

Recording requested by and mail to:

City Clerk
City of Beaumont
550 E. Sixth Street
Beaumont, CA 92223

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDER'S FEES PURSUANT TO GOVERNMENT CODE SECTION
6103 AND 27383

APN: 417-130-012

**STORM WATER MANAGEMENT WQMP/BMP FACILITIES
COVENANT AND AGREEMENT NO.**

City of Beaumont, Riverside County, California

THIS COVENANT AND AGREEMENT is made and entered into as of this ____ day of May, 2023 (this "Agreement"), by and between (1) Beaumont Industrial Equities, LLC, a California limited liability company ("Fee Owner") and (2) Beaumont ESS, LLC, a Delaware limited liability company ("Project Owner"), on the one hand (collectively, "Owner"), and the City of Beaumont, California, on the other hand ("City").

The Owner hereby certifies I am (we are) the sole owner of or tenant at, as applicable, certain real property located in the City of Beaumont, County of Riverside, State of California, more specifically described in **Exhibit "A"** ("Property").

The Owner is executing this Agreement in order to satisfy the requirements of the plot plans conditions of approval, condition no. 83, for its battery energy storage project on the Property (the "Project").

The Owner covenants and agrees to comply with the Project Water Quality Management Plan ("WQMP"), attached hereto as **Exhibit "B"**, providing for storm water quality treatment within the confines of the Property.

The Owner covenants and agrees that the health, safety and welfare of the residents of the City of Beaumont, require that the Best Management Practice ("BMP") facilities, more specifically described in the WQMP (for example bio- swales, catch basins, roof drains and appurtenances) be constructed and maintained to minimize pollutants in urban runoff by the Owner.

The Owner further covenants and agrees as follows:

1. The on-site storm water management/BMP facilities mentioned above shall be constructed by the Owner at its sole cost and expense, in accordance with the plans and specifications identified in the WQMP approved by City.
2. The Owner shall adequately maintain the storm water management/BMP facilities in a manner assuring peak performance at all times, including source control BMPs at all times as its sole responsibility, at its sole cost and expense. This includes all pipes and channels built to convey storm water on the Property, including catch basin inserts, underground detention ponds, swales and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance is herein defined as good working condition so that these facilities are performing in accordance with their design functions continuously at all times.
3. The Owner shall annually inspect the storm water management/BMP facilities mentioned above and submit an inspection report annually to the Public Works Department by the anniversary of the date of this Agreement of each year. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the storm water management BMPs listed in the WQMP such as bioswales, catch basins and related filter units, etc. Deficiencies shall be noted in the inspection report and corrected by Owner promptly.
4. The Owner hereby grants permission to City, its authorized agents and employees, to enter upon the Property and to inspect the storm water management/BMP facilities, take samples and perform testing whenever the City deems necessary and as required by the City's most current National Pollutant Discharge Elimination System (NPDES) Permit. The purpose of the inspection, testing and sampling is to follow up on apparent and reported deficiencies and/or to respond to citizen complaints and meet the requirements of the City's NPDES Permit issued by the State Water Resources Control Board – Santa Ana River Region. The City shall provide the Owner with advanced notice of entering upon the Property, except in the event of an emergency, as determined by the City. The City shall provide the Owner copies of the inspection findings and a directive to commence with the repairs if necessary. Owner or Owner's successors or assigns shall pay City for all costs incurred by City in the inspection, sampling, testing of the BMPs within thirty (30) calendar days of City invoice.
5. In the event the Owner fails to maintain the storm water management/BMP facilities in good working condition acceptable to the City, upon five (5) days advanced written notice, the City may enter upon the Property and take whatever steps necessary to correct deficiencies identified in any inspection report and to charge the costs of such repairs to the Owner the cost of which shall constitute a lien against the Property. In the event of an emergency, as determined by City, advanced notice as aforesaid, shall not be required. Notwithstanding the forgoing, it is expressly understood and agreed that the City is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation to the City.
6. The Owner will perform the work necessary to keep these facilities in good working order as appropriate. The maintenance schedule for the storm water management BMP

facilities (including sediment removal) is outlined in the approved WQMP and the schedule must be followed at all times. In the future, City of Beaumont may adopt an annual Stormwater Inspection Fee that would be assessed to the Owner.

7. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials and the like, the Owner, its successors and assigns shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder.
8. This Agreement imposes no liability of any kind whatsoever on the City. Owner agrees to indemnify, defend (with counsel reasonably approved by the City) and hold harmless the City and its authorized officers, employees, agents and volunteers (collectively, "City Parties") from any and all claims, actions, losses, damages, and/or liability (collectively, "Liabilities") arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the City on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Owner's obligation under this Section 8 applies to the City's "active" as well as "passive" negligence but, notwithstanding anything to the contrary herein, does not apply to any City Party's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782, or to any Liabilities, to the extent caused by the acts or omissions of any City Parties or any third party contractors undertaking any work (other than field inspections) or other maintenance on the Property on behalf of the City under this Agreement.
9. This Agreement shall be recorded with the County Recorder for the County of Riverside and shall constitute a covenant running with the land, equitable servitude and lien against the Property, and shall be binding on the Owner, its successors, assigns, transferees, administrators, executors, heirs, encumbrancers and any other successors in interests, including any homeowner's association. This Agreement shall (and does hereby) terminate upon the Project's removal from the Property and the restoration of the surface of the Property to allow for water flow similar to conditions existing as of the date of this Agreement prior to the construction of the Project, and as provided in the Decommissioning Plan, Beaumont Energy Storage Project, July 2022 revised October 2022, prepared for Project Owner by Dudek. Project Owner's obligations under this Agreement shall continue as long as it is a tenant or in possession of the Property and shall run with and be binding upon any successor tenant on the Property.
10. In addition to any remedy available to City under this Agreement, if Owner violates any term of this Agreement and does not cure the violation within the time already provided in this Agreement, or, if not provided, within thirty (30) calendar days, or within such time authorized by the City if said cure reasonably requires more than the subject time, the City may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the Owner with the terms of this Agreement. In such action, the City may recover any damages to which the City may be entitled for the violation, enjoin the violation by temporary or permanent injunction without the necessity of proving actual damages or the inadequacy of otherwise available legal remedies, or obtain other

equitable relief, including, but not limited to, the restoration of the Property and/or the BMPs identified in the WQMP to the condition in which it/they existed prior to any such violation or injury.

11. Owner shall provide printed educational materials with any sale of the Property which provide information on what storm water management facilities are present, the types and locations of maintenance signs that are required and how the necessary maintenance can be maintained.
12. Owner shall provide actual notice of this Agreement and its terms to any respective buyers or successor(s) in interest.
13. In order to be valid, amendment or change to this Agreement including the WQMP and BMPs requires an amendment executed by the City and Owner which is recorded with the Riverside County Recorder.
14. This Agreement may be executed in any number of counterparts, and all such counterpart signature pages combined to create one and the same instrument.


[Remainder of Page Intentionally Left Blank – Signature Page Follows]


WITNESS the following signatures:

OWNER:

BEAUMONT ESS, LLC,
a Delaware limited liability company

BEAUMONT INDUSTRIAL EQUITIES, LLC
a California limited liability company

By: 
Name: CRAIG POSPISIL
Title: VICE PRESIDENT

By: 
Name: Chris Dalkos
Title: CO-Manager

City:

CITY OF BEAUMONT

a Municipal Corporation

Signature: _____
City Manager

ATTEST:

City Manager

APPROVED AS TO FORM:

John A. Pinkney, City Attorney

APPROVED AS TO CONTENT:

Jeff Hart, Director of Engineering/Public Works

All signatures on this Agreement on behalf of the Owner must be acknowledged before a Notary Public. In the event that the owner is a corporation, the President/Vice President and the corporate secretary of the corporation must sign.

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 Riverside)

On May 26, 2023, before me, Jean-Pierre Rueda, notary public, personally appeared Chris Dalkos 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: Jean-Pierre Rueda (Seal)



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 Riverside)

On _____, 2023, before me, _____, notary public, personally appeared _____ 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)

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State of California)
County of Riverside)

On _____, 2023, before me, _____, notary public, personally appeared _____ 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.

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WITNESS my hand and official seal.

Signature: _____ (Seal)

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State of California)
County of Riverside)

On _____, 2023, before me, _____, notary public, personally appeared _____ 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)

NOTARIAL 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 SAN DIEGO)

On 5/31/2023, before me, Bethany Shedrick, Notary Public,
(here insert name and title of the officer)

personally appeared Craig Pospisil, 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 Bethany Shedrick (Seal)



EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Riverside and described as follows:

Lot 3 in Block 137 of the 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(s) 16 and 17 of Maps, Records of San Bernardino County, California.

Together with the vacated street Elm Avenue by Resolutions recorded June 28, 1940 in Book 467 page 434 of Official Records, and July 28, 1989 as Instrument No. 252946, corrected document recorded August 15, 1989 as Instrument No. 277733 all of Official Records of Riverside County, California.

APN: 417-130-012

EXHIBIT “B”

WQMP

See Project Specific Water Quality Management Plan

Project Title: Beaumont Energy Storage Project

Development No.: PP2021-0335

Design Review/Case No.: PW2023-0977

Revision Date: 04-03-2023

(copy of which is on file with the City of Beaumont)

Recording requested by and mail to:

City Clerk
City of Beaumont
550 E. Sixth Street
Beaumont, CA 92223

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDER'S FEES PURSUANT TO GOVERNMENT CODE
SECTION 6103 AND 27383

APN: 417-110-012

**STORM WATER MANAGEMENT WQMP/BMP FACILITIES
COVENANT AND AGREEMENT NO.**

City of Beaumont, Riverside County, California

THIS COVENANT AND AGREEMENT is made and entered into as of this ____ day of May, 2023 (this "Agreement"), by and between (1) MONSTER R O S INC., a California corporation ("Fee Owner") and (2) Beaumont ESS, LLC, a Delaware limited liability company ("Project Owner"), on the one hand (collectively, "Owner"), and the City of Beaumont, California, on the other hand ("City").

The Owner hereby certifies I am (we are) the sole owner of or tenant at, as applicable, certain real property located in the City of Beaumont, County of Riverside, State of California, more specifically described in **Exhibit "A"** ("Property").

The Owner is executing this Agreement in order to satisfy the requirements of the plot plans conditions of approval, condition no. 83, for its battery energy storage project on the Property (the "Project").

The Owner covenants and agrees to comply with the Project Water Quality Management Plan ("WQMP"), attached hereto as **Exhibit "B"**, providing for storm water quality treatment within the confines of the Property.

The Owner covenants and agrees that the health, safety and welfare of the residents of the City of Beaumont, require that the Best Management Practice ("BMP") facilities, more specifically described in the WQMP (for example bio- swales, catch basins, roof drains and appurtenances) be constructed and maintained to minimize pollutants in urban runoff by the Owner.

The Owner further covenants and agrees as follows:

- The on-site storm water management/BMP facilities mentioned above shall be constructed by the Owner at its sole cost and expense, in accordance with the

plans and specifications identified in the WQMP approved by City.

- The Owner shall adequately maintain the storm water management/BMP facilities in a manner assuring peak performance at all times, including source control BMPs at all times as its sole responsibility, at its sole cost and expense. This includes all pipes and channels built to convey storm water on the Property, including catch basin inserts, underground detention ponds, swales and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance is herein defined as good working condition so that these facilities are performing in accordance with their design functions continuously at all times.
- The Owner shall annually inspect the storm water management/BMP facilities mentioned above and submit an inspection report annually to the Public Works Department by the anniversary of the date of this Agreement of each year. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the storm water management BMPs listed in the WQMP such as bioswales, catch basins and related filter units, etc. Deficiencies shall be noted in the inspection report and corrected by Owner promptly.
- The Owner hereby grants permission to City, its authorized agents and employees, to enter upon the Property and to inspect the storm water management/BMP facilities, take samples and perform testing whenever the City deems necessary and as required by the City's most current National Pollutant Discharge Elimination System (NPDES) Permit. The purpose of the inspection, testing and sampling is to follow up on apparent and reported deficiencies and/or to respond to citizen complaints and meet the requirements of the City's NPDES Permit issued by the State Water Resources Control Board – Santa Ana River Region. The City shall provide the Owner with advanced notice of entering upon the Property, except in the event of an emergency, as determined by the City. The City shall provide the Owner copies of the inspection findings and a directive to commence with the repairs if necessary. Owner or Owner's successors or assigns shall pay City for all costs incurred by City in the inspection, sampling, testing of the BMPs within thirty (30) calendar days of City invoice.
- In the event the Owner fails to maintain the storm water management/BMP facilities in good working condition acceptable to the City, upon five (5) days advanced written notice, the City may enter upon the Property and take whatever steps necessary to correct deficiencies identified in any inspection report and to charge the costs of such repairs to the Owner the cost of which shall constitute a lien against the Property. In the event of an emergency, as determined by City, advanced notice as aforesaid, shall not be required. Notwithstanding the forgoing, it is expressly understood and agreed that the City is under no obligation to maintain or repair said facilities, and in no event shall

this Agreement be construed to impose any such obligation to the City.

- The Owner will perform the work necessary to keep these facilities in good working order as appropriate. The maintenance schedule for the storm water management BMP facilities (including sediment removal) is outlined in the approved WQMP and the schedule must be followed at all times. In the future, City of Beaumont may adopt an annual Stormwater Inspection Fee that would be assessed to the Owner.
- In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials and the like, the Owner, its successors and assigns shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder.
- This Agreement imposes no liability of any kind whatsoever on the City. Owner agrees to indemnify, defend (with counsel reasonably approved by the City) and hold harmless the City and its authorized officers, employees, agents and volunteers (collectively, "City Parties") from any and all claims, actions, losses, damages, and/or liability (collectively, "Liabilities") arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the City on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Owner's obligation under this Section 8 applies to the City's "active" as well as "passive" negligence but, notwithstanding anything to the contrary herein, does not apply to any City Party's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782, or to any Liabilities, to the extent caused by the acts or omissions of any City Parties or any third party contractors undertaking any work (other than field inspections) or other maintenance on the Property on behalf of the City under this Agreement.
- This Agreement shall be recorded with the County Recorder for the County of Riverside and shall constitute a covenant running with the land, equitable servitude and lien against the Property, and shall be binding on the Owner, its successors, assigns, transferees, administrators, executors, heirs, encumbrancers and any other successors in interests, including any homeowner's association. This Agreement shall (and does hereby) terminate upon the Project's removal from the Property and the restoration of the surface of the Property to allow for water flow similar to conditions existing as of the date of this Agreement prior to the construction of the Project, and as provided in the Decommissioning Plan, Beaumont Energy Storage Project, July 2022 revised October 2022, prepared for Project Owner by Dudek. Project Owner's obligations under this Agreement shall continue as long as it is a tenant or in possession of the Property and shall

run with and be binding upon any successor tenant on the Property.

- In addition to any remedy available to City under this Agreement, if Owner violates any term of this Agreement and does not cure the violation within the time already provided in this Agreement, or, if not provided, within thirty (30) calendar days, or within such time authorized by the City if said cure reasonably requires more than the subject time, the City may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the Owner with the terms of this Agreement. In such action, the City may recover any damages to which the City may be entitled for the violation, enjoin the violation by temporary or permanent injunction without the necessity of proving actual damages or the inadequacy of otherwise available legal remedies, or obtain other equitable relief, including, but not limited to, the restoration of the Property and/or the BMPs identified in the WQMP to the condition in which it/they existed prior to any such violation or injury.
- Owner shall provide printed educational materials with any sale of the Property which provide information on what storm water management facilities are present, the types and locations of maintenance signs that are required and how the necessary maintenance can be maintained.
- Owner shall provide actual notice of this Agreement and its terms to any respective buyers or successor(s) in interest.
- In order to be valid, amendment or change to this Agreement including the WQMP and BMPs requires an amendment executed by the City and Owner which is recorded with the Riverside County Recorder.
- This Agreement may be executed in any number of counterparts, and all such counterpart signature pages combined to create one and the same instrument.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

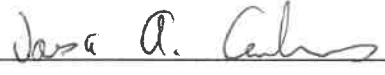
WITNESS the following signatures:

OWNER:

BEAUMONT ESS, LLC,
a Delaware limited liability company

MONSTER R O S INC.
a California corporation

By: 

By: 

Name: CRAIG POSPISIL

Name: Jose Alejandro Cardenas

Title: VICE PRESIDENT

Title: President

City:

CITY OF BEAUMONT

a Municipal Corporation

Signature: _____

City Manager

ATTEST:

City Manager

APPROVED AS TO FORM:

John A. Pinkney, City Attorney

APPROVED AS TO CONTENT:

Jeff Hart, Director of Engineering/Public
Works

NOTARIAL 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 SAN DIEGO)

On 5/31/2023, before me, Bethany Shedrick, Notary Public,
(here insert name and title of the officer)

personally appeared Craig Pospisil, 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 Bethany Shedrick (Seal)



All signatures on this Agreement on behalf of the Owner must be acknowledged before a Notary Public. In the event that the owner is a corporation, the President/Vice President and the corporate secretary of the corporation must sign.

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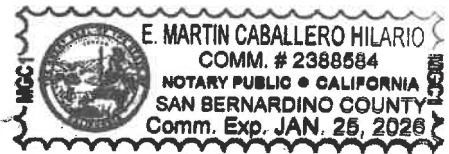
State of California)
County of SAN BERNARDINO)
~~Riverside~~

On 05/26/2023, ~~2023~~, before me, E. Martin Caballero Hilario, notary public, personally appeared Jose Alejandro Cardenas 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: [Handwritten Signature] (Seal)



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State of California)
County of Riverside)

On _____ 2023, before me, _____, notary public, personally appeared _____ 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.

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WITNESS my hand and official seal.

Signature: _____ (Seal)

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State of California) County of Riverside)

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Signature: _____ (Seal)

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State of California)

County of Riverside)

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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)

EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Riverside and described as follows:

Lot 2, Block 137, Amended Map of the Town of Beaumont, as recorded in Book 6 pages 16 and 17, of Maps, Records of San Bernardino County, California.

Together with the East half of Minnesota Avenue, 80 feet wide, as vacated by ordinance recorded June 28, 1940 as Instrument No. 1895 in Book 467, Page(s) 434 of Official Records, lying between the easterly prolongations of the North and South lines of Lot 2, Block 137.

APN: 417-110-012-7

EXHIBIT "B"

WQMP

See Project Specific Water Quality Management Plan

Project Title: Beaumont Energy Storage Project

Development No.: PP2021-0335

Design Review/Case No.: PW2023-0977

Revision Date: 04-03-2023

(copy of which is on file with the City of Beaumont)

Recording requested by and mail to:

City Clerk
City of Beaumont
550 E. Sixth Street
Beaumont, CA 92223

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDER'S FEES PURSUANT TO GOVERNMENT CODE SECTION
6103 AND 27383

APN: 417-130-005

**STORM WATER MANAGEMENT WQMP/BMP FACILITIES
COVENANT AND AGREEMENT NO.**

City of Beaumont, Riverside County, California

THIS COVENANT AND AGREEMENT is made and entered into as of this ____ day of May, 2023 (this "Agreement"), by and between (1) Shiko, LLC, a California limited liability company ("Fee Owner") and (2) Beaumont ESS, LLC, a Delaware limited liability company ("Project Owner"), on the one hand (collectively, "Owner"), and the City of Beaumont, California, on the other hand ("City").

The Owner hereby certifies I am (we are) the sole owner of or tenant at, as applicable, certain real property located in the City of Beaumont, County of Riverside, State of California, more specifically described in **Exhibit "A"** ("Property").

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The Owner covenants and agrees to comply with the Project Water Quality Management Plan ("WQMP"), attached hereto as **Exhibit "B"**, providing for storm water quality treatment within the confines of the Property.

The Owner covenants and agrees that the health, safety and welfare of the residents of the City of Beaumont, require that the Best Management Practice ("BMP") facilities, more specifically described in the WQMP (for example bio- swales, catch basins, roof drains and appurtenances) be constructed and maintained to minimize pollutants in urban runoff by the Owner.

The Owner further covenants and agrees as follows:

1. The on-site storm water management/BMP facilities mentioned above shall be constructed by the Owner at its sole cost and expense, in accordance with the plans and specifications identified in the WQMP approved by City.
2. The Owner shall adequately maintain the storm water management/BMP facilities in a manner assuring peak performance at all times, including source control BMPs at all times as its sole responsibility, at its sole cost and expense. This includes all pipes and channels built to convey storm water on the Property, including catch basin inserts, underground detention ponds, swales and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance is herein defined as good working condition so that these facilities are performing in accordance with their design functions continuously at all times.
3. The Owner shall annually inspect the storm water management/BMP facilities mentioned above and submit an inspection report annually to the Public Works Department by the anniversary of the date of this Agreement of each year. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the storm water management BMPs listed in the WQMP such as bioswales, catch basins and related filter units, etc. Deficiencies shall be noted in the inspection report and corrected by Owner promptly.
4. The Owner hereby grants permission to City, its authorized agents and employees, to enter upon the Property and to inspect the storm water management/BMP facilities, take samples and perform testing whenever the City deems necessary and as required by the City's most current National Pollutant Discharge Elimination System (NPDES) Permit. The purpose of the inspection, testing and sampling is to follow up on apparent and reported deficiencies and/or to respond to citizen complaints and meet the requirements of the City's NPDES Permit issued by the State Water Resources Control Board – Santa Ana River Region. The City shall provide the Owner with advanced notice of entering upon the Property, except in the event of an emergency, as determined by the City. The City shall provide the Owner copies of the inspection findings and a directive to commence with the repairs if necessary. Owner or Owner's successors or assigns shall pay City for all costs incurred by City in the inspection, sampling, testing of the BMPs within thirty (30) calendar days of City invoice.
5. In the event the Owner fails to maintain the storm water management/BMP facilities in good working condition acceptable to the City, upon five (5) days advanced written notice, the City may enter upon the Property and take whatever steps necessary to correct deficiencies identified in any inspection report and to charge the costs of such repairs to the Owner the cost of which shall constitute a lien against the Property. In the event of an emergency, as determined by City, advanced notice as aforesaid, shall not be required. Notwithstanding the forgoing, it is expressly understood and agreed that the City is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation to the City.
6. The Owner will perform the work necessary to keep these facilities in good working order as appropriate. The maintenance schedule for the storm water management BMP

facilities (including sediment removal) is outlined in the approved WQMP and the schedule must be followed at all times. In the future, City of Beaumont may adopt an annual Stormwater Inspection Fee that would be assessed to the Owner.

7. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials and the like, the Owner, its successors and assigns shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder.
8. This Agreement imposes no liability of any kind whatsoever on the City. Owner agrees to indemnify, defend (with counsel reasonably approved by the City) and hold harmless the City and its authorized officers, employees, agents and volunteers (collectively, "City Parties") from any and all claims, actions, losses, damages, and/or liability (collectively, "Liabilities") arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the City on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Owner's obligation under this Section 8 applies to the City's "active" as well as "passive" negligence but, notwithstanding anything to the contrary herein, does not apply to any City Party's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782, or to any Liabilities, to the extent caused by the acts or omissions of any City Parties or any third party contractors undertaking any work (other than field inspections) or other maintenance on the Property on behalf of the City under this Agreement.
9. This Agreement shall be recorded with the County Recorder for the County of Riverside and shall constitute a covenant running with the land, equitable servitude and lien against the Property, and shall be binding on the Owner, its successors, assigns, transferees, administrators, executors, heirs, encumbrancers and any other successors in interests, including any homeowner's association. This Agreement shall (and does hereby) terminate upon the Project's removal from the Property and the restoration of the surface of the Property to allow for water flow similar to conditions existing as of the date of this Agreement prior to the construction of the Project, and as provided in the Decommissioning Plan, Beaumont Energy Storage Project, July 2022 revised October 2022, prepared for Project Owner by Dudek. Project Owner's obligations under this Agreement shall continue as long as it is a tenant or in possession of the Property and shall run with and be binding upon any successor tenant on the Property.
10. In addition to any remedy available to City under this Agreement, if Owner violates any term of this Agreement and does not cure the violation within the time already provided in this Agreement, or, if not provided, within thirty (30) calendar days, or within such time authorized by the City if said cure reasonably requires more than the subject time, the City may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the Owner with the terms of this Agreement. In such action, the City may recover any damages to which the City may be entitled for the violation, enjoin the violation by temporary or permanent injunction without the necessity of proving actual damages or the inadequacy of otherwise available legal remedies, or obtain other

equitable relief, including, but not limited to, the restoration of the Property and/or the BMPs identified in the WQMP to the condition in which it/they existed prior to any such violation or injury.

11. Owner shall provide printed educational materials with any sale of the Property which provide information on what storm water management facilities are present, the types and locations of maintenance signs that are required and how the necessary maintenance can be maintained.
12. Owner shall provide actual notice of this Agreement and its terms to any respective buyers or successor(s) in interest.
13. In order to be valid, amendment or change to this Agreement including the WQMP and BMPs requires an amendment executed by the City and Owner which is recorded with the Riverside County Recorder.
14. This Agreement may be executed in any number of counterparts, and all such counterpart signature pages combined to create one and the same instrument.


[Remainder of Page Intentionally Left Blank – Signature Page Follows]


WITNESS the following signatures:

OWNER:

BEAUMONT ESS, LLC,
a Delaware limited liability company

SHIKO, LLC,
a California limited liability company

By: 
Name: CRAIG POSPISIL
Title: VICE PRESIDENT

By: KOBI KATZ
Name: JAKOB KOBI KATZ
Title: 

City:

CITY OF BEAUMONT

a Municipal Corporation

Signature: _____
City Manager

ATTEST:

City Manager

APPROVED AS TO FORM:

John A. Pinkney, City Attorney

APPROVED AS TO CONTENT:

Jeff Hart, Director of Engineering/Public Works

All signatures on this Agreement on behalf of the Owner must be acknowledged before a Notary Public. In the event that the owner is a corporation, the President/Vice President and the corporate secretary of the corporation must sign.

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 Riverside)

On _____, 2023, before me, _____, notary public, personally appeared _____ 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.

SEE ATTACHED
NOTARIAL CERTIFICATE

Signature: _____ (Seal)

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 Riverside)

On _____ 2023, before me, _____, notary public, personally appeared _____ 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.

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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 May 25, 2023 before me, Jocelyne Calvillo, Notary Public, Here Insert Name and Title of the Officer

personally appeared Jakob Kobi Katz Name(s) of Signer(s)

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 [Handwritten Signature] Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Agreement
Document Date: May 25, 2023 Number of Pages: (10)
Signer(s) Other Than Named Above: none

Capacity(ies) Claimed by Signer(s)

Signer's Name:
[] Corporate Officer -- Title(s):
[] Partner -- [] Limited [] General
[] Individual [] Attorney in Fact
[] Trustee [] Guardian or Conservator
[] Other:
Signer is Representing:

WITNESS my hand and official seal.

Signature: _____ (Seal)

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 Riverside)

On _____, 2023, before me, _____, notary public, personally appeared _____ 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)

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 Riverside)

On _____, 2023, before me, _____, notary public, personally appeared _____ 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)

NOTARIAL 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 SAN DIEGO)

On 5/31/2023 before me, Bethany Shedrick, Notary Public,
(here insert name and title of the officer)

personally appeared Craig Pospisil, 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 Bethany Shedrick (Seal)



EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Riverside, City of Beaumont and described as follows:

Lot 4 in Block 137 of the 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(s) 16 and 17 of maps, Records of San Bernardino County, California.

Together with those vacated streets Minnesota Avenue and Elm Avenue by Resolutions recorded June 28, 1940 in Book 467, Page(s) 434 of Official Records, and July 28, 1989 as Instrument No. 252946, corrected document recorded August 15, 1989 as Instrument No. 277733 all of Official Records of Riverside County, California.

APN: 417-130-005

EXHIBIT “B”

WQMP

See Project Specific Water Quality Management Plan

Project Title: Beaumont Energy Storage Project

Development No.: PP2021-0335

Design Review/Case No.: PW2023-0977

Revision Date: 04-03-2023

(copy of which is on file with the City of Beaumont)