liability policies are primary and noncontributing with any insurance that may be carried by City; Umbrella/Excess liability is noncontributing; and (iv) the policies cannot be canceled except after thirty (30) days' written notice by the insurer to City or City's designated representative except ten (10) days for nonpayment of premium. Developer shall furnish City certificates evidencing the insurance. City shall be provided with additional insured status on all policies of insurance required to be procured by the terms of this Agreement, except for all insurance required by Developer's contractors, both City and Developer shall be provided with additional insured status, excluding in all cases Workers' Compensation/Employer's Liability, professional liability, and builder's risk polices. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

9.3 Failure to Maintain Insurance and Proof of Compliance. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies within the following time limits:

a. For insurance required above, within ninety (90) days after the Effective Date.

b. For any renewal or replacement of a policy already in existence, within ten (10) days of the expiration or termination of the existing policy.

c. If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that that insurance has been procured, such failure or refusal shall be a default hereunder.

9.4 Waiver of Subrogation. Except for Professional Liability, Developer agrees that it shall not make any claim against, or seek to recover from City or its agents, servants, or employees, for any loss or damage to Developer or to any person or property, except as specifically provided hereunder and Developer shall give notice to any insurance carrier of the foregoing waiver of subrogation, and obtain from such carrier, a waiver of right to recovery against City, its agents, and employees.

9.5 Broader Coverages and Higher Limits. Notwithstanding anything else herein to the contrary, if Developer maintains broader coverages and/or higher limits than the minimums shown above, the City shall be entitled to the broader coverages and/or higher limits maintained by Developer.

10. MORTGAGEE PROTECTION.

10.1 The Parties agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed, of trust, or any other security device or agreement securing financing with respect to the Property. City acknowledges that the third parties providing such financing may require certain Agreement interpretations, modifications, and estoppel certificates, and City agrees upon request, from time to time, to communicate and meet with Developer and representatives of such third parties to negotiate in good faith any such estoppel certificates and/or requests for interpretation or modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested estoppel certificate, interpretation, or modification, provided City determines such estoppel certificate, interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the rights and privileges set forth in this Article 10.

10.2 Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

10.3 Any Mortgagee that has submitted a request in writing to City in the manner specified herein for giving notices shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

10.4 If City timely (i.e., within the stated cure period pursuant to Section 7.2(b)) receives a request from a Mortgagee for a copy of the Default Notice given to Developer (provided the default has not been cured by Developer by such time), then City shall, within ten (10) days of receipt of the Mortgagee's request, provide a copy of such Default Notice to the Mortgagee. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining time allowed for Developer to cure under Section 7.2(b), or (ii) sixty (60) days after Mortgagee's receipt of any Default Notice; provided, however, if such default cannot be cured by Mortgagee without Mortgagee having possession of the

Property, the cure period available to Mortgagee shall be extended for the time period (not to exceed an additional one hundred twenty (120) days after Mortgagee's receipt of such Default Notice) reasonably required for Mortgagee obtain possession of the Property, provided that Mortgagee diligently and continuously proceeds to use commercially reasonable efforts to so obtain possession of the Property and to complete such cure.

10.5 Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the Mortgage or deed of trust, or deed in lieu of such foreclosure, or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement.

11. ASSIGNMENTS.

11.1 The experience, knowledge, capability and reputation of Developer, its principals, employees, and affiliates were a substantial inducement for the City to enter into this Agreement. Except as set forth in Section 11.3 below, Developer may not sell, transfer, lease or assign this Agreement, the Property, or any part thereof (such sale, transfer, lease or assignment shall be referred to as an "**Assignment**") without the prior written consent of the Director, which consent shall not be unreasonably withheld, after Developer provides reasonably satisfactory documentation and evidence demonstrating that the person or entity to whom any of the rights or privileges granted herein are to be sold, transferred, leased, assigned, hypothecated, encumbered, merged, or consolidated (such person or entity, the "**Transferee**"), meets the following criteria: (i) the Transferee has the financial strength and capability to perform its obligations under the Agreement, (ii) the Transferee has the experience and expertise to operate the Project and experience with operations and projects of a similar scale as the Project; and (iii) the Transferee's key principals have no felony convictions. The proposed Transferee shall execute (with Developer as assignor) and deliver to City an assignment and assumption agreement assuming Developer's Project rights and obligations (an "**Assignment Agreement**"), which Assignment Agreement shall be in a form approved by the City Manager and City Attorney in their reasonable discretion. Should Developer be required to seek consent for an Assignment under this Section 11.1, the City agrees that it shall maintain as confidential and withhold from public disclosure the information identified by Developer as exempt pursuant to Section 11.2(a) below, which may include without limitation the existence of a Consent Request (as defined below) and the Transferee's identity (provided that the City may disclose the Transferee's identity once an Assignment that is the subject of such Consent Request has occurred), unless the City becomes legally compelled to disclose such withheld information or Developer and City mutually agree to the disclosure. Developer shall indemnify, defend, and hold harmless the City for claims and liabilities arising out of or in connection with City maintaining as confidential and withholding such information from public disclosure as provided in Section 8.1(a). If Developer should seek an Assignment that requires the Director's consent prior to paying City the DIF Amount, the CFD Payment, or the Minimum Battery Fee Amount, then Developer must make such payments to City prior to completion of the Assignment. Developer making these payments and, unless the Battery Fee is paid in full, demonstrating to the satisfaction of the Director that the Bond is and will remain effective and be binding as to the Transferee where necessary to protect the City's interest in payment of the Battery Fee, will be a condition precedent to the Director providing consent to the Assignment. The Bond may be substituted by any Transferee if such substitution is approved by the Director, and shall be so substituted if required by the Director.

11.2 Consideration of Requested Assignment. The Director will not unreasonably withhold, condition, or delay approval of a request for approval of an Assignment required pursuant to this Article 11, provided that:

a. Developer delivers written notice to City requesting the Director's approval prior to the completion of the Assignment (the "**Consent Request**"). The Consent Request shall be accompanied by (i) a proposed draft of the Assignment Agreement, which shall be in a form acceptable to the City Attorney and City Manager in their reasonable discretion and (ii) evidence that the proposed Transferee meets the criteria set forth in Section 11.1 above. When submitting a Consent Request to the City, Developer shall clearly identify all information it reasonably determines is exempt from public disclosure by City pursuant to Government Code § 7927.605 or any other applicable law. Developer shall not identify any information as being exempt from public disclosure by City unless Developer reasonably determines such information is legally exempt from public disclosure by City pursuant to Government Code § 7927.605 or any other applicable law.

b. The Assignment is not completed until either (i) the Director has provided its written consent or (ii) the Director has not rejected the Consent Request in writing after the following has transpired: (a) Developer has made an initial Consent Request to the Director in accordance with the notice procedures of Section 13.2, with a 30-day notice period for the Director to respond; and (b) after the conclusion of the 30-day notice period without rejection by the Director, then unless the City has formally acknowledged receipt of the prior notice, Developer has made a second/follow-up Consent Request to the Director in accordance with the notice procedures of Section 13.2, with a 30-day notice period for the Director to respond, except that notice of such second/follow up Consent Request shall be sent via all of the following means: (i) personally delivered as provided in Section 13.2; (ii) mailed as provided in Section 13.2; and (iii) as a courtesy but not a formal means of notice, sent to any known City email address of the City's Planning Manager and Community Development Director and any known professional email address of the City Attorney. Such notice shall not be deemed received until both the personal delivery and the mailing have been deemed received according to the provisions of Section 13.2.

11.3 Assignments Permitted Without the Director's Consent. Notwithstanding Section 11.1 above or any other provision of this Agreement, Assignments related to the following property conveyances and other transactions shall not require consent from the Director or otherwise:

a. The granting of easements, licenses or permits to facilitate construction, operation, or decommissioning of the Project or any public improvements, or such incidental transfers of rights in portions of the Property not necessary for construction, operation, or decommissioning of the Project.

b. The granting of easements or permits for utility purposes.

c. Transactions for financing purposes, including the grant of a deed of trust to secure the funds necessary, but not to exceed the amounts reasonably required, for land acquisition, construction, and/or permanent or other financing of any portion of the Project, or any collateral assignment of this Agreement to any Mortgagee.

d. The acquisition of some or all of the Property by a Mortgagee in its capacity as a Mortgagee, such as through foreclosure or a deed in lieu of foreclosure.

e. A sale or transfer resulting from, or in connection with, a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

f. A sale or transfer between members of the same family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist primarily of family members of the trustor, or transfers to a corporation or partnership in which the family members or shareholders of the transferor own at least twenty-five percent (25%) of the present equity ownership and/or at least fifty percent (50%) of the voting control of Developer.

g. If Developer is a trust, corporation, real estate investment trust, limited liability company or partnership, a transfer of stock of or other ownership interests in Developer, provided there is no material change in the actual day-to-day management and control of Developer.

h. Transactions with any member, partner, officer, employee, or affiliate of Developer or any trust or family member thereof, or transfers of any indirect or upstream ownership interests in Developer, provided in either case there is no material change in the actual day-to-day management and control of Developer.

i. Transfers of any interest in or right to any part of the Property made in lieu of or in reasonable anticipation of condemnation to any person or entity legally empowered to take such interest in or right to the Property under the power of eminent domain.

j. Transfers of direct or indirect interests in Developer in connection with shares of stock sold on a public exchange as part of "going public" or initial public offering or the sale or issuance of shares of stock through any public stock exchange or "over the counter" market.

11.4 Effect of Assignment. Unless otherwise stated within the Assignment Agreement, upon an Assignment:

a. The Transferee shall be liable for the performance of all remaining obligations of Developer with respect to those portions of the Property

which are transferred (the "**Transferred Property**"), but shall have no obligations with respect to any portions of the Property not conveyed (the "**Retained Property**").

b. The owner of the Retained Property shall be liable for the performance of all obligations of Developer with respect to the Retained Property, but shall have no further obligations with respect to the Transferred Property.

c. The Transferee's exercise, use, and enjoyment of the Transferred Property shall be subject to the terms of this Agreement to the same extent as if the Transferee were Developer.

12. AMENDMENT AND MODIFICATION.

12.1 Initiation of Amendment. Either Party may propose an amendment to this Agreement or the Project Development Approvals.

12.2 Procedure and Requirements for Amendments to Development Agreement. The procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance as set forth in Government Code §§ 65867 and 65868. City will process any amendment to this Agreement consistent with state law and will hold public hearings thereon if so, required by state law, and the Parties expressly agree nothing herein is intended to deprive any party or person of due process of law. Except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

12.3 Consent. Except as expressly provided in this Agreement, no cancellation of or amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the parties hereto and recorded in the Official Records of Los Angeles County.

12.4 Administrative Minor Project Modifications. Notwithstanding any other provision and/or Condition of Approval contained in any Project Development Approvals, minor modifications to the Project Development Approvals, the Subsequent Development Approvals, and/or the Development Plans shall be made ministerially, with the approval of the Director. The determination of whether a requested or proposed modification constitutes a minor modification shall be made by the Director in his or her sole discretion, except that minor modifications shall not include any modifications that the Director determines extend beyond the intent of the original approval, and modifications meeting any of the following criteria shall not be deemed to constitute minor modifications: (i) modifications that change the proposed uses analyzed in the MND; (ii) modifications that increase the total amount of battery enclosure square footage within the Project by more than ten percent (10%); (iii) modifications that increase building/structure heights within the Property in comparison to what was identified on the Development Plans; (iv) modifications that substantially deviate from the design or dimensions of any Gen-Tie line transmission pole as set forth in the Development Plans or from the number, height or location of the Gen-Tie line transmission poles set forth in Exhibit "C"; or (v) other modifications that involve any deviation of architectural design or details that is not in substantial conformance with the approved set of Development Plans. Notwithstanding the

foregoing, for the avoidance of doubt, any increase to the number or height of gen-tie line transmission poles beyond that specified in Exhibit "C" would require an amendment to this Agreement under Section 12.2 and would not constitute a minor modification within the meaning of this Section 12.4.

13. MISCELLANEOUS PROVISIONS.

13.1 Recordation. The City Clerk shall cause a copy of this Agreement to be recorded against the Property with the County Recorder within ten (10) calendar days after the Execution Date. The failure of the City to sign and/or record this Agreement shall not affect the validity of this Agreement.

13.2 Notices. Notices and correspondence required or permitted by this Agreement shall be in writing and either personally delivered or sent by registered, certified, or overnight mail or delivery service. Notices shall be deemed received upon personal delivery or on the second business day after registered, certified, or overnight mailing or delivery, or email if such email notice is acknowledged as received by the receiving Party. Notices shall be addressed as follows:

To City:	City of Carson 701 East Carson Street Carson, California 90745 Attn: Planning Manager
With copy to:	Aleshire & Wynder, LLP 1 Park Plaza, Suite 1000 Irvine, CA 92614 Attn: Sunny Soltani, City Attorney
To Developer:	Avocet Energy Storage, LLC c/o Arevon Energy, Inc. 8800 N. Gainey Center Dr., Suite 100 Scottsdale, AZ 83258 Attn: Contracts Management Email: contractnotices@arevonenergy.com
With copy to:	Arevon Energy, Inc. 8800 N. Gainey Center Dr., Suite 100 Scottsdale, AZ 83258 Attn: John Meinecke

A Party may change its address by giving written notice to the other Party. Thereafter, Notices shall be addressed and transmitted to the new address.

13.3 Estoppel Certificates. Either Party (or a Mortgagee) may at any time during the Term deliver written notice to the other Party requesting an Estoppel Certificate stating:

a. The Agreement is in full force and effect and is a binding obligation of the Parties;

b. The Agreement has not been amended or modified or, if so amended, identifying the amendments; and

c. There are no existing defaults under the Agreement to the actual knowledge of the Party signing the Estoppel Certificate as of the date of the Estoppel Certificate, or if there are any defaults existing to the actual knowledge of such Party as of such date, identifying same.

A Party shall provide a signed Estoppel Certificate to a requesting Party (or Mortgagee) within thirty (30) days after receipt of a request made in accordance with the notice procedures of Section 13.2. If such Party fails to respond to such request within thirty (30) days, then the requesting Party may send a second request to such Party, except that, in the case of a request made by Developer to the City, the notice shall be sent via all of the following means unless the City has formally acknowledged receipt of the prior notice: (i) personally delivered as provided in Section 13.2; (ii) mailed as provided in Section 13.2; and (iii) as a courtesy but not a formal means of notice, sent to any known City email address of the City's Planning Manager and Community Development Director and any known professional email address of the City Attorney. Such notice shall not be deemed received until both the personal delivery and the mailing have been deemed received according to the provisions of Section 13.2. In the event either Party fails to respond to the requesting Party's second request within twenty (20) days after receipt of such second request, the Estoppel Certificate shall be deemed approved by such Party.

City Manager may sign Estoppel Certificates on behalf of the City. An Estoppel Certificate may be relied on by assignees and Mortgagees.

13.4 Project as a Private Undertaking. It is specifically understood and agreed by the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect, and that each Party is an independent contracting entity with respect to this Agreement. The only relationship between City and Developer is that of a government entity regulating the development of property owned by a private party. City agrees that by its approval of, and entering into, this Agreement that it is not taking any action which would transform this private Development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement, including but not limited to Developer's obligation to provide the public improvements set forth herein.

13.5 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

13.6 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter of this Agreement. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

13.7 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement.

13.8 Severability. If any term, provision, covenant, or condition of this Agreement shall be determined invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

13.9 Covenant Not To Sue. The parties to this Agreement, and each of them, agree that this Agreement and each term hereof is legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, or based on any allegation or assertion in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable, except that nothing in this Section 13.9 shall affect the Parties' rights or remedies related to any Default or breach of the Agreement.

13.10 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, tornados, hurricanes, floods, wars, terrorism, riots or similar hostilities, strikes, and other labor difficulties beyond the Party's control, government regulations, pandemics, government-ordered quarantine, court actions (such as restraining orders or injunctions), or other causes beyond the Party's reasonable control ("**Force Majeure**"). If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of the impacts on the Project of each such event, as set forth in Section 2.6.

13.11 Waiver. All waivers of performance must be in a writing signed by the Party granting the waiver. Failure by a Party to insist upon the strict performance of any provision of this Agreement shall not be a waiver of future performance of the same or any other provision of this Agreement.

13.12 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

13.13 Governing Law and Venue. This Agreement shall be governed and interpreted in accordance with California law, with venue for any litigation concerning this Agreement in Los Angeles, California.

13.14 Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of City shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

13.15 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on

behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

13.16 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend litigation against the other Party, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and, in addition, a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to a final judgment.

13.17 Recitals. The Recitals in this Agreement constitute part of this Agreement, and each Party shall be entitled to rely on the truth and accuracy of each Recital as an inducement to enter into this Agreement.

13.18 No Brokers. City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each Party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorney's fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement arising out of agreements by the indemnifying Party to pay any commission or finder's fee.

13.19 Joint and Several Liability. In the event that Developer should enter into an Assignment of this Agreement, Developer shall bear ultimate responsibility for all obligations, conditions, and restrictions set forth under this Agreement, it being understood that both Developer and any Transferee shall be jointly and severally liable, until the Assignment has been legally consummated and Developer has provided notice of the Assignment to City and/or the Director and otherwise complied with all applicable provisions of Article 11 of this Agreement (including receiving any and all required City approvals (including any deemed approvals)), after which time only the Transferee shall be liable, and Developer shall thereafter automatically be released from all obligations under this Agreement assumed by such Transferee.

13.20 Compliance with Laws. Developer must comply with all applicable federal, state, and local laws and regulations, including the CMC.

13.21 Warranty & Representation of Non-Collusion. No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code §§ 1091 or 1091.5. Developer warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any

City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Developer further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Developer is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect. Nothing herein shall prevent Developer from providing lawful election donations, subject to compliance with Government Code § 84308 and other applicable law.

13.22 Counterparts. This Agreement may be executed by the Parties in counterparts, which together shall have the same effect as if each of the Parties had executed the same instrument.

[SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first set forth above.

CITY:

CITY OF CARSON,
a municipal corporation

_____
Lula Davis-Holmes, Mayor

ATTEST

_____
Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM
ALESHIRE & WYNDER, LLP

_____
Sunny K. Soltani, City Attorney
[brj]

DEVELOPER:

Avocet Energy Storage, LLC,
a Delaware limited liability company

By:_____
Name:
Title:

By:_____
Name:
Title:

DEVELOPER SHALL PROVIDE CITY WITH COPIES OF APPROPRIATE DOCUMENTS EVIDENCING AUTHORITY OF SIGNATORIES TO EXECUTE AND BIND DEVELOPER. DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2024, before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL

☐ CORPORATE OFFICER

_____

TITLE(S)

☐ PARTNER(S) ☐ LIMITED

☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER_____

_____

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____

TITLE OR TYPE OF DOCUMENT

_____

NUMBER OF PAGES

_____

DATE OF DOCUMENT

_____

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2024, before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL

☐ CORPORATE OFFICER

_____

TITLE(S)

☐ PARTNER(S) ☐ LIMITED

☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER_____

_____

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____

TITLE OR TYPE OF DOCUMENT

_____

NUMBER OF PAGES

_____

DATE OF DOCUMENT

_____

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

[to be attached]

Exhibit A

File No.: NCS-1171056-NRG

The Land referred to herein below is situated in the City of Carson and City of Los Angeles, County of Los Angeles, State of California, and is described as follows:

PARCEL 1: (APN: 7315-020-021)

THE NORTHEASTERLY 640.00 FEET OF THAT PORTION OF LOT 1 OF TRACT NO. 10844, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 301 PAGES 37, 38, AND 39 OF MAPS, RECORDS OF SAID COUNTY, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF THE LAND AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 9, 1998 AS INSTRUMENT NO 98-1608470, OFFICIAL RECORDS.

EXCEPT THEREFROM THAT PORTION OF SAID LAND LYING SOUTHWESTERLY OF A LINE PARALLEL WITH AND DISTANT 348.00 FEET, AS MEASURED AT RIGHT ANGLES, FROM SAID SOUTHWESTERLY LINE OF SAID INSTRUMENT NO. 98-1608470, AND LYING SOUTHWESTERLY OF A LINE PARALLEL WITH AND DISTANT 87.00 FEET, AS MEASURED AT RIGHT ANGLES, FROM THE NORTHEASTERLY LINE OF SAID LOT 1.

SAID LAND IS ALSO SHOWN AS PARCEL 1 ON CERTIFICATE OF COMPLIANCE NO. 210-06, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 27, 2006 AS INSTRUMENT NO. 2006-2876653 OF OFFICIAL RECORDS

PARCEL 2: (APN: 7315-020-022)

THAT PORTION OF THE NORTHEASTERLY 640.00 FEET OF THAT PORTION OF LOT 1 OF TRACT NO. 10844, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 301 PAGES 37, 38, AND 39 OF MAPS, RECORDS OF SAID COUNTY, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF THE LAND AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 9, 1998 AS INSTRUMENT NO 98-1608470, OFFICIAL RECORDS, AND LYING SOUTHWESTERLY OF A LINE PARALLEL WITH AND DISTANT 348.00 FEET, AS MEASURED AT RIGHT ANGLES, FROM SAID SOUTHWESTERLY LINE OF SAID INSTRUMENT NO. 98-1608470, AND LYING SOUTHWESTERLY OF A LINE PARALLEL WITH AND DISTANT 87.00 FEET, AS MEASURED AT RIGHT ANGLES, FROM THE NORTHEASTERLY LINE OF SAID LOT 1.

SAID LAND IS ALSO SHOWN AS PARCEL 2 ON CERTIFICATE OF COMPLIANCE NO. 210-06, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 27, 2006 AS INSTRUMENT NO. 2006-2876653 OF OFFICIAL RECORDS

PARCEL 3: APN: 7315-011-903

THAT PORTION OF THE MARIA DOLORES DOMINGUEZ DE WATSON 3365.95 ACRE ALLOTMENT IN THE RANCHO SAN PEDRO, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, IN BOOK 1 PAGES 119, 120 AND 121 OF PATENTS, AS SHOWN ON CLERKS FILED MAP NO. 145, FILED IN CASE NO. 3284 OF SUPERIOR COURT, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WITHIN A STRIP OF LAND 250 FEET WIDE, 125 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

BEGINNING AT A POINT IN THE WESTERLY LINE OF THAT CERTAIN STRIP OF LAND, 120 FEET WIDE, DESCRIBED IN THE SECOND PARCEL OF A DEED TO THE PACIFIC ELECTRIC RAILWAY COMPANY, RECORDED IN BOOK 1835 PAGE 251

EXHIBIT "B"

DEPICTION OF THE PROPERTY

[to be attached]

Avocet Energy Storage Project Parcel

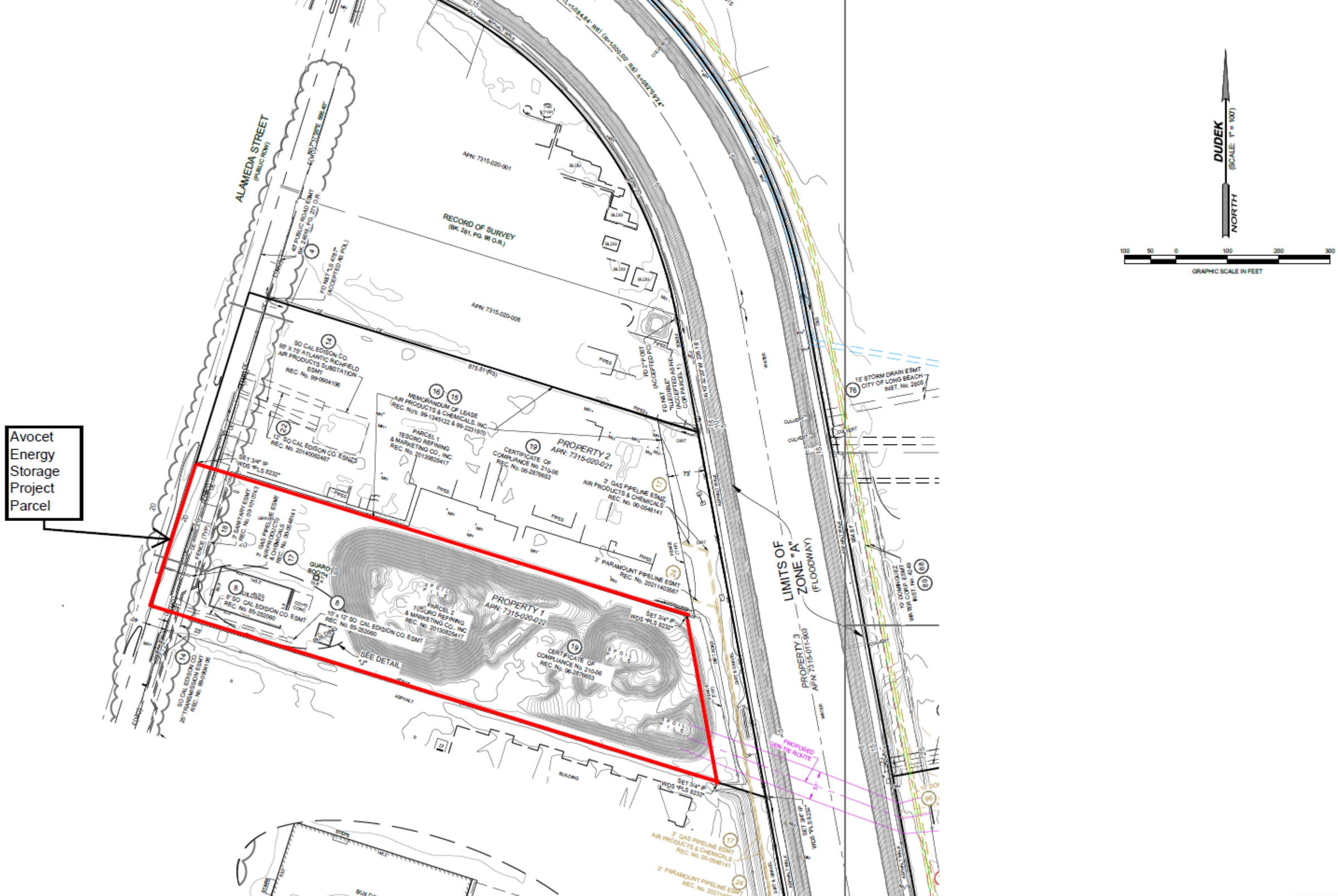


EXHIBIT "C"

DETAIL OF GEN-TIE LINE ROUTE AND

NUMBER AND HEIGHT OF ASSOCIATED TRANSMISSION POLES

[to be attached]

AN ALTA/NSPS LAND TITLE SURVEY

AREVON AVOCET

COMPRISING NINE(9) PARCELS

PARCEL 1) APN: 7315-020-021

PARCEL 2) APN: 7315-020-022

PARCEL 3) APN: 7315-011-903

PARCEL 4) APN: 7315-011-805

APN: 7315-011-810

APN: 7315-011-811

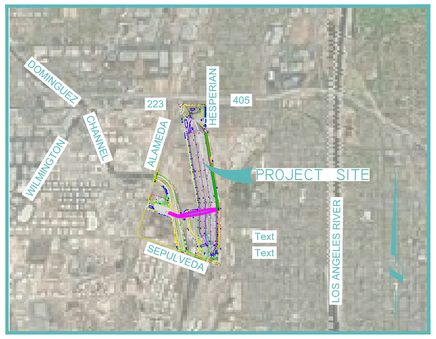
PARCEL 5) (NO APN)

PARCEL 6) APN: 7315-010-801

APN: 7315-010-804

CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

TOWNSHIP, RANGE, SECTION

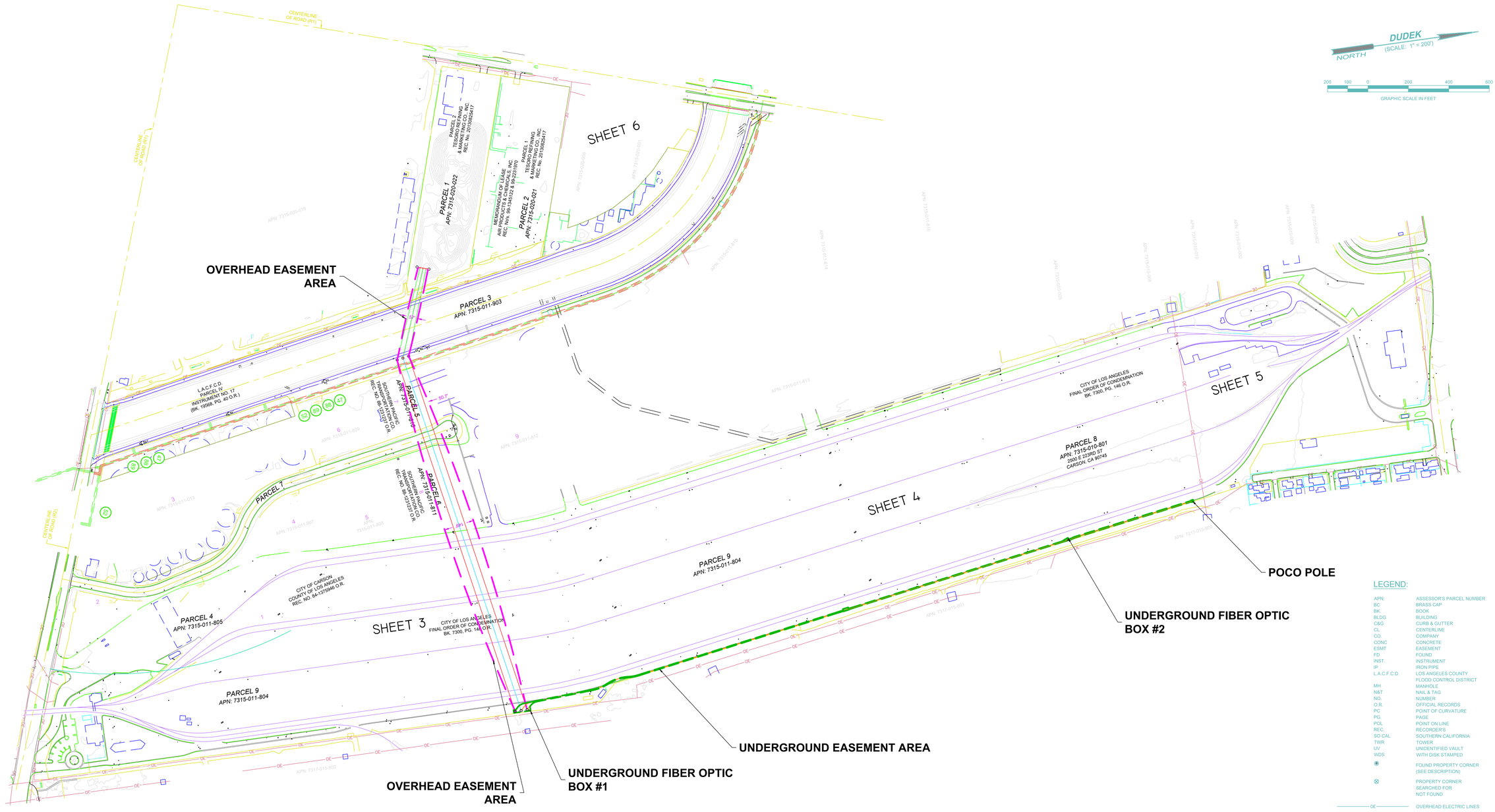


VICINITY MAP
(NOT TO SCALE)

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1(R2)	42.43'	27.00	90°02'53"
C2(R2)	191.33'	318.00	34°28'25"
C3(R2)	267.16'	318.00	48°08'07"
C4(R2)	350.15'	382.00	52°31'07"
C5(R2)	28.31'	92.00	17°37'46"
C6(R2)	202.88'	54.00	215°15'32"
C7(R2)	28.31'	92.00	17°37'46"
C8(R2)	291.49'	318.00	52°31'07"
C9(R2)	320.93'	382.00	48°08'07"
C10(R2)	229.84'	382.00	34°28'25"
C11 (R2)	42.07' 42.07'	27.00 27.00	89°16'50" 89°16'52"
C12 (R2)	117.69' 117.67'	10,050.00 10,050.00	00°40'15" 00°40'15"
C13	17.17'	1,910.08	00°30'54"

LINE TABLE		
LINE	BEARING	LENGTH
L1 (R5)	N72°42'05"W N72°50'15"W	98.39' 98.39'
L2 (R2)	N19°33'05"E N19°27'00"E	221.50' 221.51'
L3 (R2)	N14°55'20"W N15°01'25"W	223.41' 223.41'
L4 (R2)	S79°27'40"W S79°21'35"W	378.03' 378.00'
L5 (R2)	N10°32'24"W N10°38'25"W	309.59' 309.59'
L6 (R2)	N79°27'40"E N79°21'35"E	358.57' 358.53'
L7 (R2)	N28°10'06"W N26°16'11"W	50.00' 50.00'
L8 (R2)	S10°32'20"E S10°38'25"E	234.08' 234.07'
L9 (R2)	S07°05'26"W S06°59'21"W	50.00' 50.00'
L10 (R2)	S10°32'20"E S10°38'25"E	249.46' 249.45'
L11 (R2)	S79°27'40"W S79°21'35"W	400.99' 400.99'
L12 (R2)	N00°04'39"E N00°01'25"E	330.63' 330.63'
L13 (R2)	N79°27'40"E N79°21'35"E	442.44' 442.44'

LINE TABLE		
LINE	BEARING	LENGTH
L14 (R2)	S14°55'20"E S15°01'25"E	223.41' 223.41'
L15 (R2)	S19°33'05"W S19°27'00"W	222.29' 222.29'
L16 (R2)	N00°04'40"E N00°01'25"E	422.17' 422.17'
L17 (R2)	N14°55'20"W N15°01'25"W	83.42' 83.42'
L18 (R2)	N14°55'20"W N15°01'25"W	238.96' 238.96'
L19 (R2)	N00°04'39"E N00°01'25"E	286.59' 286.59'
L20 (R2)	S09°27'41"E S09°33'46"E	332.00' 332.00'
L21 (R2)	N69°40'02"W N69°46'07"W	294.43' 294.43'
L22 (R7)	S43°52'40"E S44°14'18"E	140.17' 140.16'
L23 (R7)	S01°28'15"W S01°07'31"W	75.00' 75.00'
L24 (R7)	S89°58'30"E S89°40'42"E	20.01' 20.01'
L25	N89°58'10"W	0.49'
L26 (R6)	N72°41'44"W N72°11'54"W	36.55' 35.98'



DUDEK
NORTH
(SCALE: 1" = 200')

200 100 0 200 400 600
GRAPHIC SCALE IN FEET

LEGEND:

APN:	ASSESSOR'S PARCEL NUMBER
BC	BRASS CAP
BK.	BOOK
BLDG	BUILDING
C&G	CURB & GUTTER
CL	CENTERLINE
CO.	COMPANY
CONC	CONCRETE
ESMT	EASEMENT
FD	FOUND
INST.	INSTRUMENT
IP	IRON PIPE
L.A.C.F.C.D.	LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
MH	MANHOLE
N&T	NAIL & TAG
NO.	NUMBER
O.R.	OFFICIAL RECORDS
PC	POINT OF CURVATURE
PG.	PAGE
POL	POINT ON LINE
REC.	RECORDER'S
SO CAL	SOUTHERN CALIFORNIA
TWR	TOWER
UV	UNIDENTIFIED VAULT
WDS	WITH DISK STAMPED
◉	FOUND PROPERTY CORNER (SEE DESCRIPTION)
⊗	PROPERTY CORNER SEARCHED FOR NOT FOUND
OE	OVERHEAD ELECTRIC LINES
	FENCE
	RAILROAD TRACKS

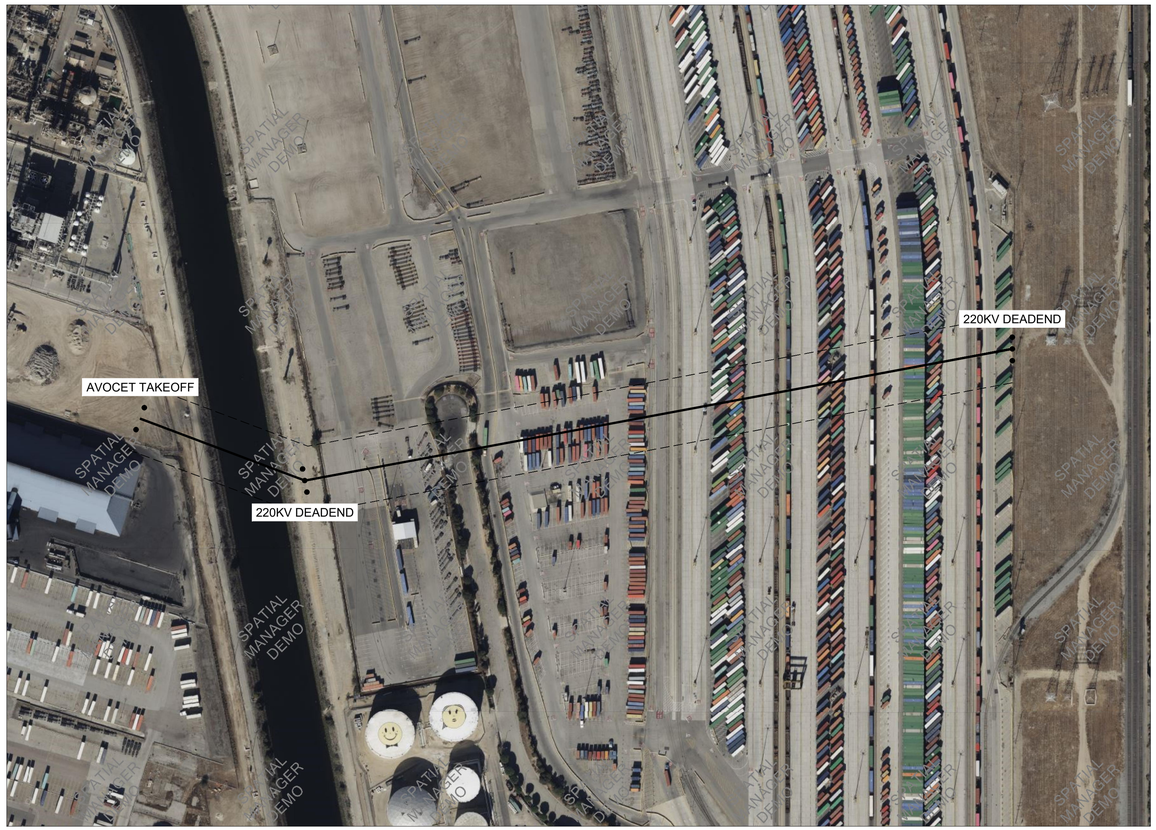
DUDEK
605 THIRD STREET
ENCINITAS, CA 92024
PH.: 760-942-5147

Project Number: 14815.13
PTRACT Date: June 4, 2024

TENASKA

AVOCET 220KV INTERCONNECTION
PRELIMINARY DESIGN

VICINITY MAP
SCALE: N.T.S.



LOCATION PLAN
SCALE: N.T.S.

NORTH

PROJECT NOTES:

1. PROJECT IS LOCATED IN LOS ANGELES COUNTY, CALIFORNIA SPANNING ACROSS CARSON CITY, LOS ANGELES, AND LONG BEACH.
2. PROJECT DOCUMENTS PREPARED ARE HIGH LEVEL DESIGN AND ARE NOT FOR BID PURPOSES OR FOR CONSTRUCTION. THIS DESIGN IS CONCEPTUAL IN NATURE AND MAY CHANGE AS THE DESIGN PROGRESSES TO A CONSTRUCTION ITERATION.
3. THIS DESIGN IS FOR A 220KV INTERCONNECTION TO SCE, WITH TWO COMMUNICATIONS CABLES AS 'DIVERSE FIBER' AS DIRECTED BY SCE FOR THE INTERCONNECTION REQUIREMENTS.
4. THIS PROJECT IS DESIGNED TO MEET ALL NESC AND GO95 REQUIREMENTS.
5. POLES ARE REQUIRED TO BE A MINIMUM OF 30-FEET FROM THE CENTERLINE OF RAILROAD TRACKS ON UPRR PROPERTY.
6. CONDUCTORS ARE REQUIRED TO BE A MINIMUM OF 36-FEET ABOVE GROUND. THIS DESIGN HAS A MINIMUM CLEARANCE OF 75-FEET ABOVE GROUND OVER UPRR PROPERTY TO ALLOW FOR MAINTENANCE EQUIPMENT TO OPERATE ON THE PROPERTY.
7. REFER TO THE PROJECT DESIGN BASIS AND CRITERIA MANUAL FOR ADDITIONAL PROJECT DETAILS.
8. STRUCTURE DIAMETER INFORMATION IS NOT AVAILABLE AT THIS PROJECT STAGE.
9. FAA FILINGS AND PROVISIONS HAVE NOT BEEN MADE FOR THIS PROJECT.
10. POCO CONFIGURATION REQUIREMENTS TO BE DETERMINED BY SCE.
11. REFER TO UNDERGROUND DESIGN PACKAGE UG-01 FOR DETAILS.
12. DETAILED DESIGN SHALL MEET THE REQUIREMENTS CALLED OUT IN UPRR 'GUIDELINES FOR TEMPORARY SHORING'. SHORING PLANS AND CALCULATIONS SHALL BE SUBMITTED FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTION.
13. FLAGGING WILL BE PERFORMED IN ADDITION TO CONSTRUCTION OBSERVATION FOR CONSTRUCTION WITHIN 25-FEET OF THE CENTERLINE OF THE NEAREST TRACK DURING CONSTRUCTION OF THE PROJECT.

no.	date	by	ckd	description
1	5/19/22	MPS	JG	PRELIMINARY DESIGN
2	12/15/22	JGC	AR	PRELIMINARY DESIGN
3	4/21/23	JCP	AR	PRELIMINARY DESIGN

PRELIMINARY - NOT FOR CONSTRUCTION

BURNS McDONNELL
9400 WARD PARKWAY
KANSAS CITY, MO 64114
816-333-9400
Burns & McDonnell Engineering Co, Inc.
LICENSEE NO. 000165

date	detailed
4/21/2023	J. PERKINS
designed	checked
J. PERKINS	A. ROOT

AREVON

TENASKA AVOCET 220KV
INTERCONNECTION DESIGN
COVER SHEET

project	contract
145220	CONTRACT

drawing **CU-001** — rev. **3**

sheet 1 of 2 sheets

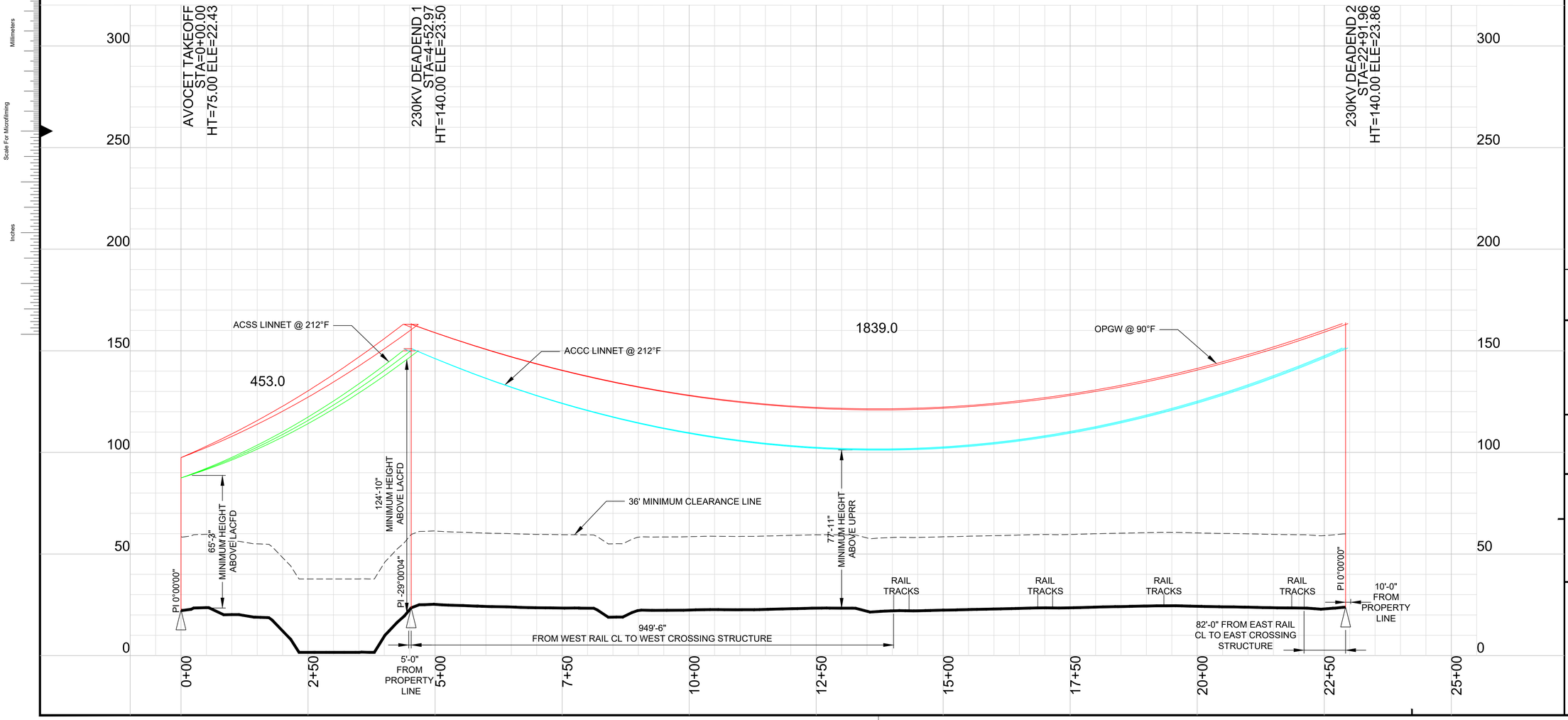
file 145220-CU-001_COVER.DWG

Scale For Microfilming
Millimeters
Inches

no.	date	by	ckd	description
1	5/19/22	MPS	JG	PRELIMINARY DESIGN
2	12/15/22	JGC	AR	PRELIMINARY DESIGN
3	4/21/23	JCP	AR	PRELIMINARY DESIGN
4	5/26/23	JCP	AR	PRELIMINARY DESIGN

100.0 FT. HORIZ. SCALE

25.0 FT. VERT. SCALE



PRELIMINARY - NOT FOR CONSTRUCTION

BURNS McDONNELL
9400 WARD PARKWAY
KANSAS CITY, MO 64114
816-333-9400
Burns & McDonnell Engineering Co, Inc.
LICENSEE NO. 000165

date	detailed
5/26/2023	J. PERKINS
designed	checked
J. PERKINS	A. ROOT

AREVON

TENASKA AVOCET 220KV
INTERCONNECTION DESIGN
PLAN & PROFILE DRAWING

project	contract
145220	CONTRACT

drawing **CU-002** rev. **3**

sheet 2 of 2 sheets

file 145220-CU-002_P&PS.DWG

EXHIBIT "D"

FORM OF EASEMENT

[to be attached]

PREPARED BY
AND WHEN RECORDED
RETURN TO:
Avocet Energy Storage, LLC
c/o Arevon Energy
8800 N. Gainey Center Dr., Suite 100
Scottsdale, AZ 85258
Attn: Asset Management

APN (SPACE ABOVE RESERVED FOR RECORDER'S USE)

THE UNDERSIGNED TENANT DECLARES
DOCUMENTARY TRANSFER TAX is $ none,
computed on the full value of the interest or property conveyed.

TRANSMISSION EASEMENT AGREEMENT

STATE OF CALIFORNIA §
§ KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF LOS ANGELES §

THIS TRANSMISSION EASEMENT AGREEMENT (this "**Agreement**") is made, dated and effective as of _____, 2024 (the "**Effective Date**"), between **City of Carson**, a municipal corporation (together with its successors and assigns, "**Grantor**"), and **Avocet Energy Storage, LLC**, a Delaware limited liability company (together with its transferees, successors and assigns, "**Grantee**"), and in connection herewith, Grantor and Grantee agree, covenant and contract as set forth in this Agreement. Grantor and Grantee are sometimes referred to in this Agreement as a "**Party**" or collectively as the "**Parties.**"

RECITALS

A. Grantor owns certain real property located in Los Angeles County, State of California, described on Exhibit A, attached hereto and by this reference made a part hereof (the "**Premises**").

B. Grantee is developing an electrical energy storage project on certain real property located in the vicinity of the Premises including one or more of the following: (1) energy collection, (2) energy storage, (3) electricity transmission, and (4) roads, buildings, facilities and communication lines in connection with the foregoing (as applicable, the "**Project**"). The Parties have entered into a Development Agreement dated _____, 2024 pursuant to California Government Code Sections 65864 *et seq*. to allow Grantee to develop the Project under the terms and conditions set forth thereunder.

C. Grantee desires to obtain an aerial easement and related rights over a portion of the Premises in order to facilitate development, construction and operation of the Project, and Grantor desires to grant such easement and rights, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual obligations and covenants of the Parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereto agree as follows:

1. Grant of Easements.

(a) Grant.

(i) Aerial Easement. For the duration of the Term (as defined in Section 2(a)), Grantor hereby grants, conveys and transfers to Grantee an exclusive easement (the "**Aerial Easement**") on, over, and across the portions of the Premises lying on either side of the "Aerial Centerline" as described and depicted on Exhibit B attached hereto and incorporated herein (the "**Easement Area**") for constructing, erecting, installing, using, replacing, relocating, reconstructing and removing from time to time, and monitoring, improving, maintaining, repairing and operating the following: (A) one or more overhead electrical transmission facilities, including without limitation overhead transmission lines, wires, and cables, together with related facilities, and (B) all appropriate appliances and fixtures for use in connection with said lines, all for use in connection with the transmission of electrical energy (the foregoing collectively being referred to herein as the "**Transmission Facilities**") together with the right to perform all other ancillary activities normally associated with such facilities as may be reasonably necessary or appropriate to service the Transmission Facilities. For the avoidance of doubt, the Transmission Facilities to be installed pursuant to this Aerial Easement shall be located at an approximate height of seventy-five feet (75') above ground level.

(ii) Access Easement. For the duration of the Term, Grantor hereby grants, conveys and transfers to Grantee, a non-exclusive easement ("**Access Easement**") on, over, under and across the Premises to conduct any reasonably necessary studies, tests or inspections, including, without limitation, surveys, soil sampling, environmental tests, archaeological assessments, and transmission and interconnection studies on or about the Easement Area; to access the Easement Area, to use and maintain existing public roadways, if any, to provide access to the Easement Area for the purposes stated in this Agreement; to exercise the other rights granted in this Agreement.

(iii) Construction and Maintenance Easement. For the duration of the Term, Grantor hereby grants, conveys and transfers to Grantee a non-exclusive easement and right (the "**Maintenance Easement**," and together with the Aerial Easement, and the Access Easement, sometimes herein called the "**Easements**") to make reasonable, temporary use of any portion of the Premises that is fifty (50) feet on either side of the Easement Area in connection with the construction, maintenance, replacement, and repair of the Transmission Facilities.

(b) Easements in Gross. The Easements granted by Grantor in this Agreement are EASEMENTS IN GROSS for the benefit of Grantee, its successors and assigns, there being no real property benefitting from the Easements, and such Easements being independent of any other lands or estates or interests in lands.

2. Basic Terms.

(a) Term. The term of this Agreement and the Easements granted herein (the "**Term**") shall be twenty-five (25) years from the Effective Date.

(b) Title to Transmission Facilities. Grantor shall have no ownership, lien, security or other interest in or to any Transmission Facilities. Grantee, its assignees or its designees shall at all times retain title to the Transmission Facilities regardless of their manner of attachment to the Premises, and such title holders will have the right to remove them (or to allow them to be removed by an authorized third party) from the Easement Area at any time after at least three (3) business days' advance written notice given to Grantor. Nothing in this Agreement requires Grantee to construct, install or operate the Transmission Facilities or exercise the rights granted under this Agreement.

(c) Termination. Notwithstanding anything to the contrary set forth in this Agreement and subject to any obligations that survive termination of this Agreement, Grantee will have the right at any time and for any reason, as to all or any part of the Easement Area, to terminate this Agreement and all of the rights, duties and obligations of the Parties under this Agreement, including, but not limited to, any payment obligations not yet due and payable, effective upon written notice given by Grantee to Grantor. Grantor and Grantee will also have the right to terminate this Agreement and all of the rights, duties and obligations of the Parties under this Agreement upon any uncured Event of Default (breach of this Agreement) by the other Party. If this Agreement is terminated in accordance with this Section 2(c), then Grantor and Grantee will execute and deliver a recordable instrument evidencing such termination, and either party may record such instrument in the land title records office of the county in which the Premises is located.

(d) Location of Easement Area. Grantee intends to obtain a surveyed description of the Easement Area (the "**Survey**"). The Survey will not materially increase the Easement Area as described in this Agreement, and determination of such materiality will be at Grantor's sole discretion. Upon delivery of the Survey to Grantor and request of Grantee, and provided Grantor assents thereto, the Parties will enter into an amendment to this Agreement ("**Amendment**") incorporating the description of the Easement Area from the Survey, and Grantee shall record such Amendment in the land title records office of the county in which the Premises is located.

(e) Removal Upon Termination. Prior to termination of this Agreement, Grantee shall remove all of Grantee's Transmission Facilities within the Easement Area.

(f) Taxes and Assessments. Grantor will pay all taxes, assessments, and other governmental charges that during the Term of this Agreement shall be levied, assessed or imposed upon, or arise in connection with, the Premises as and when due. During the Term and thereafter until all of Grantee's obligations under this Section 2(f) have been satisfied, Grantee shall be responsible for any incremental increase in such taxes, assessments, or other governmental charges directly resulting from the presence of the Transmission Facilities (the "**Grantee Taxes**"). To the extent the applicable taxing authority provides a separate tax bill for the Grantee Taxes to Grantee, Grantee shall pay such bill directly to the applicable taxing authorities prior to the date such bill becomes delinquent. If a separate tax bill for the Grantee Taxes is not provided to Grantee, Grantee shall pay the Grantee Taxes within thirty (30) days following receipt of written demand from Grantor of the amount of the Grantee Taxes with a copy of the applicable tax bill. At Grantee's election, Grantee shall either pay the applicable taxing authority directly, in which case it will promptly provide Grantor evidence of such payment, or Grantee shall make such payment directly to Grantor. If Grantee pays taxes, assessments, and/or real property taxes on behalf of Grantor that are Grantor's obligation hereunder, Grantee may offset the amount of such payments against amounts due Grantor under this Agreement.

3. Compensation. Grantee shall compensate Grantor in the amount of Three Thousand Dollars ($3,000.00) in consideration for Grantor's grant of the easements described in Section 1. Such payment represents the fair market value of the easements based on the appraisal report dated June 28, 2024, prepared by Michael F. Frauenthal, MAI of Michael Frauenthal & Associates, Inc., Payment will be made by no later than thirty (30) days after the Effective Date.

4. Grantor's Representations, Warranties and Covenants.

(a) Grantor's Authority. Grantor represents, warrants and covenants that (i) Grantor is the sole record owner of the Premises, has good and indefeasible title to the Premises, and has the unrestricted right and authority to execute this Agreement and to grant Grantee the rights granted in this Agreement; and (ii) this Agreement constitutes a valid and binding agreement enforceable against Grantor in accordance with its terms.

(b) Liens and Encumbrances. Grantee shall be entitled to obtain, and Grantor will reasonably cooperate with and assist Grantee in obtaining, subordination agreements, non-disturbance agreements, encroachment permits or other appropriate instruments from any party holding a lien or similar right that might interfere with Grantee's rights under this Agreement. Grantor will not be required to incur any out-of-pocket expense in connection with such cooperation and assistance.

(c) No Interference. Grantor will not, nor will it affirmatively permit any other party to, (i) interfere with Grantee's use of the Easements or Grantee's rights under this Agreement, (ii) create a condition on the Premises making Grantee's use of the Easements unsafe; or (iii) disrupt in any manner the use of the Transmission Facilities by Grantee for the transmission of electric power or telecommunications. Without limiting the foregoing, Grantor will not, within the Easement Area: erect or install any buildings or structures; or place or store flammable materials; or plant trees.

(d) Cooperation. Grantor will reasonably assist and cooperate with Grantee in applying for, complying with or obtaining any land use permits and approvals, building permits, environmental reviews, or any other permits, licenses, approvals or consents required for the financing, construction, installation, replacement, relocation, maintenance, repair, operation or removal of the Transmission Facilities and any other improvements made by Grantee and permitted in this Agreement. Grantor will not be required to incur any out-of-pocket expense in connection with such cooperation and assistance. Grantor will take no unreasonable actions that would cause the Transmission Facilities to fail to comply with any applicable laws, rules, regulations, permits, approvals or consents of any governmental authority having jurisdiction over the Premises. Grantor will not, directly or indirectly, unreasonably interfere with or seek to delay the development, permitting, construction, or operation of the Project or any activities related to or affiliated with the Project. Grantor will not join or encourage any opposition to the development, construction, or operation of Project or any activities related to or affiliated with the Project. Notwithstanding anything else to the contrary herein, Grantor reserves to the fullest extent of the law all land use and regulatory authority under its police powers, and nothing contained herein shall be deemed to be an abrogation or diminution of such powers or authority.

(e) Safety. **GRANTOR RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN CLOSE PROXIMITY TO ANY OF THE TRANSMISSION FACILITIES. GRANTOR AGREES TO EXERCISE CAUTION AT ALL TIMES AND TO ADVISE THE GRANTOR PARTIES TO DO THE SAME. GRANTOR SHALL TAKE REASONABLE MEASURES TO AVOID ALL RISKS ASSOCIATED WITH ELECTROMAGNETIC FIELDS RESULTING FROM THE TRANSMISSION OF ELECTRICITY.**

5. Grantee's Representations, Warranties and Covenants.

(a) Grantee's Authority. Grantee hereby represents, warrants and covenants that (i) Grantee has the unrestricted right and authority to execute this Agreement; (ii) each person signing this Agreement on behalf of Grantee is authorized to do so; and (iii) when executed by Grantee, this Agreement constitutes a valid and binding agreement enforceable against Grantee in accordance with its terms.

(b) Hazardous Materials. Grantee shall comply with all applicable laws related to Hazardous Materials and shall defend, hold harmless and indemnify Grantor and Grantor Parties against any claims arising from a violation by Grantee or any Grantee Party (defined below) of, any federal, state or local applicable law relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, or transportation of any Hazardous Materials (defined below), on or under the Premises, except for any such violation which is imposed by reason of Grantor's or any Grantor Party's (defined below) activities on or upon the Premises whether now or in the future, or the existence on or under the Premises of Hazardous Materials as of the Effective Date of this Agreement. As used in this

Agreement the term **"Hazardous Materials"** shall mean any substance, material, waste, chemical, mixture or compound which: (i) is flammable, ignitable, radioactive, hazardous, toxic, corrosive or reactive, and which is regulated under law or by a public entity, (ii) is a Hazardous Substance as defined or listed under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, or under any regulations promulgated thereunder as amended, (iii) is crude oil, petroleum, natural gas, or distillates or fractions thereof, and/or (iv) damages health, safety, or the environment and is required by any law or public entity to be remediated, including remediation which such law or public entity requires in order for the Premises to be used for any lawful purpose. The obligations of the Grantee under this Section 5(b) shall survive the termination of this Agreement. "**Grantee Party**" shall mean Grantee's affiliates, successors and assigns, members, officers, directors, agents, employees, contractors, representatives, contractors, licensees and invitees. "**Grantor Party**" and "**Grantor Parties,**" individually and collectively, shall mean Grantor's affiliates, successors and assigns, officers, directors, employees, contractors, representatives, agents, licensees and invitees.

(c) Compliance, Permits and Approvals. Grantee shall comply in all material respects with all laws and regulations applicable to the Transmission Facilities and/or Easement Area. Grantee shall be responsible, at its sole cost and expense, for obtaining any governmental permits and approvals necessary for the construction and operation of the Transmission Facilities.

6. Default; Remedies. If a Party (the "**Defaulting Party**") fails to perform an obligation under this Agreement (an "**Event of Default**") such Defaulting Party will not be in default of the terms of this Agreement if, (a) in the case of the failure to pay when due any amounts payable under Section 3 of this Agreement (a "**Monetary Default**") the Defaulting Party pays the past due amount within forty-five (45) days after receiving written notice of the Event of Default (a "**Notice of Default**") from the other Party (the "**Non-Defaulting Party**"), and (b) in the case of an Event of Default other than a Monetary Default (a "**Non-Monetary Default**"), the Event of Default is cured within ninety (90) days after receiving the Notice of Default; provided, that if the nature of the Non-Monetary Default requires, in the exercise of commercially reasonable diligence, more than ninety (90) days to cure then the Defaulting Party will not be in default as long as it commences performance of the cure within ninety (90) days and thereafter pursues such cure with commercially reasonable diligence until completion of the curative action. Should an Event of Default remain uncured by the Defaulting Party the Non-Defaulting Party shall have and shall be entitled to at its option and without further notice, but subject to the limitations set forth in the last sentence of this Section 6, to exercise any remedy available at law or equity, including, without limitation, a suit for specific performance of any obligations set forth in this Agreement or any appropriate injunctive or other equitable relief, or for damages resulting from such default. Both Parties agree that remedies at law may be inadequate to protect against any actual or threatened breach of this Agreement. In the event of any breach or threatened breach, either Party shall have the right to apply for the entry of an immediate order to restrain or enjoin the breach and otherwise specifically to enforce the provisions of this Agreement.

7. Assignment. Except as otherwise provided herein, Grantee shall have the right with Grantor's written consent to sell, convey, transfer or assign all or any portion of the Easements, this Agreement or the Transmission Facilities, or to apportion, grant sub-easements, co-easements, separate easements, leases, licenses or similar rights, however denominated (collectively, "**Assignments**"), to one or more persons or entities including the right to create co-tenancies via a partial assignment (collectively "**Assignees**"); provided, however, no such consent shall be required so long as such Assignee also owns or operates all or a portion of the Project. Any member of Grantee shall have the right without Grantor's consent to transfer any membership interest in Grantee to one or more persons or entities.

8. Right to Mortgage; Financer and Mortgagee Protection.

(a) Right to Mortgage. Grantee may, upon notice to Grantor, and without further consent from Grantor, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement, the Easements, the Easement Area, and/or the Transmission Facilities (collectively, the "**Assets**"), which said security interests in all or a part of the Assets are collectively referred to herein as "**Mortgages**" and the holders of the Mortgages, their designees and assignees are referred to herein as "**Mortgagees**." For the avoidance of doubt, Grantee shall not be permitted to mortgage Grantor's fee interest in the Premises.

(b) Financer Protection. Following notification from Grantee, Grantor agrees to provide further written consent to financing documents as may reasonably be required by any Mortgagee or other party providing investment capital to the Project or Grantee, a tax-credit equity provider, or other investor in the Project or Grantee (a "**Financer**"). If Grantor has been provided notice of a Financer, then, as a precondition to exercising remedies related to any alleged default by Grantee under this Agreement, Grantor shall give a written Notice of Default to each such Financer at the same time it delivers a Notice of Default to Grantee, specifying in detail the alleged event of default and the required remedy. Financers shall have the same amount of time to cure the default as to Grantee's entire interest or its partial interest in the Assets as is given to Grantee and the same right to cure any default as Grantee or to remove any property of Grantee, any Financer or any Assignee located on the Easement Area. A Financer will have the absolute right, but not the obligation, to substitute itself for Grantee and perform the duties of Grantee hereunder for purposes of curing such Event of Default. Grantor expressly consents to such substitution, agrees to accept such performance, and authorizes any Financer (or its employees, agents, representatives or contractors) to enter upon the Easement Area to complete such performance with all of the rights and privileges of Grantee hereunder. Any Financer that does not directly hold an interest in the Assets, or whose interest is held solely for security purposes, shall have no obligation or liability under this Agreement prior to the time such Financer directly holds an interest in the Assets, or succeeds to absolute title to Grantee's interest. A Financer shall be liable to perform Grantee's obligations under this Agreement only for and during the period it directly holds such interest or absolute title. Moreover, any Financer or other party who acquires the Assets pursuant to foreclosure or an assignment in lieu of foreclosure will not be liable to perform any obligations under this Agreement to the extent the same are incurred or accrue after such Financer or other party no longer has ownership of the Assets.

(c) Mortgagee Protection. Any Mortgagee, upon delivery to Grantor of notice of its name and address, for so long as its Mortgage is in existence shall be entitled to the following protections which shall be in addition to those granted elsewhere in this Agreement:

(i) Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (1) to assign its Mortgage; (2) to enforce its lien and acquire title to all or any portion of the Assets by any lawful means; (3) to take possession of and operate all or any portion of the Assets and to perform all obligations to be performed by Grantee under this Agreement, or to cause a receiver to be appointed to do so; and (4) to acquire all or any portion of the Assets by foreclosure or by an assignment in lieu of foreclosure and thereafter without Grantor's consent to assign or transfer all or any portion of the Assets to a third party. Grantor's consent will not be required for any of the foregoing, and upon acquisition of the interests of all or any portion of the Assets by a Mortgagee or any other third party who acquires the same from or on behalf of Mortgagee, Grantor shall recognize Mortgagee or such other

party (as the case may be) as Grantee's proper successor, and this Agreement and the Easements shall remain in full force and effect.

(ii) Termination. Neither the bankruptcy nor the insolvency of Grantee shall be grounds for terminating this Agreement or the Easements as long as all payments and all other monetary charges payable by Grantee under this Agreement are paid by Mortgagee in accordance with the terms of this Agreement and as long as all other obligations of Grantee and its successors in interest under this Agreement are satisfied.

9. Insurance. Prior to its entry upon the Premises and thereafter until all obligations of Grantee under this Agreement have been completed, Grantee shall maintain a general commercial liability insurance policy with a coverage limit of at least Five Million Dollars ($5,000,000.00) per occurrence and Ten Million Dollars ($10,000,000.00) in the aggregate to cover any personal injuries or accidents or any property damage or loss that may occur as a result of Grantee's activities on the Premises. Such insurance coverage may be provided as part of a blanket policy that covers the Project and other properties as well. A combination of primary and umbrella/excess policies may be used to satisfy these limit requirements.

Prior to its entry upon the Premises and thereafter until all obligations of Grantee under this Agreement have been completed, Grantee shall also maintain Pollution Liability insurance written on a form acceptable to Grantor providing coverage for liability arising out of sudden, accidental, and gradual pollution and release of Hazardous Materials and associated remediation. The policy limit shall be no less than $5,000,000 per claim and $10,000,000 in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

10. Indemnity. **GRANTEE SHALL AT ALL TIMES INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR FROM ANY AND ALL ACTUAL LOSS, DAMAGE OR LIABILITY SUFFERED OR SUSTAINED BY REASON OF ANY INJURY OR DAMAGE TO ANY PERSON OR PROPERTY CAUSED BY GRANTEE'S OR GRANTEE'S AGENT'S LICENSEE'S OR INVITEE'S USE OF THE EASEMENTS. IN NO EVENT SHALL GRANTEE BE RESPONSIBLE FOR PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES.**

11. Miscellaneous.

(a) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Grantor and Grantee and, to the extent provided in any assignment or other transfer under Section 7 hereof, any Assignee, and their respective transferees, successors and assigns, and all persons claiming under them. References to Grantee in this Agreement shall be deemed to include Assignees that hold a direct or indirect ownership interest in the Easements or this Agreement.

(b) Recording of Agreement. The Parties shall cause the recordation of this Agreement in the official land title records office of the county in which the Premises is located promptly after execution of this Agreement. Grantor hereby consents to the recordation of the interest of an Assignee in the Easement or this Agreement.

(c) Notices. All notices or other communications required or permitted by this Agreement, including payments to Grantor, shall be in writing and shall be deemed given when personally delivered

to Grantor or Grantee, or in lieu of such personal delivery services, five (5) calendar days after deposit in the United States mail, first class, postage prepaid, certified, addressed as follows:

If to Grantor:	If to Grantee:
City of Carson 701 East Carson Carson, CA 90745 Attn: City Manager	Avocet Energy Storage, LLC c/o Arevon Energy, Inc. 8800 N. Gainey Center Dr., Suite 100 Scottsdale, AZ 85258

Any Party may change its address for purposes of this section by giving written notice of such change to the other Parties in the manner provided in this section.

(d) ENTIRE AGREEMENT. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. THIS AGREEMENT WILL NOT BE MODIFIED OR AMENDED EXCEPT IN A WRITING SIGNED BY BOTH PARTIES. Grantor shall cooperate with Grantee in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee for the purpose of implementing the provisions contained in this Agreement or for the purpose of preserving the security interest of, or satisfying the request of, any Assignee or an Mortgagee, provided that any such amendment does not materially impair Grantor's rights or substantially increase the burdens or obligations of Grantor under this Agreement.

(e) Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the state of California. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the state district courts with jurisdiction over the county in which any portion of the Premises is located. The prevailing party in any action or proceeding for the enforcement, protection or establishment of any right or remedy under this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing party.

(f) Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding, unless such continued effectiveness of this Agreement, as modified, would be contrary to the basic understandings and intentions of the Parties as expressed herein.

(g) Estoppel Certificates. Within twenty (20) business days after written request by Grantee or its Mortgagee, Grantor will execute and deliver to Grantee and/or its Mortgagee an "**Estoppel Certificate**" (a) certifying that this Agreement is in full force and effect and has not been modified (or if modified stating with particularity the nature thereof), (b) certifying that there are no uncured events of default hereunder (or, if any uncured events of default exist, stating with particularity the nature thereof); and (c) containing any other reasonable certifications that may be reasonably requested by Grantee or its Mortgagee. Any such certificates may be conclusively relied upon by Grantee, its Mortgagee and any prospective Assignee or investor in Grantee. If Grantor fails to deliver any such certificate within such time, then Grantee may conclusively conclude and rely on the following: (i) this Agreement is in full force

and effect and has not been modified, (ii) there are no uncured events of default by the Grantee hereunder, and (iii) the other certifications so requested are in fact true and correct.

(h) No Merger. There shall be no merger of the Easements, or of the easement estate created by this Agreement, with the fee estate in the Premises by reason of the fact that the Easements or the easement estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including, without limitation, Mortgagee) having an interest in the Easements or in the estate of Grantor and Grantee shall join in a written instrument effecting such merger and shall duly record the same.

(i) No Partnership. Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture or any other association between Grantor and Grantee.

(j) Headings. The headings of the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part thereof.

(k) Counterparts. This Agreement, and any amendment hereto, may be executed in any number of counterparts and by each Party on separate counterparts with the same effect as if all signatory parties had signed the same document, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument. For recording purposes, separate signature and acknowledgement pages signed and acknowledged by the Parties may be affixed to a single counterpart hereof, and such counterpart and such signature and acknowledgement pages will be deemed a true and correct record hereof when recorded in the land title records office of the county in which the Premises is located.

(l) Eminent Domain. If all or any portion of the Easement Area is taken by, or conveyed to, any governmental or quasi-governmental entity as a result of an eminent domain proceeding, then nothing herein shall affect the right of Grantee to receive compensation or damages for any losses that it suffers as a result thereof from such governmental or quasi-governmental entity, including the loss of Transmission Facilities or electric transmission capacity as a result of that eminent domain proceeding, so long as any such award to Grantee does not diminish any claim by or award to Grantor. Both Grantor and Grantee shall have the right to pursue their respective claims for damages in connection with any eminent domain proceeding so long as any such claim by or award to Grantee does not diminish any claim by or award to Grantor.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first set forth above.

GRANTOR:

CITY OF CARSON
A municipal corporation
By: _____
Name: _____
Its: _____

GRANTOR ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____)
County of _____)

On _____, before me, _____,
(insert name of notary)
Notary Public, personally appeared _____,
the _____ of **City of Carson** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

GRANTEE:

Avocet Energy Storage, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: Authorized Signatory

GRANTEE ACKNOWLEDGMENT

THE STATE OF _____ §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, the _____ of **Avocet Energy Storage, LLC,** a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for purposes and consideration therein expressed on behalf of such limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on _____ _____, 20__.

_____

Notary Public, State of _____

EXHIBIT A

Legal Description of the Premises

All those certain lots, tracts or parcels of land lying and being situated in Los Angeles County, California, and more particularly described as:

ALL OF INTERMODAL WAY, 64 FEET WIDE, AS SHOWN AND DELINEATED IN PARCEL MAP NO. 16223, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 192 PAGES 40 TO 42 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT B

Description and Depiction of Aerial Easement

BEING A PORTION OF INTERMODAL WAY (PUBLIC RIGHT OF WAY 64 FEET WIDE) AS SHOWN ON PARCEL MAP NO. 16223 RECORDED IN BOOK 192, PAGE 40, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 7 OF SAID PARCEL MAP, SAID POINT ALSO BEING ON THE WESTERLY RIGHT OF WAY LINE OF INTERMODAL WAY;

THENCE, SOUTH 28°16'" EAST, 27.04 FEET ALONG THE EASTERLY LINE OF SAID LOT 7 AND SAID WESTERLY RIGHT OF WAY LINE TO THE **TRUE POINT OF BEGINNING**, ALSO BEING THE BEGINNING OF A NON TANGENT CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 9,418.92 FEET TO WHICH A RADIAL LINE BEARS N 13'59'45" W;

THENCE LEAVING SAID EASTERLY LINE AND SAID WESTERLY RIGHT OF WAY LINE, NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°32'11" ALONG AN ARC, A DISTANCE OF 88.18 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF INTERMODAL WAY;

THENCE, SOUTH 06°59'21" WEST, ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 27.94 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 92.00 FEET;

THENCE, SOUTHERLY ALONG SAID CURVE AND SAID EASTERLY RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 17°37'46" ALONG AN ARC, A DISTANCE OF 28.31 FEET;

THENCE, SOUTH 10°38'25" EAST, ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 70.93 FEET TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 9,413.91 FEET TO WHICH A RADIAL LINE BEARS S 07°45'33" E;

THENCE LEAVING SAID EASTERLY RIGHT OF WAY LINE, NORTHWESTERLY, ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°23'24" ALONG AN ARC, A DISTANCE OF 64.09 FEET TO A POINT ON THE EASTERLY LINE OF LOT 7, SAID POINT ALSO BEING ON THE WESTERLY RIGHT OF WAY LINE OF INTERMODAL WAY;

THENCE, NORTH 10°38'25" WEST, ALONG SAID EASTERLY LINE AND WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 67.49 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 92.00 FEET;

THENCE, NORTHERLY ALONG SAID CURVE AND SAID WESTERLY RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 17°37'46" ALONG AN ARC, A DISTANCE OF 28.31 FEET;

THENCE, NORTH 28°16'11" WEST, ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 22.96 FEET TO THE **TRUE POINT OF BEGINNING;**

SUBJECT PROPERTY EASEMENT CONTAINS 8.248 SQUARE FEET OR 0.189 ACRES, MORE OR LESS, AND SUBJECT TO ANY EASEMENTS OR RIGHTS-OF-WAYS OF RECORD.

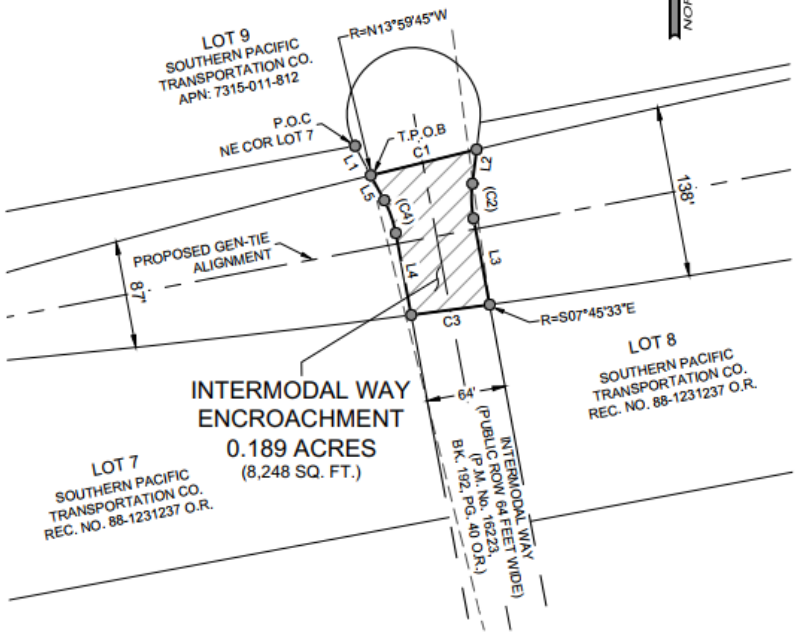
EXHIBIT B

INTERMODAL WAY CROSSING EXHIBIT
DEVELOPED LAND
CITY OF CARSON
LOS ANGELES COUNTY

LINE TABLE		
LINE	BEARING	LENGTH
L1	(S28°16'11"E)	27.04'
L2	(S06°59'21"W)	27.94'
L3	(S10°38'25"E)	70.93'
L4	(N10°38'25"W)	67.49'
L5	(N28°16'11"W)	22.96'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	88.18'	9,418.92	00°32'11"
(C2)	28.31'	92.00	17°37'46"
C3	64.09'	9,413.91	00°23'24"
(C4)	28.31'	92.00	17°37'46"

DUDEK (SCALE: 1" = 100')
NORTH



SURVEYOR NOTES:

1) P.O.C. = POINT OF COMMENCEMENT
2) T.P.O.B. = TRUE POINT OF BEGINNING
3) ( ) = INDICATES RECORD DATA PMB 192/40-42

INTERMODAL WAY CROSSING EASEMENT

PROPOSED GEN-TIE ALIGNMENT

LICENSED LAND SURVEYOR
ARMANDO M. MAGANA
No. 8232
STATE OF CALIFORNIA

Armando Magaña

ARMANDO MATA MAGANA
LICENSED PROFESSIONAL LAND SURVEYOR
CALIFORNIA LICENSE NO. 8232
EXPIRATION DATE: DECEMBER 31, 2025

DUDEK
605 THIRD STREET
ENCINITAS, CA 92024
PH.: 760-942-5147

Project Number: 14815.24
Plot Date: May 3, 2024

DUDEK