

RECORDING REQUESTED BY: CITY CLERK WHEN RECORDED RETURN TO: City Clerk City of Beaumont 550 E. 6th Street Beaumont, CA 92223	
	SPACE ABOVE THIS LINE FOR RECORDER'S USE

**CITY OF BEAUMONT
IMPROVEMENT AGREEMENT
PLOT PLAN NO. PP2021-0335_____**

DATE OF AGREEMENT: ____, <u>2023</u> .	
NAME OF DEVELOPER: BEAUMONT ESS, LLC, a _____ LIMITED LIABILITY COMPANY. (hereinafter referred to as "Developer").	
NAME/NUMBER OF DEVELOPMENT: PROJECT NO.: PP2021-0335	
PROPERTY SUBJECT TO AGREEMENT: The real property which is the subject of this Agreement is located in the City of Beaumont, County of Riverside and is described in Exhibit "A" attached hereto and incorporated herein (hereinafter the "Property").	
EST. TOTAL COST OF PUBLIC DEFERRED IMPROVEMENTS: <u>\$ 2,414,107</u> (see Exhibit "B")	EST. TOTAL COST OF PRIVATE DEFERRED IMPROVEMENTS: <u>\$ 0</u> (see Exhibit "B")
BOND NUMBERS: _____	
LETTER OF CREDIT NUMBERS: _____	
FINANCIAL INSTITUTION: _____	

THIS IMPROVEMENT AGREEMENT ("Agreement") is made and entered into by and between the City of Beaumont, a California municipal corporation (hereinafter referred to as "City"), and BEAUMONT ESS, LLC, a DELAWARE LIMITED LIABILITY COMPANY (hereinafter

referred to as “Developer”). City and Developer are sometimes referred to hereinafter individually as a “Party”, and collectively as the “Parties”.

RECITALS

A. Developer is the lessee of certain real property located in the City of Beaumont legally described on **Exhibit “A”** attached hereto and incorporated and made part of this Agreement by this reference (the “Property”).

B. The City of Beaumont Planning Commission approved Project PP2021-0335 (the “Entitlements”) on October 26th, 2021 subject to Conditions of Approval, which are hereby incorporated herein in their entirety by this reference, that require certain street improvements requiring the relocation of existing utility poles owned and maintained by Southern California Edison (“SCE”) which is anticipated to require additional time and which are, in pertinent part, described as follows:

“63. PRIOR TO ISSUANCE OF ANY OCCUPANCY PERMIT (COO): The applicant shall underground existing utility poles along the project frontage, and as necessary for transitions, in accordance with the City of Beaumont. Should the utility poles be exempt from undergrounding, as identified in the Municipal Code i.e., 17.04.100 – Utilities and 12.16.060 – Types of Facilities Exempt, the applicant shall relocate the poles sufficient to construct the improvements required as part of the development.

64. PRIOR TO ISSUANCE OF ANY OCCUPANCY PERMIT (COO): The Applicant shall construct half-width improvements for Veile Avenue, coincident with the project boundary and as necessary to safely transition to the existing improvements beyond the project boundary. The improvements shall include:

A. 6” Curb and Gutter per RCTD std. 200@ 28-feet east of centerline per RCTD std. 111. Curb height may be increased to mitigate the 10-year storm event, as directed by the City Engineer.

B. Sidewalks shall be curb-adjacent type per RCTD std. 401, unless otherwise directed by the Planning Department.

C. Street structural sections shall be designed with a Traffic Index per soils recommendations (8.0 minimum). Soils investigations shall be used by the Engineer to determine an appropriate R-value and the pavement and base thickness based on the established Traffic Index. In no case shall the minimum pavement section be less than 5” AC/10” AB. Pavement shall be per Greenbook specifications with a base course of B-PG 64-10-R0 and a minimum 2” thick final course of C2- PG 64-10-R0.” (the “Deferred Improvements”).

D. The parties acknowledge that SCE’s existing 115kV utility poles on Veile Avenue are exempt from any undergrounding requirement pursuant to the Municipal Code sections 17.04.100 and 12.16.060. The parties further acknowledge that the installation of public

streetlights required by Condition of Approval 68 and off-site landscaping and irrigation systems required by Condition of Approval 70 to be located along the frontage of the portions of Veile shall also be deferred until completion of the Deferred Improvements.

E. In consideration of the issuance of a certificate of occupancy (“Certificate of Occupancy”), by the City, prior to completion of the Deferred Improvements, Developer desires to enter into this Agreement, whereby Developer promises to install and complete, at Developer's own expense, the Deferred Improvements within the time required by this Agreement.

F. Improvement Plans (the “Plans”) for the construction, installation, and completion of the Deferred Improvements have been prepared by Developer and will be subject to approval by the Director of Engineering/Public Works (“City Engineer”). The City has adopted standards (hereinafter “Standards”) for the construction and installation of improvements within the City, and the Plans will be prepared in conformance with the Standards in effect on the date of the approval of the Entitlements. The Plans will be on file in the Office of the City Engineer and are incorporated into this Agreement by this reference as if set forth fully herein. All references in this Agreement to the Plans shall be deemed to include reference to any specifications for all of the improvements as approved by the City Engineer.

G. An estimate of the cost for construction of the Deferred Improvements according to the Plans has been made and approved by the City Engineer. The estimated cost of these improvements is set forth on Page One (1) of this Agreement, and the basis for the estimate is attached hereto as **Exhibit “B”** and incorporated and made part of this Agreement by this reference. The amounts of the Improvement Securities required to be posted with this Agreement are also based upon the estimate in **Exhibit “B”**.

NOW, THEREFORE, in consideration of the issuance of the Certificate of Occupancy, Developer and City hereby agree as follows:

1. Developer’s Obligation to Construct Improvements and Prerequisite to Issuance of Certificate of Occupancy.

(a) In constructing and installing the Deferred Improvements, Developer shall comply with all of the requirements and conditions of approval of in the Entitlements as well as the provisions of the Beaumont Municipal Code.

(b) Developer shall complete, at its own expense the Deferred Improvements, as required by the conditions of approval of the Entitlements in conformance with the approved Plans and City Standards, including without limitation, those improvements set forth in **Exhibit “B”** (hereinafter collectively the “Improvements”) within twelve (12) months of the date of the issuance of the Certificate of Occupancy, unless a time extension is granted by the City Manager as authorized by Section 20 of this Agreement.

(c) If the Public Improvements are not completed as required by this Agreement, the Planning Commission may after a public hearing terminate the Certificate of Occupancy for the Project.

(d) Developer shall furnish all necessary labor and materials for completion of the Deferred Improvements in conformity with the Plans and City Standards.

(e) Developer shall acquire and dedicate, or pay the cost of acquisition by the City, of all right-of-way, easements and other interests in real property required for construction or installation of the Deferred Improvements, free and clear of all liens and encumbrances. Developer's obligations relating to acquisition by City of off-site rights-of-way, easements and other interests in real property shall be subject to a separate agreement between Developer and City. Developer shall also be responsible for obtaining any public or private drainage easements or other access authorizations therefor to accommodate the Development.

(f) A Certificate of Occupancy shall only be issued after this Agreement has been executed, all **other** applicable requirements for a Certificate of Occupancy have been met and Developer's obligations to construct the Deferred Improvements have been secured pursuant to Section 2 of this Agreement.

2. Improvement Securities.

(a) Developer agrees to secure this Agreement with good and sufficient improvement securities in a form approved by the City Attorney (referred collectively hereinafter as "Improvement Securities" and individually as "Improvement Security") to guarantee the construction and completion of the Deferred Improvements in the Project. All such Improvement Securities shall be posted with the City prior to the City's final building inspection and issuance of a Certificate of Occupancy for the Project constructed by Developer. Said securities are estimated at this time in **Exhibit "B"** to be in the following amounts, and shall be for the purposes described as follows:

(i) Two million four hundred fourteen thousand one hundred seven DOLLARS (\$2,414,107) to ensure faithful performance of the construction and installation of the public and private Improvements required by this Agreement ("Performance Security"), which amount is 100% of the estimated cost of the Improvements as set forth in **Exhibit "B"**; and

(ii) Two million four hundred fourteen thousand one hundred seven DOLLARS (\$2,414,107) to secure payment to any contractor, subcontractor, persons renting equipment or furnishing labor materials for the Improvements required to be constructed or installed pursuant to this Agreement ("Labor & Materials Security"), which amount is one hundred percent (100%) of the estimated cost of the Improvements; and

(iii) Two hundred forty-one thousand four hundred ten DOLLARS (\$241,410) in the form of a Warranty Bond or cash deposit with the City to guarantee or warranty the

Improvement work done pursuant to this Agreement for a period of one (1) year following acceptance/certification thereof by City, against any defective work or labor done or defective materials furnished (“Warranty Security”). The Warranty Security is 10% of the estimated cost of the Performance Security amount described above, and such Warranty Security must be provided by Developer to City prior to the City’s release of any bonds or Improvement Securities filed with this Agreement.

(b) The Improvement Securities required by this Agreement shall be kept on file with the City Clerk. If surety bonds are used, they must be issued by a surety company currently admitted to transact surety insurance business in California by the California Department of Insurance, with a Best’s Insurance Guide rating of no less than A-. The terms of any documents evidencing such Improvement Securities as set forth in this Section 2 or referenced on Page One (1) of this Agreement, are incorporated into this Agreement by this reference as if set forth fully herein. If any Improvement Security is replaced by another type or kind of approved Improvement Security, subject to the approval of the form thereof by the City Attorney, the replacement shall be filed with City Clerk and, upon filing, shall be deemed to have been made a part of and incorporated into this Agreement. Upon filing of a satisfactory replacement Improvement Security with the City Clerk, the former Improvement Security shall be released.

(c) Developer agrees to keep its Improvement Securities in full force and effect until they are reduced or released by City. If any Improvement Security provided by Developer is cancelled or terminated for any reason by the action of a surety, financial institution or other party, it shall be the responsibility of the Developer to immediately, upon written notice from City, provide a substitute Improvement Security which conforms to all the requirements of this Section 2 in the same amount or amounts.

(d) Any additions, changes, alterations, or modifications of this Agreement or to the Plans, Specifications and Deferred Improvements referred to herein, including any extension of time within which the work hereunder may be completed, shall not release or exonerate any surety or sureties on the Improvement Security given in connection with this Agreement.

3. Alterations to Improvement Plans; Modification of City Standards.

(a) Any changes, alterations or additions to the Plans or to the Improvements, not exceeding 10% of the original estimated cost of the Improvements, which are mutually agreed upon by City and Developer, shall not require Developer to increase any Improvement Securities provided under this Agreement. In the event such changes, alterations, or additions exceed 10% of the original estimated cost of the Improvements, Developer shall provide additional Performance Security as required by Section 2 of this Agreement for 100% of the total estimated cost of the Deferred Improvements as changed, altered, or amended, minus any completed partial releases allowed by Section 7 of this Agreement. Developer shall also provide additional Labor

& Materials Security as required by Section 2 of this Agreement for one hundred percent (100%) of the total estimated cost of the Deferred Improvements as changed, altered, or amended.

(b) Developer shall construct all Deferred Improvements in a good and workman like manner and in accordance with the City Standards in effect as of the date of the *issuance of building permits* for the Deferred Improvements. The City reserves the right to modify the Standards applicable to the Deferred Improvements and this Agreement, when necessary to protect the public safety or welfare or to comply with applicable State or Federal law or City zoning ordinances except that Developer shall not be subject to the modified Standards to the extent it has commenced construction of the street improvements in reliance on a City-issued building permit. If Developer requests and is granted an extension of time for completion of the Deferred Improvements, the City may apply the Standards in effect at the time the extension is granted unless construction has commenced on the Deferred improvements in reliance on a City-issued building permit.

4. Modification of Drainage Plan. Developer agrees that if during the course of construction and installation of Deferred Improvements it shall be determined by the City Engineer that minor revision of the drainage plan is necessary in the public interest due to changed field or boundary conditions, it will undertake such design and construction changes as may be reasonable and as are indicated by the City Engineer and approved by City.

5. Reserved.

6. Inspections; Final Acceptance and Certification of Deferred Improvements.

(a) Developer shall at all times maintain proper facilities and safe access for inspection of the Deferred Improvements by City inspectors and to the shops wherein any work is in preparation.

(b) Upon completion of the Deferred Improvements covered in this Agreement, the Developer shall request a final inspection by the City Engineer or his/her authorized representative. Following receipt of such request, the City Engineer shall inspect the Deferred Improvements, make certain determinations and take certain actions as follows:

(i) If the City Engineer, or his/her authorized representative, determines that the Public Deferred Improvements requiring acceptance by another public agency or utility have been completed in accordance with this Agreement, then the City Engineer shall request said agency or utility to make a final inspection of such improvements and certify to the City that such improvements have been completed and installed to the satisfaction of said utility or agency. Upon receipt of such certification, the City Engineer may release or reduce the securities held for such improvements. Any certification and/or acceptance of the Public Deferred Improvements shall not constitute a waiver of any defects by City.

(ii) For Deferred Improvements not requiring dedication to or acceptance by the a public agency (the "Private Deferred Improvements"), if any, the City Engineer or his/her authorized representative shall inspect such improvements, and/or shall have the discretion to accept a certification from Developer's registered civil engineer stating that the Private Deferred Improvements have been completed in accordance with the approved Plans, City Standards and the Entitlements. If the City Engineer, or his/her authorized representative, makes a finding, based on his/her own inspection (and/or any certification submitted by Developer's registered civil engineer) that the Private Deferred Improvements have been installed and constructed in accordance with the approved Plans, City Standards and the Entitlements, the City Engineer shall recommend certification of the completion of the Private Deferred Improvements by placing an item on the next most convenient City Council agenda requesting certification and authorization to release the Improvement Securities. Said determination by the City Engineer and agendization of the certification and release shall not be unreasonably withheld or delayed.

(c) Developer shall bear all costs of inspection and certification of the Deferred Improvements.

7. Release of Improvement Securities.

(a) The Performance Security shall be fully released only upon the final completion and certification of all Private Deferred Improvements and Public Deferred Improvements. Partial releases may be permitted subject to the provisions of Subsections (a)(i) and (a)(ii) hereof. Upon final completion of the Public and Private Deferred Improvements under this Agreement, and after City Council acceptance/certification, the City shall file a Notice of Completion in accordance with the California Civil Code.

(i) The City Engineer may release a portion of the Performance Security, as work on the Deferred Improvements progresses, upon written application thereof by the Developer; provided, however, that no such release shall be considered by City for an amount where the cost estimate of the remaining work exceeds twenty five percent (25%) or less of the estimate of the total amount of work to be done as shown in **Exhibit "B"**. Upon approval of a partial release or the reduction of Performance Security, the City shall not reduce such Performance Security to an amount less than two-hundred-percent (200%) of the value of the work remaining to be done. City and Developer agree that not more than two requests for reduction or partial release of Performance Security shall be considered between the start of construction and the completion and acceptance/certification of the Deferred Improvements by the City.

(ii) In no event shall the City Engineer authorize a release or reduction of the Performance Security which would reduce such security to an amount below that required to guarantee the completion of the Deferred Improvements and any other obligations imposed upon Developer by this Agreement.

(iii) No partial reduction or release of the Performance Security shall constitute or be construed as the City's acceptance or certification of any Deferred Improvements or related work. Such partial reductions or releases (if any) will merely reflect that a certain portion of the required work has been done.

(b) The Labor & Materials Security shall, ninety (90) days after the City's recordation of the Notice of Completion described in Subsection 7(a), be reduced to an amount equal to the total claimed by all claimants for whom liens have been filed and of which notice has been given to City, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the Labor & Materials Security and to cover related legal costs. The balance shall be released upon the settlement of all claims and obligations for which the Labor & Materials Security was given. If no claims or liens have been filed and no notice has been given to City within said ninety (90) day period, then the Labor & Materials Security shall be released in full.

(c) The Warranty Security shall not be released until after the expiration of the one-year (1-year) warranty period and until any claims filed during the warranty period have been settled. As provided in Section 11, below, the warranty period shall not commence until final acceptance/certification of the Deferred Improvements and related work by the City Council.

(d) The City may retain from any Improvement Securities released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees.

8. Injury to Public Improvements, Public Property or Public Utilities Facilities.

Developer shall replace or repair, or cause the repair or replacement of any and all public or private improvements, public utilities facilities and survey or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. Developer shall bear the entire cost of replacement or repairs of any and all public or private improvements or utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be made to the reasonable satisfaction, and subject to the approval of the City Engineer and the owner of any such public or private improvement.

9. Permits. Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction and installation of the Deferred Improvements, give all necessary notices and pay all fees and taxes required by law.

10. Notice of Breach/Default of Developer.

(a) Default of Developer shall include, but not be limited to: (1) Developer's failure to timely complete construction of the Deferred Improvements; (2) Developer's unwarranted failure to timely cure any defect in the Deferred Improvements; (3) Developer's failure to perform

substantial construction work for a period of twenty (20) consecutive calendar days after commencement of the work; (4) Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within thirty (30) days; (5) the commencement of a foreclosure action or termination of lease procedure against the Property or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; (6) Developer's failure to keep the Improvement Securities in full force and effect; (7) Developer's failure to notify the City of any sale, transfer or other disposition of the Property to a purported new Developer; (8) Developer's failure to maintain insurance; or (9) the failure of Developer or Developer's contractors, subcontractors, agents or employees to comply with any other terms and provisions of this Agreement.

(b) In the event of any such default, the City Engineer or the City Council may serve written notice to Developer specifying in reasonable detail the nature of the default. Developer shall have thirty (30) days from receipt of said notice to cure the default; provided that, if the default is not reasonably susceptible to being cured within said thirty (30) days, Developer shall have a reasonable period of time to cure the default so long as Developer commences to cure the default within said thirty (30) days and diligently prosecutes the cure to completion.

(c) If following service of such written notice of default, Developer fails to cure or commence curing the default to the satisfaction of City within the cure period specified in Subsection 10(b), above, the City Engineer or the City Council may serve notice of Developer's default upon Developer and where applicable Developer's surety, or the holder(s) of any other Improvement Securities, in accordance with the notice provisions set forth in Section 22 of this Agreement.

(d) In the event of service of the notice of default specified in Subsection 10(c), above, Developer's surety shall have the duty to take over and complete the Deferred Improvements and related work required under this Agreement; provided; however, that if the surety, within twenty (20) days after the serving upon it of such notice of default, does not give the City written notice of its intention to take over the construction of said Deferred Improvements or does not, within ten (10) days after giving City notice of such election, commence to complete the Deferred Improvements, City may take over the work and prosecute the Deferred Improvements to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Developer, and Developer's surety shall be liable to City for any costs or damages occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the Deferred Improvements, such materials, appliances, plant and other property belonging to Developer as may be on the site of the work and necessary for the completion of same.

(e) The City reserves to itself all remedies available to it at law or in equity for Developer's default under this Agreement. The City shall have the right, subject to this Section, to draw upon or utilize the appropriate Improvement Securities to mitigate City's damages in event of default by Developer. The right of City to draw upon or utilize the Improvement Securities is

additional to and not in lieu of any other remedy available to City. It is specifically recognized that the estimated costs and amounts of Improvement Securities may not reflect the actual cost of construction or installation of the Deferred Improvements, and therefore, City's damages for Developer's default shall be measured by the actual cost of completing the required Deferred Improvements. The sums provided by the Improvement Securities may be used by City for the completion of the Deferred Improvements in accordance with the Plans.

(f) Failure of Developer to comply with the terms of this Agreement, including but not limited to, construction of all the Deferred Improvements as set forth herein and as required by the Entitlements, shall constitute Developer's consent to: (1) the filing by City of a notice of violation against all of the lots in the Subdivision; (2) withholding of Building permits, utility connections and/or Certificates of Occupancy. The remedies provided by this Subsection (f) are in addition to and not in lieu of any other remedies available to City at law or in equity. Developer agrees that the choice of remedy or remedies for Developer's default or breach shall be in the sole discretion of City.

(g) In the event that Developer fails to perform any obligation hereunder, Developer agrees to pay all costs and expenses incurred by City in securing performances of such obligations, including costs of suit and reasonable attorney's fees.

(h) The failure of City to take an enforcement action with respect to a default, or to declare a default or breach, shall not be construed as a waiver of that default or breach, or of any subsequent default or breach of Developer. Any failure by the City to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision(s) and further shall not act to release any surety from its obligations under this Agreement.

11. Warranty.

(a) For a period of one (1) year after final acceptance/certification by the City Council of the Deferred Improvements, Developer shall guarantee or warranty all the Deferred Improvements against any defective work or labor done or defective materials furnished. If within the warranty period any work relating to the Deferred Improvements or any part of thereof furnished, installed, constructed or caused to be done, furnished, installed or constructed by Developer fails to fulfill any of the requirements of this Agreement or the Plans, Developer shall without delay and without any cost to City, commence to repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure within thirty (30) days of receiving written notice from City of the defect and diligently prosecute the repair or replacement work to completion.

(b) Should Developer fail to act promptly or in accordance with the repair/replacement requirements set forth herein, Developer hereby authorizes City, at City's option, to perform the repair/replacement work twenty (20) days after mailing written notice to Developer and to Developer's surety, and Developer agrees to pay City for the cost of such work.

(c) Should the City determine that an emergency or a threat to the public safety and welfare exists from the condition of the Deferred Improvements which require repairs, replacements or remedial measures to be made before Developer can be notified, City may, in its sole discretion, make the necessary repairs or replacements or perform the necessary work and Developer shall pay to City the cost of such repairs.

12. Developer Not Agent of City. Neither Developer nor any of Developer's agents, officers, employees, or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement.

13. Injury to Improvement Work; Risk of Loss. Until such time as the Public Deferred Improvements are accepted by City, Developer shall be responsible for and bear the risk of loss to any of the Public Deferred Improvements constructed or installed and shall be responsible for the care, maintenance of and any damage to such Public Deferred Improvements. Neither City, nor any of its agents, officers or employees shall be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the Public Deferred Improvements specified in this Agreement prior to the completion and acceptance of the Public Deferred Improvements by City. All such risks shall be the responsibility of and are hereby assumed by Developer. Developer is responsible for and shall bear the risk of loss for all Private Deferred Improvements at all times.

14. Other Agreements. Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the Parties, or from entering into agreements with other Developers for the apportionment of costs of water and sewer mains, or other Deferred Improvements, pursuant to the provisions of City ordinances providing therefor, nor shall anything in this Agreement commit to any such apportionment.

15. Developer's Obligation to Warn Public During Construction. Until final acceptance/certification of the Public Deferred Improvements pursuant to Section 6(b)(i), and final certification of construction of the Private Deferred Improvements pursuant to Section 6(b)(ii), Developer shall give good and adequate warning to the public of each and every dangerous condition existent in said Deferred Improvements, and will take all reasonable actions to protect the public from such dangerous conditions in, on or around the work site.

16. Vesting of Ownership. Upon acceptance of the Public Deferred Improvements and related work on behalf of the City, and after recordation of the Notice of Completion, ownership of the Public Deferred Improvements shall vest in the name of the City, or applicable government agency or utility company, and any improvement constructed on any public street pursuant to this Agreement shall vest in City.

17. Indemnity/Hold Harmless.

(a) Neither the City, nor any official, officer, employee, contractor or agent thereof, shall be liable for any injury to persons or property occasioned by reason of the acts or omissions of Developer, its agents, subcontractors or employees in the performance of this Agreement. Developer hereby agrees to, and shall defend and hold harmless City, its elective and appointive boards, commissions and officers, and its agents, contractors and employees from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, consultant's fees, expert's fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Developer's operations, or any subcontractor's operations, to be performed under this Agreement for Developer's or subcontractor's tort negligence including active or passive, or strict negligence, including but not limited to personal injury including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone, including loss of use thereof, caused or alleged to be caused by any act or omission of Developer or any subcontractor, or anyone directly or indirectly employed by any of them or anyone for the full period of time allowed by law, with the exception of the sole negligence or willful misconduct of City.

(b) Developer's indemnity, defense and hold harmless obligations under this Section 17 are not conditioned or dependent upon whether City, or its elective and appointive boards, commissions and officers, or its agents, contractors and employees, prepared, supplied or reviewed any Plans or related specifications in connection with the Deferred Improvements, or whether City or Developer has insurance or other indemnification covering any of these matters.

(c) Developer's obligation to indemnify, hold harmless and defend City shall extend to injuries to persons and damages to or alleged taking of property resulting from the design or construction of the Deferred Improvements. City's acceptance and/or certification of the Deferred Improvements shall not constitute an assumption by City of any responsibility or liability for any damage or alleged taking of property referenced herein. City shall not be responsible or liable for the design or construction of the Deferred Improvements constructed or installed pursuant to the Plans, unless the particular Improvement design was required by City over the written objection of Developer, which objection stated that the Improvement design was potentially dangerous or defective and set forth a safe and feasible alternative design. After City's acceptance/certification of the Deferred Improvements, Developer shall remain obligated to correct or eliminate all dangerous conditions caused by defects in design or construction; provided, however, that the Developer shall not be responsible for routine maintenance. Developer acknowledges and agrees that Developer shall be responsible and liable for the design and construction of the Deferred Improvements and other work done pursuant to this Agreement, and except as may be provided above, City shall not be liable for any acts or omissions in approving, reviewing, checking, correcting or modifying any Plans, or in inspecting, reviewing or approving any work or construction of Deferred Improvements. Developer's Improvement Securities shall not be required to secure Developer's obligations under this Section 17.

18. Sale or Disposition of Project; Assignment.

(a) Developer acknowledges and agrees that sale, transfer or other disposition of the Property prior to completion of the Deferred Improvements required hereunder will not relieve Developer from the obligations set forth in this Agreement, and Developer shall be required to notify City sixty (60) days in advance of any sale or transfer of ownership of the Property or any proposed assignment of this Agreement. If Developer sells or otherwise transfers the Property to any other person or entity prior to final completion of the Deferred Improvements, or wishes to assign this Agreement, Developer may request a novation of this Agreement and a substitution of Improvement Securities by the new owner or proposed assignee (hereinafter collectively for purposes of this Section, "Successor"). Developer shall be required to provide any documentation reasonably required by City to determine the appropriateness of any proposed Successor.

(b) Any proposed Successor must demonstrate to the City its ability to perform and complete the obligations of Developer under this Agreement, as determined by objective standards of financial capability, creditworthiness and experience required for such performance, and the City shall have the right to compel the Successor to disclose all documents, information and other material which, in City's sole reasonable discretion, may establish or tend to establish that the proposed Successor meets the standards specified herein. Following approval by City and full execution of a novation (or other such release or assignment and assumption agreement(s) entered into by Developer, Successor and City), posting of satisfactory Improvement Securities and submission of required insurance by Successor, City shall release or reduce the securities posted by Developer in accordance with the provisions of such novation and release Developer of its obligations under this Agreement. Nothing in the novation (or other such release or assignment and assumption agreement entered into by Developer, Successor and City) shall relieve Developer of its obligations under any other Section of this Agreement for work or Deferred Improvements performed by Developer prior to the novation.

19. Time of the Essence. Time is of the essence in this Agreement.

20. Time for Completion of Deferred Improvements; Extensions.

(a) Developer shall commence and diligently prosecute to completion construction of all the Deferred Improvements required by this Agreement. The City Manager may grant an extension of time for up to one period of one year as may be in the public interest upon the showing of the Developer of good cause. Any such extension granted shall be subject to the limitations and conditions set forth in Subsections 20(b) and (c), below, and shall be made by a writing executed by the in a form as approved by the City Attorney.

(b) Any such extension may be granted without notice to Developer's surety and shall not affect the validity of this Agreement or release the surety or sureties on any Improvement Securities given for this Agreement. However, City reserves the right to require as part of any extension amendment a written assurance from the surety acceptable to the City Attorney that the Improvement Securities required by Section 2 of this Agreement shall remain enforceable throughout the term of any extension.

(c) The City Manager shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension. In addition, the time for completion of the Deferred Improvements shall be extended for any delay resulting from an act of City, or from an act of God, which Developer could not have reasonably foreseen, or by storm or inclement weather which prevents the conducting of work, or by strikes, boycotts, similar actions by employees or labor organizations, which prevent the conducting of work, and which were not caused by or contributed to by Developer, provided that Developer provides City with written notice of the delaying event within fifteen (15) days of the commencement of the delay. In the event of such delaying event, Developer shall use all reasonable efforts to remedy same and resume completion of the Deferred Improvements as promptly as practicable.

(d) As a condition of granting an extension of time to complete the Deferred Improvements required by this Agreement, the City Manager may require Developer to furnish new or additional Improvement Securities guaranteeing performance of this Agreement as extended in an increased amount as necessary to compensate for any increase in construction costs as determined by the City Engineer.

21. Notice. All notices required by or provided for under this Agreement shall be in writing and delivered in person or sent by certified or registered mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed as follows unless a written change of address is filed with City:

Notice to City: City of Beaumont
550 E. 6th Street
Beaumont, CA 92223
Attn: City Manager

With a Copy to: John Pinkney, Esq.
SBEMP
1800 East Tahquitz Canyon Way
Palm Springs, CA 92262

Notice to Developer: Mark Turner
Vice President
Terra-Gen
11455 El Camino Real, Suite 160
San Diego, CA 92130

22. Severability. The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement

shall remain in full force and effect unless amended or modified in writing by the mutual consent of the Parties.

23. Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this Agreement.

24. Insurance.

(a) Developer shall, at all times during the construction of the Deferred Improvements, obtain, carry, maintain, and keep in full force and effect, at its sole cost and expense, policies of insurance of the types and in at least the minimum amounts described below:

(i) Commercial General Liability policy with a minimum combined single limit of One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, death, personal injury and property damage arising out of or in connection with the activities of the Developer and its contractors and subcontractors in performance of the work under this Agreement. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001) and shall, in addition to the other coverages specified in this subsection, include coverage for independent contractors, ongoing operations, products and completed operations, contractual liability and personal and advertising injury.

(ii) Commercial Vehicle/Automotive Liability policy covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit, covering any vehicle utilized by Developer, its officers, agents, employees, subcontractors or independent contractors in performing the work required by this Agreement.

(iii) Workers' Compensation and Employer's Liability policy for all Developer's employees, with Workers' Compensation limits as required by State law and Employer's Liability coverage of \$1,000,000 per accident for bodily injury or disease. In case any work is sublet, Developer shall require any contractor or subcontractor similarly to provide Workers' Compensation and Employer's Liability Insurance for all contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Developer.

(1) In case any class of employees engaged in work under this Agreement at the work site(s) is not protected under any Workers' Compensation law, Developer shall provide and shall cause each contractor or subcontractor to provide, adequate insurance for the protection of employees not otherwise protected.

(2) Developer hereby indemnifies City for any damages or claims resulting from failure of either Developer or any contractor or subcontractor to take out or maintain such liability or Workers' Compensation insurance.

(b) Insurer Rating; Acceptability. Except as set forth otherwise herein, the policies required by this Section shall be issued by a California-admitted insurer with a rating of at least A-; VII in the latest edition of Best's Insurance Guide. A Commercial General Liability policy issued by an insurer that is on the California Department of Insurance's List of Approved Surplus Line Insurers ("LASLI") will be acceptable, if no coverage from an admitted insurer can be obtained by Developer, and further provided that such insurer maintains a Best's rating of at least "A-; X" and remains on the LASLI during the term hereof. Workers' Compensation coverage issued by the State Compensation Insurance Fund shall be acceptable if no other coverage can be obtained by Developer, and further provided such insurer remains admitted in California and is otherwise financially acceptable to City.

(c) Deductibles. Any deductibles or self-insured retentions must be declared in writing by Developer to City and subsequently approved by City prior to its execution of this Agreement and prior to commencement of any work hereunder. At City's option, Developer shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Developer shall procure a bond guaranteeing payment of losses and expenses.

(d) Certificates and Endorsements Verification. Developer shall submit to the City original certificates of insurance and endorsements evidencing the coverages required by this Section. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time and/or to require Developer to provide reports or status updates to evidence compliance of its contractors and subcontractors with the provisions of this Section.

(e) Required Endorsements.

(i) The Commercial General Liability and Commercial Vehicle/Automotive Liability policies are to contain or be endorsed to contain the following provisions:

(1) Additional Insureds. The City of Beaumont, its officials, officers, employees, agents and independent contractors shall be named as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer; and with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations.

(2) Primary Insurance. For any claims related to this project, the Developer's insurance coverage shall be primary insurance as respects the City of Beaumont,

its officials, officers, employees, agents and independent contractors. Any insurance or self-insurance maintained by the City of Beaumont, its officials, officers, employees, agents and independent contractors shall be excess of the Developer's insurance and shall not contribute with it. This endorsement is not applicable to the Commercial Vehicle/Automotive Liability Policy.

(3) Waiver of Subrogation. Endorsements waiving all rights of subrogation against the City of Beaumont, its officials, officers, employees, agents and independent contractors shall be provided.

(ii) The Workers' Compensation policy shall be endorsed to waive all rights of subrogation against the City of Beaumont, its officials, officers, employees, agents and independent contractors.

(f) Other Insurance Requirements. All policies required under this Agreement shall contain provisions stating that such policies cannot be canceled or reduced except on at least thirty (30) days prior written notice to Developer (ten (10) days' notice for cancellation due to non-payment). Developer further agrees to: (1) provide to City copies of any notices relating to cancellation or reduction of insurance within two (2) days of receipt; and (2) cause all certificates of insurance to include language indicating that the issuers or producers of such policies will endeavor to provide copies of any such notices directly to City.

(g) Commencement of Work. Developer shall not commence work under this Agreement until Developer has obtained all insurance required pursuant to this Section, and such insurance has been obtained by Developer and approved by City; nor shall Developer allow any contractor or subcontractor to commence work on the Deferred Improvements until not less than the same insurance hereunder is required of the contractor or subcontractor and has been obtained. Certificates, endorsements, and where applicable, full copies of policies shall be maintained on file with the City Clerk.

(h) Higher Limits. If Developer or a contractor or subcontractor maintains higher limits than the minimums specified in this Section 25, the City requires and shall be entitled to coverage for the higher limits maintained by Developer, contractor or subcontractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

25. Attorneys' Fees. In the event any action at law or in equity is brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to litigation costs and reasonable attorneys' fees.

26. Incorporation of Recitals. The Recitals to this Agreement are hereby incorporated into in the terms of this Agreement.

27. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes any prior written or oral agreements between them with respect to the subject matter hereof. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the Parties.

28. Governing Law; Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. In the event that suit shall be brought by either Party to this contract, the Parties agree that venue shall be exclusively vested in the State courts of the County of Riverside, California or where appropriate, in the United States District Court, Southern District of California, Riverside, California.

29. Runs with the Land; Recordation.

(a) The Parties agree that the terms and provisions set forth in this Agreement shall be deemed provisions, terms and/or covenants running with the Property in accordance with applicable law, including without limitation, California Civil Code section 1468, and shall pass to and be binding upon the heirs, successors and assigns of the Parties to this Agreement, and on any successor owner of the Property.

(b) The provisions of Subsection 29(a) notwithstanding, Developer shall remain jointly and severally liable with its heirs, successors, assigns or successor owners of the Property for the responsibilities and liabilities imposed by this Agreement unless a novation or assignment agreement is executed in accordance with the provisions of Section 18 of this Agreement.

(c) Upon execution, this Agreement shall be recorded in the Official Records of Riverside County, and by such recordation, it is the intention of the Parties to give notice to and bind their successors, heirs and assigns hereto.

30. Authority of Executing Parties. Each person executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so all behalf of the entity it purports to bind and that he/she is authorized to enter into contracts on behalf of Developer. The undersigned, on behalf of Developer, binds Developer, its partners, successors, executors, administrators, and assigns with respect to the terms and provisions of this Agreement.

[signatures on following page]

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto on the date above first written.

Developer:

BEAUMONT ESS, LLC,
a Delaware limited liability company

By: _____

City:

CITY OF BEAUMONT
a Municipal Corporation

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

John Pinkney, City Attorney

APPROVED AS TO CONTENT:

Jeff Hart, Dir. Of Public Works/City Engineer

Attachments: **Exhibit A** Legal description of Property
Exhibit B Cost estimates

(Proper Notarization of Developer's Signature is required and shall be attached)

Exhibit A

Beaumont Energy Storage Project property legal description summary:

Assessor's Parcel Number

417-130-005

Approximate Acreage

2.48

PROPERTY DESCRIPTION

All that certain real property situated in the City of Beaumont, County of Riverside, State of California, described as follows:

LOT 4 IN BLOCK 137 OF AMENDED MAP OF THE TOWN OF BEAUMONT, IN THE CITY OF BEAUMONT, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6, PAGE 16 AND 17 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

Assessor's Parcel Number

417-130-012-9

Approximate Acreage

2.24

PROPERTY DESCRIPTION

All that certain real property situated in the City of Beaumont, County of Riverside, State of California, described as follows:

LOT 3, BLOCK 137, AMENDED MAP OF THE TOWN OF BEAUMONT, AS RECORDED ON FEBRUARY 27, 1888 IN BOOK 6, PAGE(S) 16 AND 17 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

Assessor's Parcel Number

417-110-012

Approximate Acreage

2.24

PROPERTY DESCRIPTION

All that certain real property situated in the City of Beaumont, County of Riverside, State of California, described as follows:

LOT 2, BLOCK 137, AMENDED MAP OF THE TOWN OF BEAUMONT, AS RECORDED ON FEBRUARY 27, 1888 IN BOOK 6, PAGE(S) 16 AND 17 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

TOGETHER WITH THE EAST HALF OF MINNESOTA A VENUE, 80 FEET WIDE, AS VACATED BY ORDINANCE RECORDED JUNE 28, 1940 AS INSTRUMENT NO. 1895 IN BOOK 467, PAGE 434 OF OFFICIAL RECORDS, LYING BETWEEN THE EASTERLY PROLONGATIONS OF THE NORTH AND SOUTH LINES OF LOT 2, BLOCK 137.

Exhibit B

Westwood

Job Name: Beaumont BESS
 Job Number: 0029655.00
 Date: 2/17/2023
 By: Westwood
 Phase: Construction

**Opinion of Probable Costs
 For
 Beaumont Battery Storage Road Improvements
 Beaumont, CA**

Item Description	Quantity	Unit	Unit Price	Amount
General Sitework				
Mobilization	1	LS	\$20,000	\$20,000
Demo Existing Pavement (Veile)	10,500	SF	\$4	\$36,750
Demo Existing Pavement (Elm)	11,660	SF	\$4	\$40,810
Sawcut (Veile)	910	LF	\$3	\$2,275
Sawcut (Elm)	300	LF	\$3	\$750
Cut, Fill and Compact Onsite Material (Veile)	1,675	CY	\$5	\$8,375
Cut, Fill and Compact Onsite Material (Elm +swale)	680	CY	\$5	\$3,400
Export Excess Cut (Veile)	490	CY	\$50	\$24,500
Export Excess Cut (Elm +swale)	310	CY	\$50	\$15,500
Utility Allowance to Support & Relocate Exist Utilities (Veile)	1	LS	\$20,000	\$20,000
Utility Allowance to Support & Relocate Exist Utilities (Elm)	1	LS	\$10,000	\$10,000
Landscape Allowance (Walls, Fences, Plantings, etc.)	1	LS	\$20,000	\$20,000
Traffic Control	1	LS	\$15,000	\$15,000
Lighting	5	EA	\$5,000	\$25,000
Striping and Signage	1	EA	\$6,000	\$6,000
General Sitework Subtotal				\$248,360
Pavement				
Asphalt Paving - 5" (Veile)	693	TONS	\$125	\$86,612
Asphalt Paving - 4" (Elm)	380	TONS	\$125	\$47,480
Base (10" AB) - Veile	2,710	SY	\$12	\$32,520
Base (8" AB) - Elm	1,880	SY	\$12	\$22,560
Subgrade Prep - Veile	2,710	SY	\$5	\$13,550
Subgrade Prep - Elm	1,880	SY	\$5	\$9,400
Concrete - 4" x 5.5' wide sidewalk (Veile)	4,360	SF	\$8	\$34,880
Concrete - 4" x 5.5' wide sidewalk (Elm)	3,190	SF	\$8	\$25,520
Concrete Curb and Gutter (Veile)	865	LF	\$25	\$21,630
Concrete Curb and Gutter (Elm)	580	LF	\$25	\$14,500
Guardrail (Veile)	1	LS	\$35,000	\$35,000
Roadway Rehab Allowance (Veile)	1	LS	\$30,000	\$30,000
Roadway Rehab Allowance (Elm)	1	LS	\$15,000	\$15,000
Pavement Subtotal				\$388,652
Utility				
Curb Inlet Catch Basin - 4 ft opening	2	EA	\$5,000.00	\$10,000
Manhole - 5 foot width	1	EA	\$3,500.00	\$3,500
Flared End Section	1	EA	\$750.00	\$750
Rip-Rap	4	CY	\$50.00	\$200
18" RCP	50	LF	\$36.00	\$1,800
24" RCP	310	LF	\$60.00	\$18,600
Utility Allowance (Veile)	1	LS	\$15,000.00	\$15,000
Utility Allowance (Elm)	1	LS	\$7,500.00	\$7,500
Utility Transmission Pole Removal & New Installation	1	LS	\$1,000,000.00	\$1,000,000
Utility Subtotal				\$1,057,350
Erosion Control				
Erosion Control and Seeding	1	LS	\$30,000.00	\$30,000
Erosion Control Subtotal				\$30,000

Subtotal	\$1,724,362
Contingency (15%)	\$258,654
Contractor's OH&P (15%)	\$258,654
<u>Engineering Fees (Design, Geotech, Staking, Testing, Etc.) (10%)</u>	<u>\$172,436</u>
Project Total	\$2,414,107

Engineer's opinions of probable Construction Cost provided for herein are made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the industry. However, since the Engineer has no control over the cost of labor, equipment, or services furnished by others, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. Actual required quantities will vary from this estimate. Owner/Contractor to verify all required quantities and other estimate items, permits, fees, etc., not included above that may be specified in the Construction documents. If Owner wishes to obtain greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator.



2.17.23