Recording Requested by And
When Recorded Return to:

CITY OF CHINO
13220 Central Avenue
Chino, CA 91710
Attn: City Clerk

[Exempt From Recording Fee Per Gov. Code § 6103]

DEVELOPMENT AGREEMENT NO. 01-2025

This Development Agreement (hereinafter "**Agreement**" or "**DA**") is entered into this ____ day of _____, 2026, by and between the City of Chino, a California municipal corporation (hereinafter "**City**"), and Dirac BESS LLC, a Delaware limited liability company, together with subsidiaries, successors and assigns, collectively hereinafter "**Developer**"). The City and Developer shall be referred to jointly within this Agreement as the "**Parties**" and individually as a "**Party**."

RECITALS

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

B. *The Property*. Developer is under contract to purchase or is the optionee on a ground lease for the 13.89 acres of real property within the M2 (General Industrial) zoning district, located at 13925 Benson Avenue and 13822 Oaks Avenue, Chino, Assessor's Parcel Numbers 1021-121-05, 1021-211-02, and 1021-211-05, legally described and depicted in **Exhibit "A"** and **Exhibit "B"** attached hereto and incorporated herein (the "**Property**"). The current owners of the Property consent to the recording of this Development Agreement as set forth in the consents attached hereto[1].

C. *Development Application*. On January 16, 2025, Developer filed a development application with the City seeking approval of this Development Agreement, along with a Project (as defined herein) description for applicable CEQA (as defined herein) review, Special Conditional Use Permit and Site Approval (collectively, the "**Development Application**").

D. *The Project.* As further described in **Exhibit "C"** attached hereto and incorporated herein, the project encompasses a 400 Megawatt (MW) BESS, consisting of approximately 88,881 square feet of battery units within which battery enclosures, inverter enclosures, and medium voltage transformers are arranged, a collector substation of approximately 54,774 square feet, and

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approximately 160 square feet of auxiliary transformer pads (collectively, the "**Project**"). The Project is proposed to be largely unmanned and operate 24 hours per day, seven days a week, and include a 1,200 square foot building with space for spare parts and a small office for use during periodic inspections and maintenance. The Project is anticipated to require a four-to-seven person crew for site operations and maintenance during the week, and additional maintenance visits more sporadically. The crew would normally consist of one operator, one contracted field engineer, and two-to-five mechanical or electrical technicians. The Project would be additionally monitored remotely,

E. *CEQA.* On September 2, 2025, the City Council of the City of Chino adopted Resolution No. 2025-055, certifying an Environmental Impact Report ("**GP EIR**") (SCH# 2024090833), adopting a mitigation monitoring and reporting program, and a statement of overriding considerations for the City's 2045 General Plan, which encompasses the Property. The City, as the Lead Agency, has reviewed the Project and determined it was adequately assessed within the GP EIR. On _____, 2026, the Planning Commission of the City reviewed the Project and the CEQA Guidelines Section 15183 Checklist and determined that the Project is consistent with the analysis in the GP EIR, consistent with the goals, policies, and implementation measures identified in the City's General Plan and GP EIR, found the Project exempt pursuant to CEQA Guidelines Section 15183, approved the Special Conditional Use Permit and Site Approval for the Project and recommended approval of this Agreement to the City Council. On _____, 2026, the City Council reviewed the Planning Commission's decision and concurred that the Project is exempt from additional environmental review pursuant to Section 15183 insofar as the Project is consistent with the development density established by existing zoning, General Plan policies for which the GP EIR was certified, and that no subsequent GP EIR, negative declaration, or addendum is required. On ___, 2026, the City Council passed the Adopting Ordinance adopting the Agreement following the second reading of the Adopting Ordinance.

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

AGREEMENT

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

1. GENERAL DEFINITIONS.

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

1.1 "**Adopting Ordinance**" means Ordinance No. XXXX approving this Agreement, introduced on _____, 2026, and adopted on _____, 2026.

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

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

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

(a) The Project Development Approvals.

(b) The Existing Land Use Regulations.

(c) Subsequent Development Approvals.

(d) Those Subsequent Land Use Regulations to which Developer may agree to in writing.

1.5 "**Approval Date**" means the date on which the City Council conducted the second reading of the Adopting Ordinance.

1.6 "**BESS**" means battery energy storage systems.

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

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

1.9 "**CEQA**" means the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*).

1.10 "**City Council**" means the City Council of the City of Chino.

1.11 "**CMC**" means the Chino Municipal Code.

1.12 "**Community Benefit Payment(s)**" shall have the meaning set forth in Section 3.1.

1.13 "**Conditions of Approval**" means all conditions imposed in the Project Development Approvals.

1.14 "**COO**" shall have the meaning set forth in Section 3.1.ii.

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

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

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

1.18 **"DIF"** shall have the meaning set forth in Section 5.8.1.

1.19 "**Effective Date**" means the date on which the Adopting Ordinance becomes effective, which is thirty (30) days after the second reading of the Adopting Ordinance.[2]

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

Exhibit "A"	Legal Description of the Property
Exhibit "B"	Depiction of the Property
Exhibit "C"	Project Description
Exhibit "D"	Development Plans

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

1.22 "**Gen-Tie**" means the Project's 230 kilovolt (kV) generation interconnection line.

1.23 "**GP EIR**" shall have the meaning set forth in Recital D.

1.24 "**Guaranteed Sales Tax**" shall have the meaning set forth in Section 3.3.

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

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

1.27 "**Project**" shall have the meaning set forth in Recital C.

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1.28 "**Project Development Approvals**" means all Project-specific approvals, including, but not limited to, this Agreement, the Special Conditional Use Permit, Certificate of Occupancy and Site Approval, with respective Conditions of Approval, maps, permits, site plans, design guidelines, variances, conditional use permits, grading, building, and other similar permits, environmental assessments, including but not limited to, any environmental impact reports, CEQA exemptions (statutory or categorical), consistency evaluations/checklists and negative declarations, and any amendments, addenda or modifications to those matters, which were applied for by Developer and are required or permitted by the Applicable Laws in order to complete the Project, provided that those Project Development Approvals are consistent with Developer's Vested Right, this Agreement, and the Applicable Laws. The Project Development Approvals have been or are anticipated to be approved, subject to the Conditions of Approval, prior to or in conjunction with the approval of this Agreement. "Project Development Approvals" do not include (i) rules, regulations, policies, and other enactments of general application within the City (ii) legislative enactments, other than this Agreement, or (iii) Land Use Regulations.

1.29 "**Project Sales and Use Tax Revenue**" means all Sales and Use Tax revenue received by the City in connection with the development and construction of the Project, including from the purchase, sale or use of any and all materials, equipment, fixtures or other items by Developer or any third-party vendors or other contractors involved in the development and construction of the Project.

1.30 **"Sales and Use Tax"** means and includes both (i) the sales and use tax referenced in Chapter 3.16 of Title 3 of the CMC, or any successor thereto, and (ii) the transaction and use tax referenced in Chapter 3.18 of Title 3 of the CMC, or any successor thereto.

1.31 "**Shortfall Amount**" shall have the meaning set forth in Section 3.3.2.

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

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

1.34 "**Vested Rights Date**" shall mean thirty (30) days after the second reading of the Adopting Ordinance.

2. TERM & GENERAL COVENANTS.

2.1 **Term**. The term of this Agreement (the "**Term**") starts on the Effective Date and shall continue for twenty-five (25) years with one (1) ten (10) year extension subject to (i) any early termination provisions described in this Agreement and (ii) extension as set forth in Section 2.6. This Agreement shall self-terminate if Developer terminates its lease agreement(s) for the Property. The ten (10) year extension shall go into effect automatically provided a default under the Agreement by Developer is not occurring and continuing at the time the initial twenty-five (25) year term expires.

2.2 **Schedule and Project Completion**. The City will make commercially reasonable efforts to issue demolition permit(s) by July 22, 2026, the grading permit by September 1, 2026,

and building permits by December 1, 2026, so that Developer shall commence construction of the Project. Developer shall complete the Project, including passing final inspection, by no later than twenty-four (24) months from the date of building permit issuance, subject to extension as set forth in Section 2.6 or by mutual consent of Developer and the City Development Services Director. To allow Developer to complete the Project within the aforementioned time without delays from Chino Valley Fire District's review of the building permit, the City will not condition issuance of demolition, grading, or fencing permits, on issuance of the Project's building permit. In addition, to allow Developer to complete the Project within the aforementioned time without delays, the City shall allow the Developer to begin processing applications for demolition and grading after the Special Conditional Use Application is deemed complete if Developer (i) executes an at-risk acknowledgement letter confirming that all work and costs are undertaken at the applicant's sole risk and that no vested rights or entitlement approvals are created by the submittal and review process and (ii) the rough grading plan submittal includes rough grading plan sheets, erosion and sediment control plan sheets, a geotechnical report adequate to support the proposed rough grading work and associated earthwork recommendations (understanding that a supplemental geotechnical report may be required prior to the issuance of a precise grading permit), and applicable plan check fees. The City shall allow the Developer to begin submitting applications for fencing and building permits after Planning Commission approval. Developer hereby explicitly acknowledges and agrees that Developer bears all costs and risk related to processing these ministerial permit applications concurrent with the Project's discretionary approvals and that City Council, Planning Commission or other approval authority shall not be limited in any way from denying or conditioning the Project's discretionary approvals in a manner inconsistent with the applications for the ministerial permit approvals.

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

2.4 Agreement Runs with the Land. This Agreement shall be recorded and shall run with the land. Pursuant to Government Code Section 65868.5, the burdens of this Agreement and each of its provisions shall be binding upon, and the benefits of this Agreement shall inure to all successors in interest to the Parties, including, but not limited to, all parties that enter into lease agreements with Developer for possession of any part of the Property.

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

2.6 Tolling. Notwithstanding anything to the contrary contained in this Agreement, the time periods set forth in Sections 1.19, 2.1 and 2.2 shall be tolled and extended on a day-for-day basis for the duration of any (i) third-party litigation against the Project Development Approvals or this Agreement, (ii) delay in commencement or performance of construction or operation of the Project occasioned by a moratorium on the issuance of any of the Project

Development Approvals, (iii) delay in commencement or performance of construction or operation of the Project occasioned by an event of Force Majeure (as defined in Section 13.10) (each a "**Tolling Event**"). If, and each time a Tolling Event occurs or ends, Developer shall deliver written notice to the City in accordance with Section 13.2 as soon as reasonably practical after Developer receives actual notice of the occurrence or cessation of the Tolling Event, specifying the date of the occurrence or cessation of the Tolling Event. Notices of occurrence of Tolling Events shall be subject to approval of the Development Services Director, not to be unreasonably withheld, conditioned or delayed, in order for the tolling associated with the Tolling Event to be effective (although such tolling may take effect retroactively upon such Development Services Director approval).

3. DEVELOPER'S OBLIGATIONS

3.1 Community Benefit. Developer shall tender to the City Treasurer the following payments to be utilized by the City, at the City's sole discretion, for future community public benefits to the City overall (each, a "**Community Benefit Payment**," and collectively, the "**Community Benefit Payments**"). Each Community Benefit Payment shall be non-refundable once paid and shall be paid upon the Project reaching the following respective milestones:

i. Three Million Dollars ($3,000,000) within thirty (30) days of building permit issuance for the Project.

ii. Three Million Dollars ($3,000,000) within thirty (30) days of final certificate of occupancy ("**COO**") issuance for the Project.

iii. Any Shortfall Amount owed to the City pursuant to Section 3.3 of this Agreement within the time period described in Section 3.3 of this Agreement.

3.2 Community Benefit – Employment Outreach for Local Residents. A goal of the City with respect to this Project and other major projects within the City is to foster employment opportunities for Chino residents. To that end, Developer covenants that with respect to the construction, operation and maintenance of the Project, Developer shall make reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction, operation and maintenance of the Project to be advertised in such a manner as to target local City residents. Developer shall also notify the City of jobs available at the Project such that the City may inform City residents of job availability at the Project. Developer will inform any new owner of the Project (as set forth in Section 11) or new lessee of the Property of the provisions of these requirements. Nothing in this paragraph shall require Developer to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 3.2 are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City or to require Developer to violate any labor law.

3.3 Community Benefit – Guaranteed Project Sales & Use Tax Revenue. Developer acknowledges that one of the material inducements for the City's approval of this Agreement is the expectation that the Project will generate substantial Sales and Use Tax Revenue

for the City.[3] Developer therefore covenants and agrees that the City shall receive a total of at least Four Million Dollars ($4,000,000.00) in combined DIF and Project Sales and Use Tax Revenue ("**Guaranteed Sales Tax**").

3.3.1. Thirty (30) days following the last to occur of (i) the end of the first full City fiscal year following issuance of the COO for the Project or (ii) the date that CDTFA data reflecting Project-related allocations becomes available to the City, the City shall provide Developer with an accounting, (a) identifying the aggregate amount of all Project Sales and Use Tax Revenue and DIF received by the City to date in relation to the Project, and (b) to the extent not prohibited by law, a summary of the information relied upon by the City in making its determination. After the information becomes available to Developer, Developer shall supply the City with information to assist the City in reasonably determining the Project Sales and Use Tax Revenue. Such information may include, at City's request, (i) sales and use tax returns filed with the CDTFA by Developer or its contractors, (ii) invoices relating to Developer's or its contractors' purchase of taxable items in connection with the development, construction or operation of the Project, (iii) business records reflecting payment of sales or use tax to vendors or the CDTFA relating to purchase or use of taxable items in connection with the development, construction or operation of the Project, and/or (iv) names of contractors, vendors, or other parties who may remit sales or use tax to the CDFTA in connection with the development, construction or operation of the Project. For the avoidance of doubt, nothing in this Section 3.3.1 shall require Developer to provide each of the items enumerated in this subsection or prohibit Developer from providing additional information as contemplated by Section 3.3.2.

3.3.2. If the City determines that the amount of Project Sales and Use Tax Revenue and DIF received by the City is less than the Guaranteed Sales Tax, the City shall invoice Developer for the difference (i.e., $4,000,000.00 *less* the amount of Project Sales and Use Tax Revenue and DIF actually received) (the "**Shortfall Amount**"). Developer shall have thirty (30) days after receipt of such invoice to either (i) remit payment to the City Treasurer of the Shortfall Amount, or (ii) provide written comments or additional information to the City relevant to the City's calculation. The City shall consider any such information in good faith and no later than thirty (30) days following the receipt of any such information from Developer, the City shall notify Developer in writing whether its determination of the Project Sales and Use Tax Revenue has changed and, if so, issue a revised invoice to Developer. Developer will remit payment to the City Treasurer within thirty (30) days of receipt of such notice or revised invoice.

3.3.3. Project Sales and Use Tax Revenue shall be deemed to have been received by the City if and to the extent the CDTFA elects to offset the payment of any such Project Sales and Use Tax Revenue against any other obligations of the City.

3.3.4. Developer further acknowledges that, should it purchase taxable items in connection with any upgrade, replacement or expansion of taxable items in

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connection with the operation of the Project during the term of this Agreement, Developer shall continue to designate the City as the point of delivery for such taxable items for the purpose of City's receipt of Project Sales and Use Tax Revenue.[4]

3.4 Financial Assurance for Decommissioning. To ensure the safe decommissioning of the Project, upon the issuance of a temporary COO or final COO, Developer or operator of the battery energy storage facility shall continuously maintain a financial assurance or security, payable to the City, in the amount equivalent to the estimated net cost of decommissioning the Project (i.e. decommissioning cost minus salvage value) and in a form required by the City and acceptable to the surety. The security may be in the form of a parent or subsidiary company guarantee, performance bond, letter of credit, or if an alternative form of security is used, an alternative form of security approved by the City and acceptable to the surety. The financial assurance shall be maintained for the duration of the use of the Project. All costs shall be borne solely by the Developer or operator. The amount of financial assurances shall be adjusted every five (5) years to account for any increase or decrease in costs. Developer or operator shall submit an updated net cost estimate for the decommissioning of the Project to the Finance Director thirty (30) days prior to each five (5) year anniversary date of the initial financial assurances approved by the City. The Finance Director may require further revisions and/or explanation from the Developer or operator if the submission is found to be inadequate.

3.5 Community Benefit – Fire Safety Training. Developer shall pay for a third-party expert to provide a training for the Chino Valley Fire District and Chino Police Department first responders on the proper strategies for responding to a BESS safety incident.

3.6 Satisfaction of Developer Obligations. Developer's obligations identified in Section 3 of this Agreement shall be deemed satisfied if the City does not approve the Project Development Approvals.

4. DEVELOPMENT OF THE PROPERTY.

4.1 Scope of Developer's Vested Right. Subject to the Reservation of Authority set forth in Article 5, Developer shall have the vested right to develop the Project to the full extent permitted under the Applicable Laws as of the Vested Rights Date and compliance with this Agreement.

4.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings and structures, and the design, improvement and construction standards and specifications applicable to the Development of the Property, shall be as set forth in the Existing Land Use Regulations which were in full force and effect as of the effective date of the Adopting Ordinance, subject to the terms of this Agreement. If the City adopts a Subsequent Land Use Regulation against which the Developer holds a Vested Right, the Developer may, in its sole

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discretion, partially waive its Vested Right in writing and be subject to the Subsequent Land Use Regulation.

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

4.4 Lesser Development. Without amending this Agreement, Developer shall have the right to elect to develop and construct upon all or any portion of the Property a Project of lesser height or building or structure size than that permitted by the Project Development Approvals provided that the Project otherwise complies with the Project Development Approvals and this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Developer may, but is not required to, develop or construct the Project.

4.5 Project Development Approvals; Subsequent Development Approvals. The Project Development Approvals for the Project may require the processing of Subsequent Development Approvals. Subject to the provisions of Section 4.7 below and Section 4.3 above, the City shall accept for processing, review, and action all applications for Subsequent Development Approvals, and such applications shall be processed in the manner for processing such matters in accordance with the Existing Land Use Regulations. Notwithstanding the foregoing, the parties acknowledge that subject to the Existing Land Use Regulations, the City is not obligated to approve any Subsequent Development Approval, or to approve any Subsequent Development Approval with or without any particular condition. Except as limited by Developer's Vested Right, the City reserves its full police power and this Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval.

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

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

5. CITY'S RESERVATION OF AUTHORITY.

5.1 Reservation. To the full extent permitted by law, the City expressly reserves its police power over the Project, the Project Development Approvals, and any Subsequent Development Approvals. Nothing herein shall be deemed to be a prejudgment, commitment or

guarantee that any approvals or permits will be issued within any particular time, or with or without any particular conditions.

5.2 Uniform Codes. Developer agrees to comply with changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, or other such Uniform Codes incorporated into the City's formally adopted version of the County of San Bernardino Building Code in effect at the time the initial building permit application is deemed complete, as applicable City-wide, and any Subsequent Land Use Regulations.

5.3 Emergencies. Nothing herein shall limit the City's authority to promulgate emergency rules, regulations, laws, and ordinances within the City's police power that would limit the exercise of Developer's Vested Right ("**Conflicting Emergency Regulations**"), provided that the Conflicting Emergency Regulations:

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

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

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

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

(e) Do not impose a moratorium on siting, ownership, construction, development, use, maintenance, repair, or operation of the Project.

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

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

(b) If an Additional Regulation is enacted after the Vested Rights Date and prevents or precludes compliance with one or more of the provisions of this Agreement, those provisions shall be modified or suspended as may be necessary to comply with the Additional Regulation. In that event, this Agreement shall remain in full force and effect to the extent it is not

inconsistent with the Additional Regulation and to the extent that the suspension or modification necessitated by the Additional Regulation does not deny one of the Parties its primary benefits under this Agreement.

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

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

5.6 Energy Efficient and Sustainable Building Design. All Project buildings shall promote sustainable and energy efficient practices through compliance with California Code of Regulations, Title 24 as in effect at the time of the initial building permit application is deemed complete.

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

rights only, but should it do so, City shall waive the indemnification herein provided such waiver occurs prior to the issuance of any judgment in the matter. Nothing herein shall be construed to limit any obligation of the Developer or the Project to pay prevailing wages pursuant to a private agreement between the Developer or its contractors and any third parties.

5.8 Fees, Taxes, and Assessments.

5.8.1. Development Impact Fees and Processing Fees.[5] Developer shall pay all development impact fees pursuant to Chino Municipal Code Chapter 3.40 ("**DIF**") in the applicable amount pursuant to Chapter 3.40 and City-wide published processing fees and charges of every kind and nature lawfully imposed by City to cover the estimated actual costs to City of processing applications for or monitoring compliance with Project Development Approvals.

5.8.2. Taxes, Licenses & Permits, User Fees, and All Other Fees & Service Charges. Except as expressly provided in this Agreement, Developer shall pay all fees and charges which are standard and uniformly-applied to similar projects in the City under Existing Land Use Regulations, which may be increased from time-to-time in accordance with cost of living or cost of construction indices or other current schedules or by other incremental means in accordance with applicable law. If any other fee or charge does not exist as of the Vested Rights Date, then the Parties agree it is a Subsequent Land Use Regulation.

5.8.3. General Charges. Nothing herein shall prohibit the application of the following, if lawfully imposed upon the Property and is a type of non-BESS-specific fee, rate, tax, assessment or charge not already addressed by Section 5.8.1 or 5.8.2 of this Agreement:

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

2. Developer, or Developer's Project occupants, shall be obligated to pay any types of fees or assessments imposed on an area-wide basis and lawful increases thereof;

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

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

5.9 Inconsistencies. It is expressly agreed that in the event of any clear and explicit conflict between the provisions or conditions of the GP EIR, CEQA Guideline Section 15183, the Existing Land Use Regulations, this Agreement, and the Project Development Approvals (other

[5] TBD

than the GP EIR and CEQA Guideline Section 15183), then the provisions or conditions of the following shall prevail in this order:

(a) GP EIR and CEQA Guideline Section 15183;

(b) this Agreement;

(c) Project Development Approvals (other than the GP EIR, CEQA Guideline Section 15183, and this Agreement); and

(d) Existing Land Use Regulations

For the avoidance of doubt, the Parties agree that, when determining whether a clear and explicit conflict exists between the provisions or conditions of the documents listed above in this Section 5.9, the fact that one provision or condition may be more detailed than another provision or condition relating to the same subject matter, or that a provision or condition related to a given subject matter may be contained in one document whereas another document is silent on the subject matter, does not, on its own, create a clear and explicit conflict. In such circumstances, the provision or condition in each document shall be read to be consistent with one another.

5.10 Exercise of Project Development Approval. Notwithstanding anything herein or in the CMC to the contrary, pursuant to Section 65865.2 of the Development Agreement Law, Project Development Approvals shall not expire during the term of this Agreement on the grounds that Developer failed to exercise the Project Development Approvals within a specified period of time after their approval.

6. ANNUAL REVIEW.

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

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

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

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

(a) As part of either an Annual Review or Special Review, within ten (10) business days of a request for information by the City, the Developer shall respond and/or deliver to the City all information and supporting documents reasonably requested by City (i) regarding the Developer's performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement, and (ii) as required by the Applicable Laws.

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

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

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

6.5 Certificate of Agreement Compliance. If, at the conclusion of an Annual Review or a Special Review, Developer is found to be in compliance with this Agreement, City shall, upon written request by Developer, issue a Certificate of Agreement Compliance ("**Certificate**") to Developer stating that after the most recent Annual Review or Special Review and based upon the information known or made known to the Development Services Director, Planning Commission, and City Council that (i) this Agreement remains in effect and (ii) Developer is in compliance. The Certificate, whether issued after an Annual Review or Special Review, shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer shall at its cost record the Certificate with the County Recorder.

Additionally, Developer may at any time request from the City a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Property, or any lot or parcel within the Property.

6.6 Review Process Not a Prerequisite to Declaring a Default. Neither the Annual Review nor Special Review procedure is a prerequisite to either party declaring a default and initiating the default and cure procedure in Article 7. In other words, either Party may declare a default at any time without first undertaking the Annual Review or Special Review process.

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

7. DEFAULTS AND REMEDIES.

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

7.2 Declaration of Default & Opportunity to Cure.

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

7.2.2 Notice and Opportunity to Cure. A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party ("**Defaulting Party**") to perform any material duty or obligation of the Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure in order to return to compliance with this Agreement (the "**Default Notice**"). The Defaulting Party shall be deemed in Default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within thirty (30) days after the date of such Default Notice or ten (10) days for monetary defaults (or such lesser time as may be specifically provided in this Agreement). If such non-monetary Default cannot be cured within such thirty (30) day period, then the Defaulting Party shall not be deemed in breach of this Agreement if the Defaulting Party does each of the following:

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

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

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

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

(e) Diligently prosecutes such cure to completion.

7.3 Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Non-Defaulting Party may seek termination of this Agreement, in which case the Non-defaulting Party shall provide the Defaulting Party with a written notice of intent to terminate this Agreement ("**Termination Notice**"). The Termination Notice shall state that the Non-Defaulting Party will elect to terminate this Agreement within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default or a copy of the Default Notice) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, if the Developer is the Defaulting Party, then the termination will not go into effect unless the City Council also elects to terminate this Agreement pursuant to Section 7.4. The Parties may elect to rescind a Termination Notice at any time.

7.4 Hearing Opportunity Prior to Termination. If Developer is the Defaulting Party pursuant to Section 7.2, then the City's Termination Notice to Developer shall additionally specify that Developer has the right to a hearing prior to the City's termination of any Agreements ("**Termination Hearing**"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code §§ 54950–54963. At said Termination Hearing, Developer shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in

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

(a) Decide to terminate this Agreement; or

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

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

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has caused or will cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, or such other interests that City and public may have in the Project. Notwithstanding anything to the contrary contained in this Agreement, in order to promote an orderly planning process and encourage Developer to participate in the planning process in advance of committing significant private resources to obtaining long-term ground leases at the Project Site, the Parties agree that if the Developer fails to effectuate such ground leases prior to 300 days after the second reading of the Adopting Ordinance and the City Planning Director does not grant an extension of time, then the Agreement shall self-terminate.[6]

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

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

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

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8. THIRD PARTY LITIGATION.

8.1 Indemnity Obligations on Third-Party Claims.

(a) Developer hereby agrees to indemnify, defend, and hold City, its officers, agents, employees, members of its City Council and any commission[7], (collectively, "**City Indemnitees**") harmless from any and all claims, actions, suits, damages, liabilities, and any other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature) (collectively, "**Claims**"), asserted against City or City Indemnitees arising out of or in connection with this Agreement, including, without limitation, (i) City's approval of this Agreement and all documents related to any of the Project Development Approvals, Conditions of Approval, permits, or other entitlements for the Project and issues related thereto (including, City's determinations regarding CEQA compliance and/or any other development incentives granted to the Project), (ii) the development of the Project, and (iii) liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from, or are attributable to, Developer's (or Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf ("**Developer's Representatives**")) performance of its obligations under this Agreement and/or the negligence or misconduct of Developer or of Developer's Representatives which relate to the Project or the Property. Nothing herein shall be construed to mean that Developer shall indemnify the City for any Claims to the extent arising from, or alleged to arise from, the sole negligence or gross or willful misconduct of the City, the City Indemnitees, or the City's officers, employees, agents, contractors or subcontractors.[8]

(b) The City shall provide Developer with notice of the pendency of such Claims within ten (10) days of being served or otherwise notified of such Claims and shall request that Developer defend such action. Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. In all cases, City shall have the right to utilize the City Attorney's office in any legal action. Upon City's notification to Developer of the pendency of the claim or suit, Developer shall make a minimum deposit sufficient to pay all of Developer's indemnification obligations for the following ninety (90) days, which includes legal costs and fees anticipated to be incurred as determined by City in its sole discretion (not to exceed Fifty Thousand Dollars ($50,000)). Developer shall make deposits required under this Section 8.1 within fifteen (15) days of receipt of City's written request. City shall endeavor to provide Developer written notice when City determines the minimum balance is approaching Twenty Thousand Dollars ($20,000)

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[8] TBD

and shall provide written notice to Developer when the City determines the deposit balance is below Twenty Thousand Dollars ($20,000). Developer shall make the balance of the minimum deposit (not to exceed Fifty Thousand Dollars ($50,000)) within fifteen (15) days of receipt of such written notice.

(c) If Developer fails to provide the deposit, and after compliance with the provisions of this Section 8.1, the City may abandon the action and Developer shall pay all costs resulting therefrom (including but not limited to any attorneys' fees and other costs for which City may be liable as result of such abandonment), and City shall have no liability to Developer. It is expressly agreed that City shall have the right to utilize the City Attorney's Office or use other legal counsel of its choosing. Developer's obligation to pay the defense costs of City shall extend until final judgment, including any appeals. City agrees that it shall fully cooperate with Developer in the defense of any matter in which Developer is defending and/or holding the City harmless. City shall discuss litigation strategy with Developer in good faith but shall retain absolute discretion to make strategy decisions for the City, but not the Developer. City may make all reasonable decisions with respect to its representation in any legal proceeding, including its inherent right to abandon or to settle any litigation brought against it in its sole and absolute discretion. If the City abandons or settles the litigation without Developer's consent to the Settlement, then Developer shall not be responsible for City Attorney fees related to the Settlement or costs imposed by the Settlement.

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

8.3 Loss and Damage. City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or[9] from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature. Nothing herein shall be construed to mean that Developer shall

[9] TBD

bear liability for the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors of subcontractors.

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

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

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

9. INSURANCE.

9.1 Types of Insurance.

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

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

9.1.3 Automobile Liability Insurance. Developer shall ensure that all contractors with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder maintains automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Developer arising out of or in connection with work to be performed under this Agreement, including coverage for any owned (if any), hired, non-owned or rented vehicles, in an amount not less than $2,000,000 for each accident. Limits can be met by a combination of primary and excess policies.

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9.1.4 Pollution Liability Insurance. Environmental Impairment Liability Insurance shall be written on a Contractor's Pollution Liability form or other form reasonably acceptable to City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than $5,000,000 dollars per claim and $10,000,000 in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

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

9.1.6 Professional Liability Insurance. To the extent exposure exists, Professional liability insurance may be obtained by Developer or its Contractors/Subcontractors that is appropriate to the profession for any Project design work, with limits no less than $5,000,000 per claim and $5,000,000 general aggregate.[11] This coverage will be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of the services or the termination of this Agreement. During this additional 5-year period, Developer shall annually and upon request of the City submit written evidence of this continuous coverage.

9.1.7 Products/completed operations coverage. Products and completed operations liability coverage shall be maintained for a period of not less than three (3) years following Substantial Completion of the Project, or such longer period as is commercially available on reasonable terms. Such coverage shall apply to liability arising out of the work performed by or on behalf of the Developer, including work performed by subcontractors, and shall be maintained subject to the terms, conditions, and limitations of the applicable policy. The City shall be included as additional insureds, but only with respect to liability arising out of the Developer's operations. Such additional insured coverage shall be provided on a primary and non-contributory basis, to the extent available under the policy.

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

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

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

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

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

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

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

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

waiver of subrogation, and obtain from such carrier, a waiver of right to recovery against City, its agents and employees.

10. MORTGAGEE PROTECTION.

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

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

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

10.4 If City timely (i.e., within the stated cure period pursuant to Section 7.2(b)) receives a request from a Mortgagee for a copy of the Default Notice given to Developer (provided the default has not been cured by Developer by such time), then City shall, within ten (10) days of receipt of the Mortgagee's request, provide a copy of such Default Notice to the Mortgagee. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining time allowed for Developer to cure under Section 7.2(b), or (ii) sixty (60) days after Mortgagee's receipt of any Default Notice; provided, however, if such default cannot be cured by Mortgagee without Mortgagee having possession of the Property, the cure period available to Mortgagee shall be extended for the time period (not to exceed an additional one hundred twenty (120) days after Mortgagee's receipt of such Default Notice) reasonably required for Mortgagee obtain possession of the Property, provided that Mortgagee diligently and continuously proceeds to use commercially reasonable efforts to so obtain possession of the Property and to complete such cure.

10.5 Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the Mortgage or deed of trust, or deed in lieu of such foreclosure, or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding anything to the contrary, the transfer of the Property described in the preceding sentence shall not constitute a "change of ownership" contemplated under Section 11 of this Agreement, and the provisions of Section 11 shall not apply to any Mortgagee.

11. CHANGE OF OWNERSHIP.

11.1 Change of Ownership. If any owner of the Project is proposed to change, such that Aypa Power Holdings LP shall no longer be the ultimate parent that owns and controls, directly or indirectly, more than fifty percent (50%) of the Project, Developer shall notify the City Manager of such proposed change in ownership at least ninety (90) calendar days prior to the proposed ownership change. Approval by the City Manager shall be required, but shall not be unreasonably withheld. In providing that approval, the City Manager may, in his/her reasonable discretion, request information about the new owner to ensure that the new owner has the financial capability and expertise to assume all obligations established and applicable to the Project, as set forth in this Agreement, the site plan and design review approval, and the decommissioning plan, and all related financial responsibilities. Developer and/or new owner shall provide, within ten (10) calendar days, any and all information from the date of the City Manager's request. If the change in ownership is approved by the City Manager, Developer, new owner, and City Manager shall execute and record an Assignment and Assumption Agreement, or other form approved by the City Attorney, to formally approve and consent to the change in ownership. No change in ownership shall be effective until such Assignment and Assumption Agreement, or other form approved by the City Attorney, is executed by all parties (with the City Manager on behalf of the City) and recorded. The City Manager is hereby authorized to negotiate and execute such Assignment and Assumption Agreement.[12]

11.2 Consideration of Requested Assignment. The City Manager will not unreasonably withhold, condition, or delay approval of a request for approval of an Assignment required pursuant to this Article 11, provided that Developer delivers written notice to City requesting the Director's approval prior to the completion of the Assignment (the "**Consent Request**"). The Consent Request shall be accompanied by (i) a proposed draft of the Assignment Agreement, which shall be in a form acceptable to the City Attorney and City Manager in their reasonable discretion and (ii) evidence that the proposed Transferee meets the criteria set forth in Section 11.1 above. When submitting a Consent Request to the City, Developer shall clearly identify all information it reasonably determines is exempt from public disclosure by City pursuant to Government Code § 7927.605 or any other applicable law. Developer shall not identify any information as being exempt from public disclosure by City unless Developer reasonably determines such information is legally exempt from public disclosure by City pursuant to Government Code § 7927.605 or any other applicable law.

11.3 Effect of Change of Ownership. Unless otherwise stated within the Assignment Agreement, upon a change of ownership of the Project:

(a) The new owner shall be liable for the performance of all remaining obligations of Developer with respect to those portions of the Property which are transferred (the "**Transferred Property**"), but shall have no obligations with respect to any portions of the Property not conveyed (the "**Retained Property**").

[12] TBD

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

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

12. AMENDMENT AND MODIFICATION.

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

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

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

12.4 Administrative Minor Project Modifications. Notwithstanding any other provision and/or Condition of Approval contained in any Project Development Approvals, minor modifications to the Project Development Approvals, the Subsequent Development Approvals, and/or the Development Plans shall be made ministerially, with the approval of the Development Services Director. The determination of whether a requested or proposed modification constitutes a minor modification shall be made by the Director in his or her sole discretion, except that minor modifications shall not include any modifications that the Director determines extend beyond the intent of the original approval, and modifications meeting any of the following criteria shall not be deemed to constitute minor modifications and would require amendment to this Agreement under Section 12.2: (i) modifications that change the proposed uses analyzed in the GP EIR and considered in approving the CEQA exemption per CEQA Guideline Section 15183; (ii) modifications that increase the total amount of battery enclosure square footage within the Project, as shown in the Development Plans approved and dated [XX], by more than ten percent (10%); (iii) modifications that increase building/structure heights within the Property in comparison to what was identified on the Development Plans by more than 10%; (iv) modifications that substantially deviate from the design or dimensions of any Gen-Tie line transmission pole as set forth in the Development Plans or from the number, height, or location of the Gen-Tie line transmission poles set forth in **Exhibit "D"**; or (v) other modifications that involve any deviation of architectural design or details that is not in substantial conformance with the approved set of Development Plans. Notwithstanding the foregoing, changes to the site plan

required by the appliable utility company shall be considered minor modifications and City will ministerially approve changes to the site plan required by such utility company's design standards.

13. MISCELLANEOUS PROVISIONS.

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

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

To City:	City of Chino 13220 Central Avenue Chino, CA 91710 Attn: City Manager
With copy to:	Aleshire & Wynder, LLP 1 Park Plaza, Suite 1000 Irvine, CA 92614 Attn: Fred Galante, City Attorney
To Developer:	Dirac BESS LLC c/o Aypa Power Development LLC 11801 Domain Blvd, Suite 525 Austin, TX 78758 Attn: Development Email: DiracBESS@aypa.com
With copy to:	Dirac BESS LLC c/o Aypa Power Development LLC 11801 Domain Blvd, Suite 525 Austin, TX 78758 Attn: General Counsel Email: legal@aypa.com

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

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

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

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

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

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

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

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

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

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

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

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

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

13.10 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, tornados, hurricanes, floods, wars, terrorism, riots or similar hostilities, strikes, and other labor difficulties beyond the Party's control, government regulations, supply chain interruptions, excessive tariffs, pandemics, government-ordered quarantine, court actions (such as restraining orders or injunctions), or other causes beyond the Party's reasonable control ("**Force Majeure**"). Notwithstanding the foregoing, no Force Majeure shall apply unless the party claiming the existence of such Force Majeure event notifies the other party in writing within ten (10) days of becoming aware of the commencement of such Force Majeure event, or as soon thereafter as reasonably may be provided in light of the circumstances of the Force Majeure event, describing the causes of the delay. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of the impacts on the Project of each such event, as set forth in Section 2.6.

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

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

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

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

13.15 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

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

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

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

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

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

13.21 Warranty & Representation of Non-Collusion. No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to

Government Code §§ 1091 or 1091.5. Developer warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Developer further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Developer is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect. Nothing herein shall prevent Developer from providing lawful election donations, subject to compliance with Government Code § 84308 and other applicable law.

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

[SIGNATURES ON FOLLOWING PAGE(S)]

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

CITY:

CITY OF CHINO,
a California municipal corporation

_____
Eunice Ulloa, Mayor

ATTEST

_____
Natalie Gonzaga, City Clerk

APPROVED AS TO FORM
ALESHIRE & WYNDER, LLP

_____
Fred Galante, City Attorney

DEVELOPER:

Dirac BESS LLC, a Delaware limited liability company

_____
By:_____
Title:_____

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

CONSENT OF OWNER[13]

Owner, Helmar Industrial Properties, LLC, a California limited liability company, ("Owner"), represents and warrants that is it the owner of the property at 13910 Oaks Avenue, Chino, Assessor's Parcel Number 1021-211-05. Given that the Agreement will be applicable to Developer for the term of the Agreement and is not effective until the Developer or its affiliate closes escrow with Owner, Owner consents to the recording of this Agreement with the San Bernardino County Recorder.

_____
By:_____
Title:_____

[13] TBD

CONSENT OF OWNER

Owner, Rexford Industrial-13925 Benson LLC, a Delaware limited liability company ("Owner"), represents and warrants that is it the owner of the property at 13925 Benson Avenue Chino, Assessor's Parcel Number 1021-211-02. Given that the Agreement will be applicable to Developer for the term of the Agreement and is not effective until the Developer effectuates a ground lease with Owner, Owner consents to the recording of this Agreement with the San Bernardino County Recorder.

_____

By:_____

Title:_____

CONSENT OF OWNER

Owner, Shea Center Chino, LLC, a California limited liability company ("Owner"), represents and warrants that is it the owner of the property at 13822 Oaks Avenue, Chino, Assessor's Parcel Number 1021-121-05. Given that the Agreement will be applicable to Developer for the term of the Agreement and is not effective until the Developer or its affiliate closes escrow with the Owner, Owner consents to the recording of this Agreement with the San Bernardino County Recorder.

_____
By:_____
Title:_____

[End of Signatures]

ACKNOWLEDGEMENT

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

State of _____)
County of _____)

On _____, before me, _____, 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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

ACKNOWLEDGEMENT

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

State of _____)
County of _____)

On _____, before me, _____, 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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

ACKNOWLEDGEMENT

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

State of _____)
County of _____)

On _____, before me, _____, 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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

ACKNOWLEDGEMENT

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

State of _____)
County of _____)

On _____, before me, _____, Notary Public, personally appeared _____, _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name~~s~~(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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

ACKNOWLEDGEMENT

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

State of _____)
County of _____)

On _____, before me, _____, Notary Public, personally appeared _____, _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name~~s~~(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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

[to be added or attached]

EXHIBIT "B"

DEPICTION OF PROPERTY

(*See Attached*)

EXHIBIT "C"

PROJECT DESCRIPTION

Developer shall construct, operate, and eventually decommission the up to 400-megawatt (MW) Dirac Battery Energy Storage System (BESS) Project located on up to approximately 13.89 acres on the Property in the City of Chino. The Project is comprised of three Assessor Parcel Numbers (APNs 1021-121-05, 1021-211-02, and 1021-211-05) and currently supports industrial buildings and paved hardscape that would be demolished as part of construction. The Property is located immediately north of the existing Southern California Edison (SCE)-owned and operated Chino Substation (SCE Chino Substation) and is accessible from Benson Avenue and Oaks Avenue.

The primary components of the Project include a containerized BESS facility utilizing lithium-iron phosphate cells, or similar technology, an operations and maintenance (O&M) building, emergency facilities, an on-site Project substation, a 230-kilovolt (kV) generation interconnection (gen-tie) transmission line, and interconnection facilities within the existing SCE Chino Substation. Associated site improvements would include, but are not limited to, internal and perimeter access roads, parking areas, perimeter wall, stormwater detention facilities, utility connections, landscaping, exterior lighting, and telecommunications facilities.

The Project would provide electrical grid services by charging during periods of low demand and discharging during periods of peak demand, as well as providing ancillary services such as frequency response and regulation. These functions would support the integration of renewable energy resources, reduce reliance on fossil-fuel generation, and enhance local and regional grid reliability. The Project would be available to receive or deliver energy 24 hours per day, 365 days per year and has the capacity to provide 8 hours of electricity to approximately 300,000 single family homes. During operation, qualified locally based technicians would conduct regular inspections and maintenance to ensure safe and reliable performance.

EXHIBIT "D"

DEVELOPMENT PLANS

(*See Attached*)