AGREEMENT
Agreement No. _____

This Agreement (this "**Agreement**") is made and entered into as of May __, 2024 (the "**Effective Date**") by and between the **CITY OF BOULDER CITY**, a Nevada municipal corporation (the "**City**"), and **ROCCASECCA BESS LLC**, a Delaware limited liability company ("**RBL**"). (The City and RBL are at times referenced individually as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, the Bureau of Land Management ("**BLM**") has granted RBL a right-of-way grant, Serial Number N-101453 (NVNV105862609), for use of the Premises (as defined below) (the "**BLM ROW Grant**"); and

WHEREAS, the City is authorized to agree to the use of municipal lands in the Eldorado Valley area of Boulder City, Nevada for public purposes pursuant to NRS 268, NRS 277 and the Eldorado Valley Act of 1958 (Public Law 85-339); and

WHEREAS, RBL desires to develop a battery energy storage system project (the "**Facility**") adjacent to the Sloan Canyon Switching Station on a portion of the property designated as BLM 368 Energy Corridor; and

WHEREAS, the Parties desire to enter into an agreement regarding RBL's development of the Facility, as more particularly described herein.

NOW, THEREFORE, in consideration of the Recitals above, which are true and correct and are incorporated herein by this reference, and for other good and valuable consideration as expressed in this Agreement, the receipt and sufficiency of which the Parties hereby acknowledge, the City and RBL hereby agree as follows:

AGREEMENT

1. Premises and Term.

1.1 Premises. In consideration of the obligation of RBL to pay the Capacity Payments (as defined below) and in consideration of the other terms, provisions, and covenants of this Agreement, the City hereby consents to the use by RBL of that approximately 9.43 acres of land located within the Eldorado Valley, known as a portion of Clark County Assessor's Parcel Number 206-00-002-011, and depicted and more particularly described in **Exhibit "A"** attached hereto (the

"**Premises**"), subject to all easements, rights, rights of way, exceptions and other matters of record, for the purpose of constructing and operating the Facility. Notwithstanding anything to the contrary, the City makes no representation or warranty of any kind or nature with respect to whether the City has any ownership rights in the Premises, or any rights to lease, or grant any license or other right to use, all or any portion of the Premises.

1.2 Definition of Selected Terms.

1.2.1 Commercial Operation Date. "**Commercial Operation Date**" means the date that the Facility has become operational and can begin selling energy storage products on a regular basis (excluding start-up or test energy) pursuant to the terms of its energy sales agreement, power purchase agreement, or similar agreement for the sale of energy.

1.2.2 Term of Agreement. This Agreement became effective on the Effective Date, and shall continue, unless sooner terminated pursuant to the provisions of this Agreement, for a period of twenty (20) years after the Commercial Operation Date (as the same may be extended, the "**Term**"); provided, that, RBL shall have the option to extend the Term an additional ten (10) years by written notice to the City delivered no later than ninety (90) days prior to expiration of the then current Term so long as there is no uncured Event of Default (as defined below) at the time such notice is delivered; and provided further, that, RBL shall have the option to extend the Term of this Agreement for an additional term equivalent to the period of time the BLM ROW Grant is extended and is in full force and effect by written notice to the City delivered no later than ninety (90) days prior to expiration of the then current Term so long as there is no uncured Event of Default (as defined below) at the time such notice is delivered. RBL has the right to terminate this Agreement at any time prior to the Commercial Operation Date by written notice to the City. If for any reason the Commercial Operation Date has not occurred by the date four (4) years after the Effective Date, then the City may terminate this Agreement by written notice to RBL given at any time prior to the Commercial Operation Date. If, after the Commercial Operation Date, RBL ceases to operate the Facility for a period of more than two (2) years, then the City may terminate this Agreement by written notice to RBL given at any time prior to RBL's recommencement of the operation of the Facility. In addition, notwithstanding anything to the contrary, this Agreement shall automatically terminate upon (i) the termination of the BLM ROW Grant for any reason, (ii) the date that is one (1) year after a determination by federal law, or by a final, non-appealable ruling of a court of competent jurisdiction, that the City has no ownership interest in the Premises; provided, that RBL and the City shall, within such one (1) year period, enter into a new agreement that includes such terms contained within this Agreement that are (a) material to RBL's construction and/or operation of the Facility and (b) not dependent upon the City having any ownership interest in the Premises, or (iii) the one (1) year anniversary of a determination by federal law, or by a final, non-appealable ruling of a court of competent jurisdiction, that the City owns fee title to the Premises, unless prior to such anniversary RBL and the City have entered into a lease for the Premises that replaces this Agreement, for a term equal to the remainder of the term

of this Agreement, with the rent increased to then fair market, appraised rent, and otherwise in a form substantially similar to the terms and conditions contained within this Agreement; provided that RBL recognizes and agrees that terms unique to a lease type of agreement may need to be added, and some terms may need to be revised to effectuate a lease type of agreement, including without limitation real property covenants, and other provisions typical of a lease.

1.2.3 Reference Rate of Interest. "**Reference Rate of Interest**" means the Prime Rate published by the Wall Street Journal (or an equivalent rate announced by a national bank selected by the City in the event the Wall Street Journal no longer publishes a Prime Rate).

1.3. No Representations. The City makes no representations or warranties concerning either the Premises or any matters with respect thereto, except as expressly stated in this Agreement. Except for such representations and warranties as are expressly memorialized in this Agreement, RBL is entering into this Agreement based on its investigation and analysis of the Premises.

2. **Construction and Improvements**. The City shall have the right and the opportunity to review all concept and construction plans for any buildings and other improvements which RBL intends to construct on the Premises (collectively, the "**Improvements**").

2.l. Approval of Plans. The City shall complete its review of RBL's Plans (defined below) and approve, provide notice of required corrections, or disapprove in writing RBL's Plans within thirty (30) days after receiving the same. If the City fails to respond to RBL's Plans within thirty (30) days after receiving the same, then RBL shall deliver to the City written notice stating that if the City fails to respond within ten (10) days after receiving such written notice, the City shall be deemed to have approved RBL's Plans. If the City fails to respond within ten (10) days after receiving such written notice, then the City shall be deemed to have approved RBL's Plans. In the event the City disapproves RBL's Plans as set forth herein and in connection with such written disapproval, the City shall describe in detail its reasons for such disapproval and provide RBL an opportunity to remedy any deficiencies in its Plans.

2.1.1. Construction Plans: RBL shall follow the City's development processes and shall be subject to the fees as outlined in the City Code and Resolutions adopted by the City Council. All construction documents (collectively, "**RBL's Plans**") shall be wet stamped by a professional engineer licensed in the State of Nevada.

2.1.2. Expedited Processing. RBL may request a dedicated inspector to expedite the inspection process. However, RBL must reimburse the City for the direct and actual costs associated with the said dedicated inspector. RBL may also request a third-party plan review to expedite the plan review process provided RBL pays the City the actual costs associated with said third-party plan review.

2.1.3. Provision of Plans to the City. Within one hundred eighty (180) days after completion of

any Improvements or modifications thereto, RBL shall deliver to the City a complete set of record drawings signed by the Engineer of Record in both pdf and digital vector coordinate format or other format reasonably acceptable to both Parties.

2.1.4 Phasing of Improvements. The precise scope and extent of the Improvements are presently unknown. Accordingly, RBL may phase-in the Improvements to the Premises, at such times and to such extent as RBL, in its sole discretion, shall determine to be developmentally and financially viable.

2.2 The City's Improvement Work. The City shall have no obligation whatsoever to improve or alter the Premises. Furthermore, the City shall not have any obligation to improve or alter any other area that RBL may have the right to use or where the Premises may ultimately connect to any public roadway.

2.3. General Contractor. Selection of a general contractor for all Improvements shall be made by RBL. Such general contractor shall be licensed in Nevada. All engineering performed for RBL shall conform to the applicable laws of the State of Nevada. All engineering shall be approved by professional engineers licensed in the State of Nevada.

2.4. Commencement of RBL's Construction; RBL's Duty to Reclaim the Premises; Credit Support. RBL shall obtain all required preconstruction permits and commence construction of the Improvements in accordance with applicable laws. RBL shall proceed with such construction substantially in accordance with RBL's Plans, as approved by the City, with reasonable diligence and in a good and workmanlike manner. In the event that RBL abandons this project, and this Agreement is terminated after the commencement of construction but before substantial completion, then RBL shall at its own expense comply with RBL's obligations under **Section 2.10**. In the event that RBL does not post a construction and reclamation bond in an amount sufficient to remove the Improvements as required by the BLM ROW Grant, then, prior to the commencement of construction on the Premises, RBL shall provide the City credit support in the form of either or both of the following instruments (collectively, the "**Section 2.4 Credit Support**"), the composition of which shall be determined by RBL, and approved of by the City, but which shall, in the aggregate, be reasonably sufficient to pay for the removal of the Improvements in the event that construction on the Premises commences but the Commercial Operation Date is not achieved: (i) one or more letters of credit; and/or (ii) one or more guaranties from direct or indirect parent entities or equity owners of RBL reasonably approved of by the City (the "**Construction Guaranty**"), which Construction Guaranty, if given, shall be in form and substance substantially similar to the form of guaranty attached hereto as **Exhibit "B"** and incorporated herein by this reference. Any obligation of RBL to provide the Section 2.4 Credit Support shall terminate upon the Commercial Operation Date. The City and RBL agree that the City Manager may grant a request by RBL to modify the composition of the Section 2.4 Credit Support from time to time, and that such a modification, if approved in writing by the City Manager

(such approval not to be unreasonably withheld or delayed), shall be deemed to have been made with the City's consent pursuant to **Section 29.12(iv)**.

2.5. Liability. RBL covenants and agrees that the Improvements shall be constructed, operated, repaired, and maintained, during the Term, without cost or expense to the City, in accordance with the requirements of all laws, ordinances, codes, orders, rules, and regulations of all governmental authorities having jurisdiction over the Premises and in a good and workmanlike manner. RBL agrees to defend, indemnify and hold the City, its successors, assigns, agents, employees and attorneys harmless from and against any and all cost, liability, expense, damage or injury to the extent resulting from or arising in connection with the construction, operation, repair and maintenance of the Improvements during the Term.

2.6. Insurance. Prior to commencing any construction on the Premises, RBL shall obtain, or cause its contractors to obtain on behalf of RBL, its contractors and agents and without cost to the City, Builder's Risk Insurance covering the Improvements to the full extent of the insurable value thereof until the Commercial Operation Date. RBL shall also cause its contractor to obtain or cause to be obtained Workers' Compensation Insurance covering all persons employed in connection with any demolition or construction and with respect to whom death or bodily injury claims could be asserted against the City, RBL or the Premises during the Construction Period. RBL shall also obtain general liability insurance for the mutual benefit of the City, RBL and the Premises. All of the aforementioned policies shall be in the form and shall contain the liability limits specified in **Section 9**.

2.7. No Subordination of the City's Interest in Premises. The City shall not be required to subordinate any rights or interests of the City in, to or with respect to the Premises to any lien securing RBL's construction loan or other financing; provided, however, that City shall agree to enter into a non-disturbance agreement with any lender providing a construction loan or other financing of the Facility, containing terms and conditions customarily included in such non-disturbance agreements related to financing of commercial projects and otherwise in a form reasonably acceptable to the City, pursuant to which City agrees not to disturb the interest of any such lender or its assignee in the event of a foreclosure of RBL's interest in the Premises, or in the event such lender or its assignee otherwise succeeds to RBL's interest in the Premises via deed in lieu of foreclosure or via other similar transfer, so long as such lender or its assignee assumes the obligations of RBL under this Agreement and no Event of Default has occurred and is continuing.

2.8. Intentionally Deleted. .

2.9. **Liens**. RBL shall at all times indemnify, save and hold harmless the City and the City's successors, assigns, agents, employees and representatives and the Premises against all liens or claims which may ripen into liens, and against all reasonable attorneys' fees and other reasonable costs and expenses, to the extent growing out of or incurred by reason of or with respect to any

non-payment for services performed or materials provided for construction done by or for RBL on the Premises. If RBL is required to do so under this **Section 2.9**, should RBL fail to fully discharge any such lien or claim, or in the alternative fail to post a bond sufficient to discharge such lien or claim within sixty (60) days after written request therefore by the City, then the City, at its option, may pay the same or any part thereof excluding such liens or claims which RBL contests in good faith the validity or amount of such liens or claim. No bond required by the City shall exceed 150% of the amount claimed unless otherwise required by law. All amounts paid by the City in accordance with this **Section 2.9**, together with interest in a per annum amount equal to two percent (2%) in excess of the Reference Rate of Interest, but in no event in excess of the maximum interest rate permitted by law, from the time of payment until repayment, shall be repaid by RBL within ten (10) days after written notice and evidence of payment by the City shall have been delivered to RBL. The provisions of this **Section 2.9** shall survive the expiration or sooner termination of this Agreement.

2.10. Ownership of Improvements.

2.10.1. RBL-Made Improvements, Trade Fixtures, and Equipment. During the Term, all Improvements made by RBL, and all movable trade fixtures and equipment (whether or not attached to the Premises or other Improvements) including, without limitation, RBL's battery systems, project substation, towers, fencing, cabling, storage devices, switching devices, transformers, inverters, relays and related installed equipment (collectively, "**RBL's Personal Property**") shall remain and continue to be the property of RBL and may be repaired or replaced at RBL's sole discretion during the Term regardless of whether such RBL's Personal Property would otherwise be deemed fixtures, "fixtures of the land", or real property under Nevada law.

2.10.2. Encumbrance of RBL's Personal Property. The City agrees that RBL's Personal Property may be leased from one or more equipment lessors and that RBL may execute and enter into equipment leases with respect to RBL's Personal Property. Further, RBL may grant one or more security interests in RBL's Personal Property to one or more lenders. Within ten (10) days after RBL's request, the City shall execute and deliver a customary estoppel certificate in form and substance reasonably acceptable to RBL's lender or equipment lessor certifying (a) as to whether this Agreement has been supplemented or amended or assigned or sublicensed, and if so, the substance and manner of such supplement or amendment or Assignment; (b) as to the validity and force and effect of this Agreement; (c) as to the existence of any Event of Default hereunder; (d) as to the commencement and expiration dates of the Term; and (e) confirming that the City consents to such equipment lease.

2.10.3. RBL's Failure to Remove Improvements or Other Personal Property. If RBL fails to remove any Improvement or other RBL's Personal Property by the date that is one hundred eighty (180) days after the expiration or earlier termination of the Term, then the City may undertake and complete such removal, and the cost of such removal, together with interest in a per annum amount

equal to two percent (2%) in excess of the Reference Rate of Interest, but in no event in excess of the maximum interest rate permitted by law, shall be payable on demand by RBL to the City. In the event that RBL does not post a construction and reclamation bond in an amount sufficient to remove the Improvements as required by the BLM ROW Grant, then upon the expiration or earlier termination of the Term, RBL shall provide the City credit support in the form of either or both of the following instruments (collectively, the "**Section 2.10.3 Credit Support**"), the composition of which shall be determined by RBL, and approved of by the City, but which shall, in the aggregate, be reasonably sufficient to pay for the City's costs in removing the Improvements and all other RBL's Personal Property in the event that RBL fails to remove any Improvements or other RBL's Personal Property by the date that is one hundred eighty (180) days after the expiration or earlier termination of the Term: (i) one or more letters of credit; and/or (ii) one or more guaranties from direct or indirect parent entities or equity owners of RBL reasonably approved of by the City (the "**Post-Term Guaranty**"), which Post-Term Guaranty, if given, shall be in form and substance substantially similar to the form of guaranty attached hereto as **Exhibit "C"** and incorporated herein by this reference. Any obligation of RBL to provide the Section 2.10.3 Credit Support shall terminate upon the removal of all Improvements and other RBL's Personal Property from the Premises and the reimbursement of the City's costs, if any, in causing such removal. The City and RBL agree that the City Manager may grant a request by RBL to modify the composition of the Section 2.10.3 Credit Support from time to time, and that such a modification, if approved in writing by the City Manager (such approval not to be unreasonably withheld or delayed), shall be deemed to have been made with City's consent pursuant to **Section 29.12(iv)**. The provisions of this **Section 2.10.3** shall survive the expiration or sooner termination of this Agreement.

2.11. Land Use Matters and Other Regulatory Approvals and Cooperation. The City and RBL acknowledge that RBL enters into this Agreement with the intention of constructing the Facility upon the Premises and exercising all rights not inconsistent with the Permitted Use. Subject to the conditions set forth in this **Section 2.11**, the City shall reasonably cooperate with RBL's efforts to obtain entitlements, permits, licenses, variances, grant approvals, tax credits and other federal, state or local government assistance or approvals for the development of RBL's Improvements, provided that such cooperation is without additional cost or expense to the City. The City shall have no liability to RBL if, despite the City's cooperation under this **Section 2.11** RBL is unable to obtain a permit, approval, agreement, grant, tax credit, variance, or other entitlement or permission contemplated by this **Section 2.11** (generally, "**permits**").

2.12 Materials Removal. Development of the Premises for RBL's Permitted Use may require the excavation and removal of certain materials from the Premises. Removal of any significant quantity of said materials from the Premises shall be in accordance with, and subject to, the express written reasonable approval of the City. RBL shall not sell any materials removed from the Premises. At no time shall removal of any materials during the construction of this project be construed as the granting to RBL of any mineral right or rights.

2.13 Off-site Improvements. Without expanding **Section 1.1**, for any off-site work necessary for RBL's use of the Premises within the limits of Boulder City, Nevada, RBL shall abide by all currently applicable ordinances, regulations, standards and specifications, or other requirements of Boulder City, Nevada, and all other applicable local, state and federal laws. For the avoidance of doubt, in no event shall any such off-site work be permitted without the City's prior written approval of such work (including, without limitation, the plans and specifications for such work).

2.13.1 RBL, at its own cost, shall perform and complete design and permitting for all off-site work and improvements required to connect the Premises to public roads and connect the Premises to existing utility service and power lines, including, without limitation, construction of streets, sewers, water systems, curbs, electrical systems, gutters, sidewalks, street lighting, driveways, drainage, rights of way, accesses, signs, survey monuments, reference lines or points, etc., in accordance with currently applicable ordinances, regulations, standards or specifications of the City.

2.13.2 The Premises shall not be cleared of vegetation or graded, and the natural ground surface of the Premises shall not be otherwise disturbed, until a grading plan has first been submitted to and approved by the City.

2.13.3 RBL shall notify the City Engineer of the date and hour that off-site work on any of the following items is expected to begin, notification to be no less than twenty-four (24) hours in advance of the date work is anticipated to start; and if thereafter conditions develop to delay the start of work, RBL agrees to notify the City Engineer of the delay not less than two hours before work is scheduled, to begin with, respect to any of the following:

(i) Laying of sewer, water, gas, power, telephone, and TV lines;

(ii) Backfilling of sewer, water, gas, power, telephone and TV lines;

(iii) Placing concrete for curb, gutter, sidewalk, valley gutters, storm drain structures, manholes, street lighting foundations and alley gutters;

(iv) Placing of Type II gravel base course - each lift;

(v) Priming base course;

(vi) Placing street lighting and burn testing; and

(vii) Testing of electrical systems-high voltage testing, if required.

Should RBL suspend work on any item longer than overnight (except during Saturday and Sunday

and legal holidays), a new notification shall be made to the City Engineer before work may begin anew on any items requiring inspection.

2.13.4 Approval of Off-Site Work after Inspection; Dedication. Whenever the City Engineer or his/her duly authorized, representative inspects portions of off-site work as mentioned above and finds the work performed to be in accordance with this Agreement, the City Engineer or his/her duly authorized representative shall issue a statement of inspection which shall permit RBL to perform the next phase of the construction.

Inspection and approval of any item of off-site work shall not forfeit the right of the City to require the corrections of quality workmanship or materials at any time during the course of work, although previously approved by oversight. If the City disapproves any work, it shall state the same in writing and provide with reasonable detail the reasons for disapproval.

Nothing herein shall relieve RBL of the responsibility during the Term for proper construction and maintenance of the off-site work, materials, and equipment required or performed under the terms of this Agreement until all work has been completed by RBL and such work has been dedicated to and accepted by the City.

2.13.6 RBL shall perform any alterations or connections that are required to existing utility lines or utility improvements because of the work contemplated by this Agreement to bring utilities to the Premises, without cost to the City.

2.13.7 RBL shall perform and complete all such improvements in accordance with the general regulations, specifications, and ordinances of the City, and approval by the City of the final construction map or plans shall not be made until all street plans and profiles, including drainage provisions, electrical light layout, architectural arrangement of construction units and all other such plans and specifications as may be required have been submitted to, and approved by, the various City Departments concerned.

2.13.8 Intentionally Deleted.

2.13.9 RBL shall protect and maintain all off-site work until its completion, and for a period of sixty (60) days following RBL's offer of dedication to the City of such work. During move-in, construction and move-off, RBL shall keep the site free and clear from the dangerous accumulation of rubbish and debris and shall maintain sufficient and proper barricades, lights, etc. for the protection of the public. Final acceptance of the work will not be made by the City where work has occurred has been cleared of all rubbish, surplus materials and equipment resulting from the contractor's operation, to the reasonable satisfaction of the City Engineer or his/her duly authorized representative.

2.13.10 Intentionally Deleted.

2.13.11 Before beginning construction of any off-site improvements, RBL shall execute a surety and performance bond or make a cash deposit in lieu of bond for the full cost of said off-site improvements in favor of the City, conditioned that the said RBL will complete said off-site improvements, and further conditioned that said bond or cash deposit, shall be used for the payment of the costs of completion of said off-site improvements by the City in case RBL fails to do so within said period, in the event that the City has exercised its option to complete said off-site improvements as provided in the following paragraph.

If the construction or installation of any off-site improvements or facilities for which a performance bond is posted or deposited are not completed within the above described two-year period (subject to Events of Force Majeure) or if such construction is not in accordance with applicable standards and specifications as prescribed by law, then in either or any such event, the City may, at its option by reasonable advance written notice to RBL (which shall not be less than sixty (60) days), proceed to complete said improvements at the expense of RBL under its bond as provided for above, but such cure right shall not apply if RBL has cured the construction problem before the notice period has expired.

Any application for release of said performance bond upon the completion of the off-site improvements by RBL shall not be granted unless accompanied by a written certificate from the Registered Engineer of Record to the City Engineer stating that all requirements of this **Section 2.13** have been satisfactorily completed in accordance with the terms of this Agreement.

2.13.12 No certificates of occupancy shall be granted until such time as the off-site improvements have been completed in accordance with this Agreement, as reasonably determined by the City Engineer or his/her duly authorized representative, including but not limited to the provisions relating to the performance bond (or cash security in lieu of bond) and the one year warranty of improvements contemplated by Section 11-39-8(I) of the Boulder City Code, provided, however, that as provided in **Section 2.13.4**, the City may only disapprove the off-site improvements if such off-site improvements (i) do not comply with applicable codes, laws, or regulations, or (ii) do not comply with plans previously approved by the City, or (iii) create an unreasonable risk of harm to the safety of persons working on or about the Premises .

2.14 In any instance, where approval or consent of the City is required in this **Section 2**, such approval or consent, shall be obtained from the City department or official having jurisdiction over the approval sought pursuant to the laws of the City (for example, an application for a building permit would be submitted to the City Community Development Department, Building and Safety Division Office).

3. **Payments and Other Consideration**.

3.1 Payment Upon Execution. Concurrent with the mutual execution and delivery of this Agreement, RBL shall pay the City an amount equal to Twenty Thousand Dollars ($20,000), which amount shall be not be refundable for any reason.

3.2 Capacity Payments. On the Commercial Operation Date and on each Capacity Payment Date (defined below) thereafter, (i) RBL shall certify to the City in writing, in a form reasonably satisfactory to the City, the then current Installed Storage Capacity (defined below), and (ii) RBL shall pay to the City, in advance, the amount of Five Hundred Dollars ($500) per quarter (Two Thousand Dollars ($2,000) per annum) per megawatt (AC) of the then current Installed Storage Capacity (as increased annually as provided below, the "**Capacity Payment**"). As used herein, (i) "**Capacity Payment Date**" means the Commercial Operation Date and each three month anniversary of the Commercial Operation Date (e.g., if the Commercial Operation Date is January 15, then the next Capacity Payment Date shall be April l5 and the Capacity Payment Date after that shall be July 15), and (ii) "**Installed Storage Capacity**" means the aggregate maximum dependable operating capacity, measured in megawatts (AC), of all power storage facilities on the Premises to discharge power for four (4) hours of continuous discharge. On each anniversary of the Commercial Operation Date, the amount of the then current Capacity Payment shall increase by a percentage equal to the percentage increase in the CPI-U over the preceding year; provided, however, that in no event shall such percentage increase on any Commercial Operation Date be less than two percent (2%) or greater than eight percent (8%). As used herein, "**CPI-U**" means the U.S. Department of Labor, Bureau of Labor Statistics, Consumers Price Index for all Urban Consumers, All Cities Average, Subgroup "all items" (base reference period 1982-84=100). If during the Term the U.S. Department of Labor, Bureau of Labor Statistics, ceases to publish a CPI-U, such other index or standard as will most nearly accomplish the aim and purpose of such CPI-U and the use thereof by the Parties shall be selected by the City in its reasonable discretion.

3.3 Place of Payments. All Capacity Payments and other amounts due from RBL to the City hereunder will be made in lawful money of the United States via wire transfer pursuant to the City's wire transfer instructions.

3.4 Late Charges. Notwithstanding anything in this Agreement to the contrary, if RBL fails to pay any Capacity Payment or other amount that RBL is required to pay to the City hereunder within five (5) days following the due date thereof, then RBL shall pay to the City upon demand a late charge equal to the greater of (i) five percent (5%) of the amount due, or (ii) interest on the amount due in the per annum amount equal to two percent (2%) in excess of the Reference Rate of Interest, but in no event in excess of the maximum interest rate permitted by law, from the date such payment is due until paid, and the payment of such late charge shall not excuse or cure any Event of Default by RBL under this Agreement.

3.5 Other Expenses of Premises. During the entire Term, in addition to the Capacity Payments payable under this **Section 3**, RBL shall also pay all expenses whatsoever relating to the Premises, including, without limitation, all real and personal property taxes and assessments, insurance premiums, costs of repair and maintenance of the Premises, the costs of all utilities and services of any type provided to the Premises, and all monies required to be expended on or in relation with the Premises or its operations in connection with any applicable law or matter of record; provided, however, nothing herein shall require RBL to pay any expenses of City that relate to a dispute between City and BLM over ownership of the Premises.

3.6 Other Consideration. It is understood and agreed to by the Parties that a material condition of the BLM ROW Grant is the obligation to post a construction and reclamation bond as provided in 43 CFR 2805 and as additional consideration for this Agreement, RBL agrees to comply with and perform such obligation at all times during the Term and to provide the City with such evidence of such compliance and performance as the City may reasonably request from time to time.

4. **Intentionally Deleted**.

5. **Uses**.

5.1 Permitted Use. In general terms, RBL shall have the right to develop the Premises for the Facility and related uses consistent with the terms and conditions of this Agreement (the "**Permitted Use**"). Notwithstanding anything to the contrary, the City acknowledges that energy storage is a rapidly evolving field and that the technologies involved in energy storage will likely change during the Term. Except as provided in this **Section 5.1**, RBL shall be free to utilize any new methods of energy storage that are developed during the Term, provided that such technologies do not materially increase the burden placed on the Premises by this Agreement, all of which new methods shall be considered a Permitted Use pursuant to this **Section 5.1**; but further provided, however, that the energy storage system technology used by RBL at the Premises from time to time shall be a technology that is approved by the City in advance in writing from time to time, which approval will not be unreasonably withheld by the City. Without limiting the foregoing, RBL and the City shall negotiate in good faith and enter into an agreement to install and maintain in good and working condition and repair, at RBL's sole cost and expense, any necessary on-site infrastructure to address fire suppression directly related to the Permitted Use of the Premises by RBL (the "**Fire Suppression System**").

5.1.1 Other Governmental Requirements. If any governmental license, permit or BLM right-of-way is required for the lawful conduct of any business activity to be carried on by RBL on the Premises, then, RBL shall procure and maintain such license, permit or BLM right-of-way for so long as the same is required, make such license, permit or BLM right-of-way available for inspection by the City, and comply at all times with all terms and conditions thereof.

5.2 Prohibited Uses. RBL covenants and agrees that it will not use or authorize or permit any person or persons to use the Premises or any part thereof for any use or purpose, or in any manner, in violation of the laws of the United States of America or the laws, ordinances, regulations or requirements of the State of Nevada, Clark County, the City or other lawful authorities having jurisdiction.

RBL shall promptly, and upon demand by the City, reimburse the City for any additional premium charged for any insurance policy maintained by the City, resulting from RBL's failure to comply with the provisions of this **Section 5** and for any other costs reasonably incurred by the City in enforcing the provisions of this **Section 5**.

5.3 Project Standards. In constructing the Improvements under **Section 2**, RBL shall utilize prudent industry-standard dust control products and equipment designed to keep the generation of dust to a minimum. RBL shall also operate the Facility in conformance with all applicable standards of the Institute of Electrical and Electronics Engineers, the National Electric Safety Code, the National Electric Manufacturer's Association, the Southern Nevada Health District, and the Clark County Department of Air Quality and Environmental Management. Notwithstanding anything to the contrary contained in this Agreement, RBL shall be entitled to determine the size, type, manufacturer and exact location of the Facility to be located upon the Premises in RBL's sole discretion. RBL may, at its sole discretion, use the Premises for one consolidated project or RBL may elect to divide the project into multiple phases or projects and/or consolidate one or more projects on the Premises with a project or projects outside of the Premises.

6. **Representations and Covenants of City.** The City represents, warrants and covenants to RBL as follows:

6.1. Intentionally Deleted.

6.2. Legal Proceedings. Subject to the last sentence of **Section 1.1**, that there are no pending, or to the knowledge of the City, threatened, actions or legal proceedings which could adversely affect the Premises or RBL's rights under this Agreement.

6.3. Binding Obligation. That this Agreement has been duly authorized, executed, and delivered by or on behalf of the City and is, upon execution and delivery, the legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not conflict with or constitute a default or an event which with notice or passage of time or both will constitute default under any contract to which the City is a party or by which the City is bound.

6.4. Environmental Matters. To the knowledge of the City, the City is in material compliance with all state, federal, and local Environmental Laws applicable to the Premises, and the City is not subject to any environmental proceedings with respect to the Premises. The City has not received

any written notice of any violation, and to the knowledge of the City, no other person has received any written notice of any violation, that, as of the date hereof, remains uncured. The City affirms and covenants that, to the knowledge of the City, no Hazardous Substances (as defined in **Section 24.4**) have ever been disposed of on the Premises.

6.5. Authority. Neither the execution, delivery or performance of this Agreement will breach any statute, law ordinance, rule or regulation of the City or any other governmental authority or the City's charter documents, and the City affirms that the offering and execution of this Agreement complies with all applicable provisions of NRS 268 and the Boulder City Charter.

6.6. Title. That the City has not granted any possessory rights with respect to the Premises other than as set forth in any matters of record, if any.

6.7. No Violation of Law. That the City has not received notice of any violation of any law, regulation, order, or other requirement of any governmental authority with respect to the Premises.

7. **Utilities.**

7.1. Generally. RBL is responsible for procuring, constructing and installing all utilities required for the Premises or RBL's use thereof including, without limitation, water necessary for the Permitted Use and Fire Suppression System, gas, electricity, water and telephone; and RBL shall pay all customary charges incurred for the use of such utility services at the Premises. RBL shall also pay all customary utility connection charges and any charges associated with having utility services extended to the Premises.

7.2 SNWS Limitations. Without limiting **Section 7.1**, the Parties recognize that the water supply for the City is dependent upon sources that are variable in quantity or quality and beyond the reasonable control of the City. No liability shall attach to the City hereunder on account of any failure to accurately anticipate availability of water supply or because of an actual failure of water supply due to inadequate runoff, poor quality delivery from Southern Nevada Water System or occurrences beyond the reasonable control of the City.

8. **Taxes, Assessments, and other Governmental Impositions**.

8.1 Payment. Subject to the following sentence, RBL shall pay, within thirty (30) days after receipt of written demand from the City, any real estate taxes, assessments (both general and special) and other governmental impositions which are levied against the Premises; provided that RBL shall have no obligation to pay any of such taxes, assessments and impositions more than ten (10) days prior to the date the same is due to the taxing authority. RBL's obligations under this **Section 8.1** shall extend only to taxes, assessments and impositions which are properly allocable to the Premises during the Term. Any tax, assessment, imposition or other similar expense which is properly allocable to any property outside the Premises shall not be the obligation of RBL.

8.2 Contest. RBL may, if it shall so desire, contest the validity or amount of any tax or assessment against the Premises, in which event RBL may defer the payment thereof during the pendency of such contest if applicable law so permits; provided, however, that RBL shall not allow any tax lien to be foreclosed on the Premises, and, unless such tax is paid under protest, not later than ten (10) days prior to the date the same shall become delinquent, RBL shall have, at RBL's election, either: (i) deposited with a bank or trust company reasonably acceptable to the City, an amount sufficient to pay such contested item(s) together with the interest and penalties thereon (as reasonably estimated by the City) with written instructions to said bank or trust company to apply such amount to the payment of such item(s) when the amount thereof shall be finally fixed and determined (with the remainder to be paid to RBL), or (ii) provided the City with other reasonably acceptable security. In the event the City is required by law to join in any action or proceeding taken by RBL to contest any such taxes or assessments, RBL shall indemnify, defend and hold the City and the City's successors, assigns, agents, employees and representatives harmless from any and all costs, fees (including, but not limited to reasonable attorneys' fees), expenses, claims, judgments, orders, liabilities, losses or damage actually incurred and arising out of such action or proceeding.

If, at any time, in the judgment of the City reasonably exercised, it shall become necessary so to do, the City, after written notice to RBL, may, under protest and if so requested by RBL, pay such monies as may be required to prevent: (i) transfer of the Premises to the Clark County Treasurer or the sale of the Premises or any part thereof: or (ii) foreclosure of any lien created thereby, and any amounts so paid shall become immediately due and payable by RBL to the City, together with interest in the per annum amount equal to two percent (2%) in excess of the Reference Rate of Interest; but in no event in excess of the maximum interest rate permitted by law, and shall constitute additional consideration hereunder. At RBL's option, sole cost and expense, and in lieu thereof, RBL may obtain lien release bonds in amounts equal to the claims of any such liens or as otherwise required by applicable law to obtain a full and timely release of such liens.

8.3 Substitute Taxes. Notwithstanding anything herein to the contrary, if at any time during the Term there shall be levied or assessed in substitution of real estate taxes, in whole or in part, a tax, assessment or governmental imposition (other than a general gross receipts or income tax) on the consideration paid to the City hereunder, and said tax, assessment or governmental imposition shall be imposed upon the City, then RBL shall pay the same as hereinabove.

8.4 Installment Payments. Notwithstanding anything herein to the contrary, if at any time during the Term any assessment (either general or special) is levied upon or assessed against the Premises or any part thereof, and if such assessment is permitted to be paid in installments and RBL elects to pay such assessment in installments, then RBL's obligation under this **Section 8.4** to pay such assessment shall be limited to the amount of such installments (plus applicable interest thereon charged by the taxing authority, if any) which become due during the Term.

9. **Insurance**.

9.1 Property Insurance. RBL shall maintain so called "all risk" fire and extended coverage insurance (including vandalism and malicious mischief insurance and earthquake and flood insurance if commercially available at reasonable cost) on the Improvements, with a limit of, or in an amount reasonably equivalent to, the probable maximum loss from an insured casualty, less the cost of excavations, foundation, footings and underground tanks, conduits, pipes, pilings and other underground items. RBL shall evidence the insurance coverage required by this **Section 9.1** by delivering to the City, thirty (30) days after the Commercial Operation Date, and thereafter from time to time upon request by the City, certificates issued by the insurance companies, if any, underwriting such risks.

9.2 Liability Insurance. RBL shall also insure against property damage and public liability arising by reason of occurrences on or about the Premises by maintaining a policy or policies of commercial general liability insurance, including contractual liability coverage insuring against the tort liabilities assumed under this Agreement, on an "Aegis claims-first-made" basis, with a primary liability limit of not less than One Million Dollars ($1,000,000), and a combined primary and excess coverage limit of not less than Three Million Dollars ($3,000,000). Every ten (10) years during the Term, RBL and the City shall meet and in good faith mutually determine whether such amounts should be increased to account for inflation or generally larger industry standards, insurance settlements or jury verdicts. RBL shall evidence the insurance coverage required by this **Section 9.2** by delivering to the City, prior to taking possession of the Premises, and thereafter from time to time upon request by the City, certificates issued by the insurance companies, if any, underwriting such risks.

9.3 Workers' Compensation. RBL shall maintain (at its sole cost and expense) workers' compensation and employers' liability insurance covering all of its employees as required by the laws of the State of Nevada. RBL shall have the right to self-insure with respect to such required coverage to the extent permitted by Nevada law. RBL shall evidence the insurance coverage required by this **Section 9.3** by delivering to the City, prior to taking possession of the Premises, and thereafter from time to time upon request by the City, reasonable evidence that RBL has complied with its obligations under this **Section 9.3**.

9.4 Policy Requirements. All insurance policies required to be maintained by RBL hereunder shall be with responsible insurance companies authorized to do business in the State of Nevada, and, except for workers' compensation policies, shall, to the extent authorized by such insurance companies, name the City as an additional insured and shall provide for cancellation only upon thirty (30) days prior written notice to the City.

9.5 Blanket and Self Insurance. Notwithstanding any provisions of this **Section 9** to the

contrary, and only to the extent permitted by applicable law, RBL shall be permitted to fulfill its obligations under this **Section 9** pursuant to (i) one or more blanket policies (as long as the Premises are adequately insured as required by this Agreement), or (ii) self-insurance (provided that RBL shall first provide evidence of capability to self-insure and obtain the City's prior written approval, and such approval not to be unreasonably withheld or delayed).

10. **Maintenance and Repairs**. RBL shall maintain the Premises and the Improvements (including, without limitation, the Fire Suppression System) in accordance with all applicable laws and otherwise in good order, condition and repair, it being understood that the City shall not be required to maintain or make any repairs to the Premises or the Improvements during the Term.

11. **Alterations**. RBL shall have the right to make, at its sole cost and expense, additions, alterations and changes (hereinafter referred to as "**Alterations**") in or to the Improvements, provided that an Event of Default shall not then exist, and subject to the following conditions:

11.1 Permits. No Alterations shall be undertaken unless and until RBL shall have procured and paid for, so far as the same may be required from time to time, all required permits and authorizations of the City required by its codes and ordinances and other governmental authorities having jurisdiction.

11.2 Construction. All Alterations shall be pursued diligently to completion, shall be done in a good and workmanlike manner, and shall be in compliance with all applicable permits and authorizations, building and zoning laws and all other laws, ordinances, orders, rules, regulations and requirements of all federal, state and local governments, departments, commissions, boards and officers.

11.3 Inspection. During construction of either the Improvements or any Alterations, and subject to applicable laws and RBL's security policies, the City shall have the right to go upon and inspect such Improvements and Alterations at all reasonable times and upon reasonable notice.

11.4 Liens. RBL shall indemnify, defend, satisfy and hold harmless the City and the City's heirs, successors, assigns, agents, employees and representatives from and against any and all claims, losses, cost and expenses (including, without limitation, reasonable attorneys' fees) the City sustains that are incurred by reason of any liens for labor or materials supplied or claimed to be supplied in connection with Alterations done by or for RBL. Should RBL fail to fully discharge any such lien or claim if required to do so under the foregoing sentence, or in the alternative fail to post a bond sufficient to discharge such lien or claim within thirty (30) days after written request therefor by the City, then the City, at its option, may pay the same or any part thereof excluding such liens or claims which RBL contests in good faith the validity or amount of such liens or claim. No bond required by this **Section 11.4** shall exceed 125% of the amount claimed unless otherwise

required by law or other security is posted by RBL that is acceptable to the City. All amounts paid by the City, together with interest in the per annum amount equal to two percent (2%) in excess of the Reference Rate of Interest, but in no event in excess of the maximum interest rate permitted by law, from the time of payment until repayment, shall be repaid by RBL as additional consideration within ten (10) days after demand for payment by the City. The provisions of this **Section 11.4** shall survive the expiration or sooner termination of this Agreement.

11.5 Insurance. Prior to making any material Alterations to any building or work of improvement, RBL and RBL's subcontractors and agents shall obtain Workers' Compensation insurance as required by applicable law. RBL shall also obtain Builder's Risk and Liability Insurance in such amounts and form as required by **Section 2.6**.

12. **Equipment, Fixtures, and Signs**.

12.1 Equipment and Fixtures. RBL shall have the right to erect, install, maintain and operate on the Premises such equipment, trade and business fixtures, and other personal property, including the Improvements, the Facility, and RBL's Personal Property, as RBL may deem necessary or appropriate, and which shall not be deemed to be part of the Premises, but shall remain the property of RBL, however affixed to the Premises, as provided in **Section 2.10**.

12.2 Permitted Signs. RBL shall be entitled to erect upon the Premises such signs as may be permitted pursuant to current Boulder City ordinances governing signs. RBL's rights under this **Section 12.2** are subject to RBL's receipt of any and all necessary governmental approvals, permits and consents.

13. **Damage by Fire or Other Casualty**.

13.1 Restoration and Material Damage to Improvements. In the event any substantial portion of the Improvements shall be damaged or destroyed in whole or in part by fire or any other casualty, RBL shall proceed diligently to repair or rebuild the Improvements to a value, condition, quality and character substantially similar to that which existed immediately prior to such damage, subject to RBL's right to alter the same in accordance with **Section 11**; provided, however, that if the Facilities are incapable of being rebuilt, repaired, and/or restored to permit operation on a commercially feasible basis as reasonably determined by RBL, then RBL may instead elect to terminate this Agreement by written notice to the City given within ninety (90) days after such casualty.

13.2 Use of Insurance Proceeds. Use of any insurance proceeds shall be at RBL's discretion; provided, however, that if RBL exercises the right to terminate this Agreement as set forth in **Section 13.1**, then all casualty insurance proceeds received by RBL shall be applied by RBL in the following order of priorities: (i) First, demolition and/or removal of the Improvements and all

other RBL's Personal Property, (ii) Second, to the payment of any Capacity Payments and any other amounts owed by RBL to the City hereunder through the date of the termination of this Agreement, if any, and (iii) Third, to RBL.

13.3 Additional Cost of Restoration. If RBL decides to rebuild the Improvements, and if the insurance proceeds received by or for the account of RBL shall be insufficient to pay the entire cost of such repairs and restoration, then RBL shall supply the amount of any such deficiency and shall apply the same to the payment of the cost of such repair and restoration. Under no circumstances shall the City be obligated to make any payment or contribution towards the cost of any repairs or restoration.

14. **Condemnation**.

14.1 Condemnation in Full. If all of the Premises shall be acquired by the right of condemnation or eminent domain by a third-party government entity or a private actor with the private right of eminent domain under NRS Chapter 37, then the Term shall cease and terminate as of the date of title vesting in such proceeding or sale and all Capacity Payments and other consideration shall be paid up only to that date.

14.2 Partial Condemnation. In the event of a partial taking or condemnation by a third-party government entity or private actor with the private right of eminent domain under NRS Chapter 37, which takes less than all of the Premises, if RBL can continue to operate its business on the remaining Premises, as determined by RBL in its sole and absolute discretion, then RBL, at RBL's sole cost and expense, may proceed with reasonable diligence to restore the Premises to a condition, to the extent practicable, comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Agreement may continue in full force and effect. If RBL cannot continue to operate its business on the remaining Premises, then the Term shall cease and terminate as of the date of title vesting in such proceeding or sale.

14.3 Payment of Award. In the event of any condemnation or taking, whether whole or partial, the City shall be entitled to the entire award attributable solely to the Premises. RBL shall be entitled to the greater of (i) the value of RBL's interest in the Premises and the Improvements, or (ii) the loss of goodwill arising from the taking or condemnation of the Premises and cessation of RBL's business on the portion of the Premises so taken, without duplication of value calculated pursuant to preceding clause (i). Any amount remaining after payment to the City for the value of the Premises and payments to RBL in accordance with this **Section 14.3** shall be paid by the taking authority to the City. Notwithstanding the above allocation of the entire award solely in respect of the Premises to the City, if the Premises shall be restored by RBL as herein provided, then RBL shall first be entitled to recover the costs and expenses it incurred in such restoration out of any such award. Nothing contained in this **Section 14.3** shall be deemed to prevent RBL from seeking a separate award from the taking authority for the condemnation or taking of RBL's Personal

Property and fixtures or for relocation, repair and restoration and business interruption expenses incurred by RBL as a result of such condemnation or taking.

15. **Indemnification; Liability Limitations**.

15.1 City's Liability. The City shall not be liable to RBL or RBL's successors, assigns, managers, members, employees, agents, patrons or invitees, or any person whomsoever, for any injury to person or damage to property to the extent caused by or arising as a result of the negligence or misconduct of RBL, its employees or agents, or of any other person (other than the City or the City's employees, invitees, or agents) entering upon the Premises under express or implied invitation of RBL, as well as for any such damage or injury to the extent caused by or arising as a result of RBL's breach of this Agreement.

15.2 RBL Indemnity. RBL agrees to indemnify, defend and hold the City and the City's successors, assigns, agents, employees and representatives harmless from any liability, loss, claim, damage, cost or expense suffered or incurred by the City to the extent caused by or arising as a result of (i) any use, occupancy, management or enjoyment of the Premises by RBL, (ii) any action, omission or inacation of RBL on or about the Premises, or (iii) any work or improvement or construction performed by, at the request of or for the benefit of RBL on or about the Premises.

15.3 Notice of Indemnity; Cooperation. The City shall provide RBL notice of any claim of liability for which the City may seek indemnification pursuant to **Section 15.2** reasonably before the passage of any deadlines that would compromise or materially impair the defense of such claim if the City is aware of such claim, and RBL shall thereupon defend such claim by counsel of its own choosing, at RBL's expense. The City shall cooperate fully in all respects with RBL in any such defense at RBL's expense, including, without limitation, by making available to RBL all pertinent information under the control of the City. The City may, at the City's expense, participate in such matter with counsel of the City's choosing.

15.4 Survival. The provisions of this **Section 15** shall survive the expiration or sooner termination of this Agreement.

16. **Right of Inspection**. Subject to applicable laws, the provisions of any right-of-way granted to RBL by the BLM, RBL's normal security policies, and the City's exercise of reasonable care, the City, its agents, and representatives, shall be entitled to enter upon and inspect the Premises and the Improvements at any time during normal business hours and upon prior reasonable (but in any event not less than twenty-four (24) hours notice to RBL or, in the case of an emergency, at any time and with or without notice), provided only that such inspection shall not unreasonably interfere with RBL's business. RBL reserves the right to require that the City be accompanied by a representative of RBL while on the Premises.

17. **Intentionally Deleted**.

18. **Force Majeure**. The time for performance by the City or RBL of any term, provision or covenant of this Agreement, other than the payment of Capacity Payments and other amounts due under this Agreement, shall be deemed extended by time lost due to delays or hindrance of the design, permitting or construction of Improvements or off-site improvements required under this Agreement or other performance under this Agreement resulting from unusual flooding, landslide, earthquake, volcanic activity, storm, hurricane, tornado, fire, or other natural disaster, pandemic, strike, lockout or other labor or industrial disturbance, civil disturbance, act of a public enemy, war, terrorist act, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body, litigation or regulatory proceedings asserted or instituted by any third party regarding this Agreement or RBL's Permitted Use, delay in obtaining permits beyond the time periods for obtaining permits that existed as of the Effective Date (but only to the extent that such delay did not result from any failure of RBL to prepare plans and specifications that comply with applicable laws, codes, ordinances, statutes or regulations or to timely submit such plans and specifications), and any other cause not within the reasonable control of the City or RBL, as the case may be, to the extent such delays are not attributable to the fault or negligence of the Party claiming relief (an "**Event of Force Majeure**"). Any Party asserting an Event of Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other Party was timely notified of the likelihood or actual occurrence which would justify such an assertion so that other prudent precautions could be contemplated.

19. **No Brokers**. RBL warrants that it has not had any contact or dealings with any person or broker which would give rise to the payment of any finders' fee or brokerage commission by the City in connection with this Agreement, and RBL shall indemnify, hold harmless and defend the City from and against any liability with respect to any such finder's fee or brokerage commission. The City warrants that it has not had any contact with any person or real estate broker which would give rise to the payment of any finders' fee or brokerage commission by RBL in connection with this Agreement, and the City shall indemnify, hold harmless and defend RBL from and against any liability with respect to any such finders' fee or brokerage commission. The provisions of this **Section 19** shall survive the expiration or sooner termination of this Agreement.

20. **City-RBL Relationship**. It is understood and agreed that the City shall in no event be construed or held to be a partner, joint venturer or associate of RBL in the conduct of RBL's business, nor shall the City be liable for any debts incurred by RBL in RBL's business.

21. **Assignment**. RBL shall have the right, without the City's consent, to assign this Agreement (an "**Assignment**"), to an Approved Assignee of RBL. As used in the prior sentence, an

"**Approved Assignee**" means: (i) any assignee which controls or is controlled by or under common control with RBL, any partnership in which RBL is a general partner, any limited liability company which is controlled by RBL, or any member in RBL which holds not less than a twenty-five percent (25%) interest in the profits or capital of RBL; (ii) any entity acquiring all or substantially all of the assets or ownership interests of RBL; (iii) any entity into or with which RBL is merged; (iv) any entity which the City has previously approved to develop or operate energy facilities on land of the City, and which has not defaulted under an agreement with the City; or (v) any Mortgagee or purchaser at foreclosure or assignee or grantee of an Assignment or transfer in lieu of foreclosure pursuant to a Mortgage, in accordance with **Section 26**. All other Assignments shall require the City's prior written consent, not to be unreasonably withheld. If RBL makes any Assignment under this **Section 21**, RBL shall give written notice to the City of such Assignment (including the interest conveyed by the Assignment and address of the assignee for notice purposes) to the City. An Assignment shall not release RBL or any guarantor from its obligations under or with respect to this Agreement until the assignee enters into a written attornment agreement with the City that is reasonably acceptable to the Parties and (if applicable) a substitute guarantor from a parent company of such new assignee has issued a new guaranty to the City under **Section 2.8**, upon which time RBL and any guarantor shall be released of their obligations under this Agreement.

22. **Notices and Payments**. Any notice or document required or permitted to be delivered hereunder or by law shall be deemed to be delivered, whether actually received or not (i) when delivered in person, (ii) upon the date received by recipient via United States mail, postage prepaid, certified or registered, return receipt requested, (iii) upon the date received by recipient via Federal Express or other nationally recognized overnight courier, shipping charges pre-paid, or (iv) when sent by email transmission, which shall be deemed served upon receipt of confirmation of transmission if transmitted during normal business hours or, if not transmitted during normal business hours, on the next Business Day following the email transmission, in each case addressed to the appropriate Party hereto at its address set out below, or at such other address as it shall have theretofore specified by written notice delivered in accordance herewith:

CITY:

City of Boulder City
401 California Avenue
Boulder City, Nevada 89005
Attn: City Manager
Email: TTedder@bcnv.org

with a required copy to:

City of Boulder City
401 California Avenue

Boulder City, Nevada 89005
Attn: City Attorney
Email: Bwalker@bcnv.org

RBL:

Roccasecca BESS LLC
c/o Eolus North America, Inc.
5538A La Jolla Blvd.
La Jolla, California 92037
Attn: Legal Department
Email: ena-legal@eolusvind.com

23. **Default**.

23.1 RBL's Events of Default. Each of the following events shall be an "**Event of Default**" under this Agreement:

(a) RBL shall fail to pay any Capacity Payment or other amount owed by RBL to the City hereunder as and when the same shall become due and shall not cure such default within ten (10) days after written notice thereof is given by the City to RBL; or

(b) RBL shall fail to comply with any other term, provision or covenant of this Agreement, and shall not cure such failure within ninety (90) days after written notice thereof is given by the City to RBL; provided, however, that if such default cannot reasonably be cured within ninety (90) days, then RBL shall have an additional reasonable period of time within which to cure such default so long as RBL commences to cure such default within the initial ninety (90) day period and thereafter diligently prosecutes such cure to completion.

23.2 City's Remedies. Upon the occurrence of any Event of Default, and subject to the provisions of **Section 25**, the City shall have the option to terminate this Agreement, sue for damages and pursue any other remedies available to the City at law or in equity. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law. Forbearance by the City to enforce one or more of the remedies herein provided upon the occurrence of an Event of Default shall not be construed as a waiver of any other Event of Default.

23.3 City's Events of Default. As used herein, "**City Event of Default**" means the City's failure to comply with any term, provision or covenant of this Agreement, which failure is not cured within ninety (90) days after written notice thereof is given by the City to RBL; provided, however, that if such default cannot reasonably be cured within ninety (90) days, then the City shall have an additional reasonable period of time within which to cure such default so long as the City

commences to cure such default within the initial ninety (90) day period and thereafter diligently prosecutes such cure to completion.

23.4 RBL's Remedies. Upon the occurrence of any City Event of Default, and subject to the provisions of **Section 25**, RBL shall have the right to immediately terminate this Agreement and the right and option to pursue any remedies available to RBL at law or in equity. In the event of RBL's exercise of its right to terminate pursuant to this **Section 23.4**, then Capacity Payments payable will be prorated to through and including the date of such termination. Except as otherwise expressly stated in this **Section 23.4**, in the event of a termination by RBL, RBL shall be relieved of all further liability hereunder, save and except for liabilities that accrued prior to such termination and obligations that expressly survive the termination of this Agreement.

24. **Hazardous Substances**. RBL's use of Hazardous Substances, as defined below, upon the Premises is restricted under this **Section 24**.

24.1 Covenant. RBL covenants to the City that it will not use, allow to be used on the Premises, or bring onto, or allow to be brought onto, the Premises, any Hazardous Substance, as defined below, except as may be reasonably required in connection with its business on the Premises as specifically permitted under **Section 5.l**, and then only in full compliance with all applicable federal, state and local laws. Without limiting the foregoing or any other provision of this **Section 24**, RBL acknowledges and agrees that it shall not be permitted to dispose of any Hazardous Substances in any landfill or similar trash disposal area within the City and that RBL shall be responsible, at its sole cost and expense, for arranging any necessary disposals of Hazardous Substances with an appropriate facility outside of the City. RBL shall require any permitted sublease to contain provisions similar to those set forth in this **Section 24**.

Prior to the expiration or earlier termination of this Agreement, RBL shall, at RBL's sole cost and expense, furnish to the City a report addressed to the City prepared by either a qualified engineering firm or environmental consultant ("**RBL's Consultant**") selected by RBL and reasonably approved by the City, stating that RBL's Consultant has examined the Premises and found no evidence that the Premises contains Hazardous Substances in violation of applicable Environmental Laws. If RBL's Consultant determines that there exist Hazardous Substances in violation of applicable Environmental Laws, RBL shall, at its sole cost and expense and in compliance with Environmental Laws, perform remediation or removal of any Hazardous Substances which were placed, or allowed to be placed, in, on or about the Premises by RBL in violation of Environmental Laws. Nothing in this paragraph shall require RBL to perform remediation or removal with respect to Hazardous Substances that RBL is not required to remediate or remove pursuant to applicable law.

If it is determined that there exist Hazardous Substances on the Premises in violation of applicable Environmental Laws, then upon the expiration or earlier termination of the Term, RBL shall

provide the City credit support in the form of either or both of the following instruments (collectively, the "**Section 24.1 Credit Support**"), the composition of which shall be determined by RBL, and approved of by the City, but which shall, in the aggregate, be reasonably sufficient to guarantee the completion of RBL's obligations under the prior paragraph of this **Section 24.1**: (i) one or more letters of credit; and/or (ii) one or more guaranties from direct or indirect parent entities or equity owners of RBL reasonably approved of by the City in substantially the form of the Post-Term Guaranty. RBL's obligation to provide the Section 24.1 Credit Support shall terminate upon the remediation or removal of any Hazardous Substances which were placed, or allowed to be placed, in, on or about the Premises by RBL in violation of Environmental Laws. The City and RBL agree that the City Manager may grant a request by RBL to modify the composition of the Section 24.1 Credit Support from time to time, and that such a modification, if approved in writing by the City Manager (such approval not to be unreasonably withheld or delayed), shall be deemed to have been made with City's consent pursuant to **Section 29.12(iv)** of this Agreement.

24.2 Right of Entry. Subject to applicable laws and RBL's normal security policies, the City reserves the right to enter the Premises and all Improvements thereon at any reasonable time and upon reasonable (but in any event not less than twenty- four hours) notice, and at any time in exigent circumstances, for the purpose of inspecting and examining the Premises for the presence of any Hazardous Substance and whenever the City has a reasonable basis for believing that RBL has not complied with this **Section 24**. RBL reserves the right to require that the City be accompanied by a representative of RBL while on the Premises. If the results of such inspection or examination reveal the presence of Hazardous Substances in, on or about the Premises in violation of applicable Environmental Laws due to RBL's failure to comply with this **Section 24**, then RBL shall reimburse the City for its reasonable costs incurred in undertaking such inspection and examination.

24.3 Indemnity. RBL shall indemnify, defend and hold the City and its successors, assigns, agents, employees and representatives harmless from any and all Indemnified Costs (as the same are hereinafter defined) to the extent caused by the presence of Hazardous Substances in, on or about the Premises which are placed, or allowed to be placed, in, on or about the Premises by RBL during the Term or any extension thereof, or incurred by the City due to the release, removal or storage of any Hazardous Substance placed, or allowed to be placed, in, on or about the Premises by RBL during the Term or any extension thereof. The provisions of these indemnities shall not be affected or impaired by the expiration or any earlier termination of this Agreement and shall survive any such expiration or termination of this Agreement for a period of ten (10) years from the time such Hazardous Substances could have reasonably been discovered. "**Indemnified Costs**" means all actual liabilities, claims, actions, causes of action, judgments, orders, damages, reasonable costs, reasonable expenses, fines, penalties and losses (including sums paid in settlement of claims and all reasonable consultant, expert and legal fees), including those incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or

restoration work (whether of the Premises or any other property), or any resulting damages, harm or injuries to the person or property of any third parties or to any natural resources. Without limiting the foregoing, Indemnified Costs incurred by the City as a result of any work of cure, mitigation, cleanup, remediation, removal or restoration shall bear interest in the per annum amount equal to two percent (2%) in excess of the Reference Rate of Interest.

24.4. Hazardous Substances Defined. As used herein, the term "**Hazardous Substances**" shall include: (i) petroleum or any of its fractions, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other similar materials or pollutants which pose a hazard to the Premises, or to persons on or about same, or which cause the Premises to be in violation of any law or local approval, or are defined as or included in the definition of "**hazardous substances**", "**hazardous wastes**", "**hazardous materials**", or "**toxic**", or words of similar import under any applicable local, state or federal law, including, but not limited to: (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 960 I et seq., (B) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq., (C) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq., and (D) regulations adopted and guidance promulgated pursuant to the aforesaid laws and common law (collectively, the "**Environmental Laws**"), (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million, and (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority under any Environmental Laws.

25. **Dispute Resolution**. If any controversy or claim between the Parties arises out of this Agreement, and if the Parties are unable to agree by direct negotiations within sixty (60) days after such controversy or claim arises, either Party may file an action in the Eighth Judicial District Court in Clark County.

If the City gives RBL notice of a claimed Event of Default pursuant to **Section 23**, and if RBL in good faith elects to dispute such claimed Event of Default pursuant to the provisions of this **Section 25**, then any cure period provided in **Section 23** as to such claimed Event of Default shall be tolled during the resolution of such dispute hereunder; provided, however, that the following claimed Events of Default shall not be subject to tolling pursuant to this paragraph: RBL's non-payment of Capacity Payments pursuant to **Section 3** or any other amounts due from RBL to the City hereunder; RBL's failure to keep in force and effect all insurance policies required of RBL under this Agreement; RBL's failure to keep in effect all business licenses required of RBL to perform the Permitted Use; and RBL's failure to timely expunge or bond over any liens pursuant to the terms of **Section 2.9**.

26. **Encumbrance or Assignment as Security**.

26.1 Definitions.

26.1.1 The term "**Mortgage**" means a first mortgage, a first deed of trust, collateral assignment, sale-leaseback (wherein the leaseback is prior to all other security interests in RBL's estate) or other first priority security instrument or device by which RBL's interest in the Premises and/or this Agreement is mortgaged, conveyed, assigned or otherwise transferred in whole or in part, to secure a debt or other obligation.

26.1.2 The term "**Mortgagee**" means the holder of a Mortgage which is not an affiliate of RBL (which in the case of a deed of trust is the beneficiary thereof and in the case of a sale-leaseback is the lessor).

26.2 RBL's Right to Mortgage its Interest. Notwithstanding any other provision contained in this Agreement, RBL shall have the right to encumber or assign its interest in the Premises, the Improvements and/or this Agreement by Mortgage to any institutional lender or other lender as mortgagee and if such Mortgage is a deed of trust, foreclosure may be had thereunder by the exercise of a power of sale in accordance with the provisions of Chapter 107 of the Nevada Revised Statutes or as otherwise permitted by applicable law. There may be more than one Mortgage on RBL's interest in the Premises and/or this Agreement at any given time, and each Mortgagee may from time to time assign its right, title and interest in and to the Mortgage. All obligations imposed hereunder on any Mortgage or Mortgagee shall bind all such Mortgages and Mortgagees.

26.3 Notice to the City. Upon execution and recordation of a Mortgage (or any amendment, supplement or modification thereto) and in order to be entitled to such benefits, a recorded copy of the Mortgage (or a recorded copy of a memorandum evidencing same) shall be delivered to the City together with written notice of the name and mailing address of the Mortgagee (which shall be deemed such Mortgagee's address pursuant to this Agreement).

26.4 Intentionally Deleted.

26.5. Termination for RBL Default. Notwithstanding anything contained in this Agreement, if any Event of Default shall occur which would otherwise entitle the City to terminate this Agreement, the City shall have no right to terminate this Agreement unless, following the expiration of the period of time given RBL to cure such Event of Default, the City notifies any Mortgagee of the City's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination, if such Event of Default is capable of being cured by the payment of money, and at least forty-five (45) days in advance of the proposed effective date of such termination if such Event of Default is not capable of being cured by the payment of money. The provisions of **Section 26.6** shall apply if, during such thirty (30) or forty-five (45) day cure period, any Mortgagee:

(a) notifies the City of such Mortgagee's intent to avoid termination of this Agreement;

(b) pays or causes to be paid any payments specified in the notice to such Mortgagee; provided, however, that such payment shall not be deemed a waiver of any other Event of Default; and

(c) complies, or with reasonable diligence commences to comply, with all nonmonetary requirements of this Agreement then in default.

26.6 Procedure of Default.

26.6.1 If the City shall elect to terminate this Agreement by reason of any Event of Default of RBL, and if a Mortgagee shall have proceeded in the manner provided for by **Section 26.5**, the specified date for the termination of this Agreement as fixed by the City in its termination notice shall be extended for a period of six (6) months provided that such Mortgagee shall, during such six (6) month period:

(a) Pay or cause to be paid the monetary obligations of RBL under this Agreement as the same become due, and continue its good faith efforts to perform all of RBL's other obligations under this Agreement, excepting (i) obligations of RBL to satisfy or otherwise discharge any lien, charge or encumbrance against RBL's interest in this Agreement or the Premises junior in priority to the lien of the Mortgage, so long as such lien, charge or encumbrance does not also encumber or threaten the City's interest in the Premises, and (ii) past nonmonetary obligations then in default and not reasonably susceptible of being cured by such Mortgagee; and

(b) If not enjoined or stayed, take steps to acquire or sell RBL's interest in this Agreement and/or the Premises by foreclosure of the Mortgage or other appropriate means and prosecute the same to completion with due diligence.

26.6.2 If at the end of such six (6) month period such Mortgagee is complying with **Section 26.6.1**, this Agreement shall not then terminate, and the time for completion by such Mortgagee of its proceedings shall continue so long as such Mortgagee is enjoined or stayed and thereafter for so long as such Mortgagee proceeds to complete steps to acquire or sell RBL's interest in this Agreement by foreclosure of the Mortgage or by other appropriate means with reasonable diligence. Nothing in this **Section 26.6.2**, however, shall be construed to extend this Agreement beyond the Term or to require a Mortgagee to continue such foreclosure proceedings after the subject Event of Default has been cured.

26.6.3 If a Mortgagee is complying with **Sections 26.6.1** and **26.6.2**, upon the acquisition of RBL's interest in this Agreement and/or the Premises or any other purchaser at a foreclosure sale or otherwise, and upon the discharge of any lien, charge or encumbrance against RBL's interest in this Agreement and/or the Premises which is junior in priority to the lien of the Mortgage, and which RBL is obligated to satisfy and discharge by reason of the terms of this Agreement, this Agreement shall continue in full force and effect as if RBL had not defaulted under this Agreement.

26.6.4 The making of a Mortgage shall not be deemed to constitute an assignment or transfer of

this Agreement or of RBL's interest in the Premises and this Agreement, nor shall any Mortgagee, as such, be deemed to be an assignee or transferee of this Agreement or of RBL's interest in the Premises so as to require such Mortgagee to assume the performance of any of the terms, covenants or conditions on the part of RBL to be performed hereunder, but the purchaser at any sale of this Agreement and of RBL's interest in the Premises in any proceedings for the foreclosure of any Mortgage, or the assignee or transferee of this Agreement and of RBL's interest in the Premises under any transfer in lieu of the foreclosure of any Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Agreement, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of RBL to be performed hereunder from and after the date of such purchase and assignment.

26.6.5 Notwithstanding any other provision of this Agreement, any sale of this Agreement and of RBL's interest in the Premises in any proceedings for the foreclosure of any Mortgage, or the assignment or transfer of this Agreement and of RBL's interest in the Premises in lieu of the foreclosure of any Mortgage shall be deemed to be a permitted sale, transfer or assignment of this Agreement and of RBL's interest in the Premises and no consent of the City shall be required.

26.7 Future Amendments. In the event RBL hereafter seeks to encumber its interest in this Agreement and/or the Premises, the City agrees to amend this Agreement from time to time to the extent reasonably requested by a prospective Mortgagee, provided that such proposed amendments do not materially and adversely affect the rights of the City under this Agreement. All reasonable expenses incurred by the City in connection with any such amendment shall be paid by RBL.

27. **Estoppel**. Either Party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request from the other Party to do so, certify to the requesting Party and/or any other person or entity requested by the requesting Party: (i) as to whether this Agreement has been supplemented or amended or assigned, and if so, the substance and manner of such supplement or amendment or assignment, (ii) as to the validity and force and effect of this Agreement, (iii) as to the existence of any Event of Default hereunder or breach hereof, (iv) as to the commencement and expiration dates of the Term, and (v) as to any other matters as may be reasonably requested by the requesting Party. Any such certificate may be relied upon by the requesting Party and any other person or entity to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the delivering Party.

28. **Waiver of Subrogation**. The City and RBL each severally waive any and every claim which arises or may arise in its favor and against the other during the Term for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Premises, which loss or damage is covered by valid and collectible fire and extended coverage, general liability, or workers' compensation insurance policies, to the extent that such loss or damage is recoverable thereunder. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), the

City and RBL severally agree immediately to give to each insurance company which has issued to it policies of insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverages by reason of said waivers.

29. **Miscellaneous**.

29.1 Termination. In the event that this Agreement is terminated pursuant to any right to do so herein contained, then except as specifically provided herein, neither the City nor RBL shall thereafter have any further obligation or liability one to the other, except for obligations that expressly survive the termination of this Agreement, and this Agreement shall be of no further force or effect.

29.2 Captions; Section References. The captions used in this Agreement are for convenience only and shall not be deemed to amplify, modify or limit the provisions hereof. Section, subsection, clause, schedule and Exhibit references herein are to this Agreement unless otherwise specified

29.3 Meanings. Words of any gender used in this Agreement shall be construed to include the other gender, and words in the singular shall include the plural and vice versa unless the context otherwise requires.

29.4 Successors and Assigns. Subject to the restrictions set forth herein as to assignment by RBL, this Agreement shall be binding upon and shall inure to the benefit of the City and RBL and their respective heirs, legal representatives, successors and assigns.

29.5 Entire Agreement. Any Exhibits annexed to this Agreement are hereby incorporated by this reference, with the same force and effect as if they were set forth in this Agreement in their entirety. This Agreement contains the entire agreement between the City and RBL with respect to the subject matter hereof and cannot be altered, amended or modified except by a written instrument, executed by both such Parties.

29.6 Time. In the event the date for performance of an obligation or delivery of any notice hereunder falls on a day other than a business day, then the date for such performance or delivery of such notice shall be postponed until the next ensuing business day. Any references to "**business days**" contained herein are references to normal working business days (i.e., Monday through Friday of each calendar week, exclusive of Federal and Nevada state holidays).

29.7 Severability. If any term or provision, or any portion thereof, of this Agreement, or application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected

thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

29.8 Counterparts. This Agreement may be signed in one or more counterparts with the same force and effect as if all required signatures were contained in a single, original instrument.

29.9 Attorneys' Fees. In the event of litigation between the Parties to enforce this Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, without limitation, reasonable attorneys' fees and costs allowed by law.

29.10 Intentionally Deleted.

29.11 Governing Law; Venue. This Agreement shall be construed, interpreted, and enforced pursuant to the laws of the State of Nevada, without giving effect to the choice of law principles of said State, and the exclusive venue for disputes hereunder shall be a state court of competent jurisdiction located in Clark County, Nevada.

29.12 Consent of the City. For the purposes of this Agreement, for so long as the City of Boulder City, Nevada remains a Party hereto, any approval or consent of the City shall be deemed to require the consent or approval of the City given in accordance with the requirements of the City ordinances and Nevada state law, except (i) with respect to construction and development approvals under **Article 2** and Alterations under **Article 11**, which shall be granted, conditioned, or denied by the City department or official having jurisdiction over the approval sought pursuant to and in accordance with the laws of the City (for example, an application for a building permit would be submitted to the City Community Development Department, Building Inspection and Safety Division Office), (ii) with respect to any approval, amendment, or modification required in connection with exhibits attached hereto, any title or survey matters, or any other exhibit to this Agreement, which approvals, amendments, or modifications may be granted by the City Manager, (iii) with respect to the extension or waiver of any deadline or performance by RBL hereof, which extensions or waivers may be granted by the City Manager, and (iv) as otherwise expressly stated herein. Further, the execution or approval of any document contemplated or required under this Agreement, shall be executed or approved by the City Manager or such department director as may be designated by the City Manager. Through the approval of this Agreement, the City Council of Boulder City expressly delegates authority to the City staff as indicated in this Agreement.

29.13 No Party Deemed Drafter. The Parties agree that neither Party shall be deemed the drafter of this Agreement and that in the event this Agreement is ever construed by a court of law or equity, such court shall not construe this Agreement or any provision hereof against either Party as the drafter thereof. The City and RBL acknowledge that each has contributed substantially and materially to the preparation of this instrument.

29.14 Binding Obligation. The Parties hereby represents and warrants to each other that this Agreement, as well as the consummation of the transactions contemplated hereby, is valid and binding upon such Party; the individuals executing this Agreement on behalf of such Party are authorized to so act; and that the execution hereof does not constitute an Event of Default (or an event which, with notice or the passage of time or both, will constitute an Event of Default) under any contract to which such Party is a party or by which such Party is bound.

29.15 Severability. Should any provision of this Agreement be held in a final and unappealable decision by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding.

29.16 BLM ROW GRANT. The Parties acknowledge and agree that nothing in this Agreement is intended to materially conflict with the BLM ROW Grant. In the event BLM determines that a provision of this Agreement materially conflicts with the BLM ROW Grant and BLM provides notice to RBL of its intent to terminate the BLM ROW Grant or take other action with respect to the BLM ROW Grant that jeopardizes RBL's ability to construct or maintain the Facilities or results in material additional obligations on RBL (the "**Materially Conflicting Provision**"), then City and RBL shall immediately negotiate in good faith to modify any such Materially Conflicting Provision so that it no longer constitutes a Materially Conflicting Provision.

29.17 No Statement Regarding Ownership. The Parties acknowledge and agree that nothing in this Agreement is intended to state or imply anything regarding ownership of the fee interest in the Premises, which fee ownership may be the subject of a dispute between the City and the BLM.

[The remainder of this page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the dates written below.

CITY:

CITY OF BOULDER CITY,
a Nevada municipal corporation

By:_____
Name:_____
Title: City Manager
Date:_____

Attest:_____
_____, City Clerk
Date:_____

Approved as to Form and Legality:

_____
_____, City Attorney
Date:_____

RBL:

ROCCASECCA BESS LLC,
a Delaware limited liability company

By:_____
Name:Hans-Christian Schulze
Title:__President
Date:_____

[Remainder of this page intentionally left blank]

EXHIBIT "A"

Depiction and Legal Description of the Premises

The land referred to herein is situated in the State of Nevada, County of Clark, described as follows:

AN APPROXIMATE 9.43 ACRE PORTION OF SECTION 26, TOWNSHIP 24 SOUTH, RANGE 62 EAST M.D.M., KNOWN AS APN 206-00-002-011, AND AS FURTHER DEPICTED BY THE ALTA SURVEY IN EXHIBIT D.

Assessor's Parcel Number: Portion of 206-00-002-011

EXHIBIT "A"
LEGAL DESCRIPTION
PROJECT SITE

BEING A PORTION OF THE EAST HALF OF SECTION 26, TOWNSHIP 24 SOUTH, RANGE 62 EAST M.D.M. AS SHOWN ON BK 950170, INST 00559 O.R. IN THE CITY OF BOULDER CITY, COUNTY OF CLARK, STATE OF NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 26, FROM A FOUND 3" ALUMINUM DISK STAMPED " U.S. CADASTRAL SURVEY BUREAU OF LAND MANAGEMENT" ;

THENCE, SOUTH 00°21'56"EAST 1,842.61 FEET ALONG THE EAST LINE OF SAID SECTOIN 26 TO A POINT;

THENCE LEAVING SAID EAST LINE OF SAID SECTION 26, NORTH 89°38'00" EAST 718.19 FEET TO THE **TRUE POINT OF BEGINNING;**

THENCE SOUTH 39°30'36" WEST, 833.58 FEET TO A POINT;

THENCE SOUTH 50°57'02" EAST, 317.01 FEET TO A POINT;

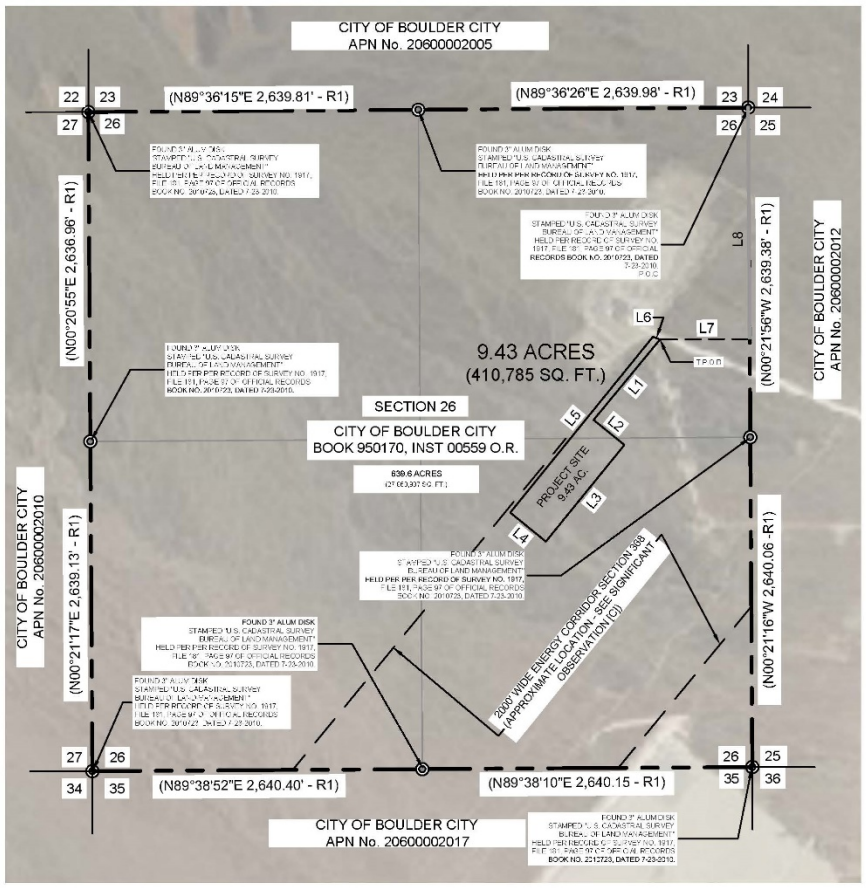
THENCE SOUTH 39°02'58" WEST, 996.50 FEET TO A POINT;

THENCE NORTH 50°57'02" WEST, 367.61 FEET TO A POINT;

THENCE NORTH 39°02'58" EAST, 1,812.37 FEET TO A POINT;

THENCE SOUTH 68°06'44" EAST, 59.97 FEET TO THE **TRUE POINT OF BEGINNING;**

SUBJECT PROPERTY SITE CONTAINS 410,785 SQUARE FEET OR 9.430 ACRES, MORE OR LESS, AND SUBJECT TO ANY EASEMENTS OR RIGHTS-OF-WAYS OF RECORD.



AN EXHIBIT OF

ROCCASECCA BESS PROJECT AGREEMENT PROJECT SITE
CITY OF BOULDER CITY
CLARK COUNTY

LINE TABLE		
LINE	BEARING	LENGTH
L1	S39°30'36"W	833.58'
L2	S50°57'02"E	317.01'
L3	N39°02'58"E	996.50'
L4	N50°57'02"W	367.61'
L5	N39°02'58"E	1,812.37'
L6	S68°06'44"E	59.97'
L7	N89°38'00"E	718.19'
L8	S00°21'56"E	1,842.61'

DUDEK (SCALE: 1" = 1000')
NORTH

SURVEYOR NOTES :

1) P.O.C. = POINT OF COMMENCEMENT
2) T.P.O.B. = TRUE POINT OF BEGINNING

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

8 1/2" x 11"

EXHIBIT "B"
Form of Construction Guaranty

GUARANTY
(Section 2.4 – Construction Guaranty)

THIS GUARANTY (this "Guaranty"), dated as of _____, ____ (the "Effective Date"), is made by _____ ("Guarantor"), in favor of The City of Boulder City, a Nevada municipal corporation ("Counterparty").

RECITALS:

A. WHEREAS, Counterparty and Roccasecca BESS LLC, a Delaware limited liability company ("Obligor") have entered into that certain Agreement (Boulder City Agreement Number 24-[ ]) effective as of _____ _____, 2024 (the "Agreement");

B. WHEREAS, Section 2.4 of the Agreement requires Obligor to remove Improvements (as that term is defined in the Agreement) in the event that Obligor abandons construction and the Agreement is terminated after the commencement of construction but before substantial completion;

C. WHEREAS, Section 2.4 of the Agreement also provides that in the event Obligor has not provided a construction and reclamation bond to the Bureau of Land Management in an amount sufficient to remove the Improvements pursuant to the right-of-way grant, Serial Number N-101453 (NVNV105862609) (the "BLM ROW Grant"), Obligor is required to provide a guaranty of these obligations prior to the commencement of construction of such Improvements; and

C. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement to be entered into between Obligor and Counterparty.

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty entering into the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. GUARANTY. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to Section 2.4 of the Agreement (the "Obligations") on or after the Effective Date. This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed the sum of Ten Million U.S. Dollars (U.S. $10,000,000) (the "Maximum Recovery Amount").

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under Section 2.4 the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney's fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). Notwithstanding anything herein or in the Agreement to the contrary, with the exception of the Obligations the Guarantor is not guaranteeing or providing support for any other obligations, duties and/or liabilities of the Obligor, regardless of whether such obligations, duties and/or liabilities are presently owed or may in the future become due to Counterparty. In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

(a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "Overdue Obligation"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "Payment Demand").

(b) Guarantor's obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "Business Day" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of California or the State of New York.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a [ ] duly organized and validly existing under the laws of the State of [ ] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Subject to and in accordance with the terms and provisions of this Guaranty:

(a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release any person (other than Obligor or Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. REINSTATEMENT. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. TERMINATION. Unless terminated earlier, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately at 11:59:59 p.m. Pacific Prevailing Time on: (i) the Commercial Operation Date, but no later than August 1, 2030 and (ii) the date on which Obligor has provided a construction and reclamation bond to the Bureau of Land Management in an amount sufficient to remove the Improvements pursuant to the BLM ROW Grant; provided, however, that no such termination shall affect Guarantor's liability with respect to any Obligations entered into or accrued prior to the time the termination is effective, which Obligations shall remain subject to this Guaranty.

9. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

TO GUARANTOR:	TO COUNTERPARTY:
[ ] Attn:	City of Boulder City 401 California Avenue Boulder City, Nevada 89005 Attn: City Manager and City of Boulder City 401 California Avenue Boulder City, Nevada 89005 Attn: City Attorney
[Tel: ( ) - -- for use in connection with courier deliveries]	*[Tel: (___) ___-___ -- for use in connection with courier deliveries]*

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of Nevada, without regard to principles of conflicts of laws thereunder.

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of Nevada, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Eighth Judicial District Court in and for the County of Clark (without prejudice to the right of any party to remove to the United States District Court for the District of Nevada) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO

OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[ ]

By:

Name:

Title:

EXHIBIT "C"
Form of Post-Term Guaranty

GUARANTY
(Section 2.10.3 – Post-Term Guaranty)

THIS GUARANTY (this "Guaranty"), dated as of _____, ____ (the "Effective Date"), is made by _____ ("Guarantor"), in favor of The City of Boulder City, a Nevada municipal corporation ("Counterparty").

RECITALS:

A. WHEREAS, Counterparty and Roccasecca BESS LLC, a Delaware limited liability company ("Obligor") have entered into that certain Lease Agreement (Boulder City Agreement Number 24-[ ]) effective as of _____ _____, 2024 (the "Agreement");

B. WHEREAS, Section 2.10.3 of the Agreement requires Obligor to remove Improvements or other RBL's Personal Property (as such terms are defined in the Agreement) by the date that is 180 days after the expiration or earlier termination of the Term (as such term is defined in the Agreement);

C. WHEREAS, Section 2.10.3 of the Agreement also provides that in the event Obligor has not provided a construction and reclamation bond to the Bureau of Land Management pursuant to the right-of-way grant, Serial Number N-101453 (NVNV105862609) (the "BLM ROW Grant") in an amount sufficient to remove the Improvements, Obligor is required to provide a guaranty of the obligations prior to the expiration or earlier termination of the Term; and

D. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement to be entered into between Obligor and Counterparty.

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty entering into the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. GUARANTY. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to Section 2.10.3 of the Agreement (the "Obligations") on or after the Effective Date. This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed the sum of Ten Million U.S. Dollars (U.S. $10,000,000) (the "Maximum Recovery Amount").

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under Section 2.10.3 of the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney's fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). Notwithstanding anything herein or in the Agreement to the contrary, with the exception of the Obligations the Guarantor is not guaranteeing or providing support for any other obligations, duties and/or liabilities of the Obligor, regardless of whether such obligations, duties and/or liabilities are presently owed or may in the future become due to Counterparty. In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

(a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "Overdue Obligation"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "Payment Demand").

(b) Guarantor's obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "Business Day" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of California or the State of New York.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a [ ] duly organized and validly existing under the laws of the State of [ ] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Subject to and in accordance with the terms and provisions of this Guaranty:

(a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release any person (other than Obligor or Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. REINSTATEMENT. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. TERMINATION. Unless terminated earlier, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately at 11:59:59 p.m. Pacific Prevailing Time on: (i) the date on which all Obligations have been paid or been satisfied in full; and (ii) the date on which Obligor has provided a construction and reclamation bond to the Bureau of Land Management in an amount sufficient to remove the Improvements pursuant to the BLM ROW Grant; provided, however, that no such termination shall affect Guarantor's liability with respect to any Obligations entered into or accrued prior to the time the termination is effective, which Obligations shall remain subject to this Guaranty.

9. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

TO GUARANTOR:	TO COUNTERPARTY:
[ ] Attn:	City of Boulder City 401 California Avenue Boulder City, Nevada 89005 Attn: City Manager and City of Boulder City 401 California Avenue Boulder City, Nevada 89005 Attn: City Attorney
[Tel:(_) - -- for use in connection with courier deliveries]	*[Tel: (___) ___-___ -- for use in connection with courier deliveries]*

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of Nevada, without regard to principles of conflicts of laws thereunder.

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of Nevada, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Eighth Judicial District Court in and for the County of Clark (without prejudice to the right of any party to remove to the United States District Court for the District of Nevada) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

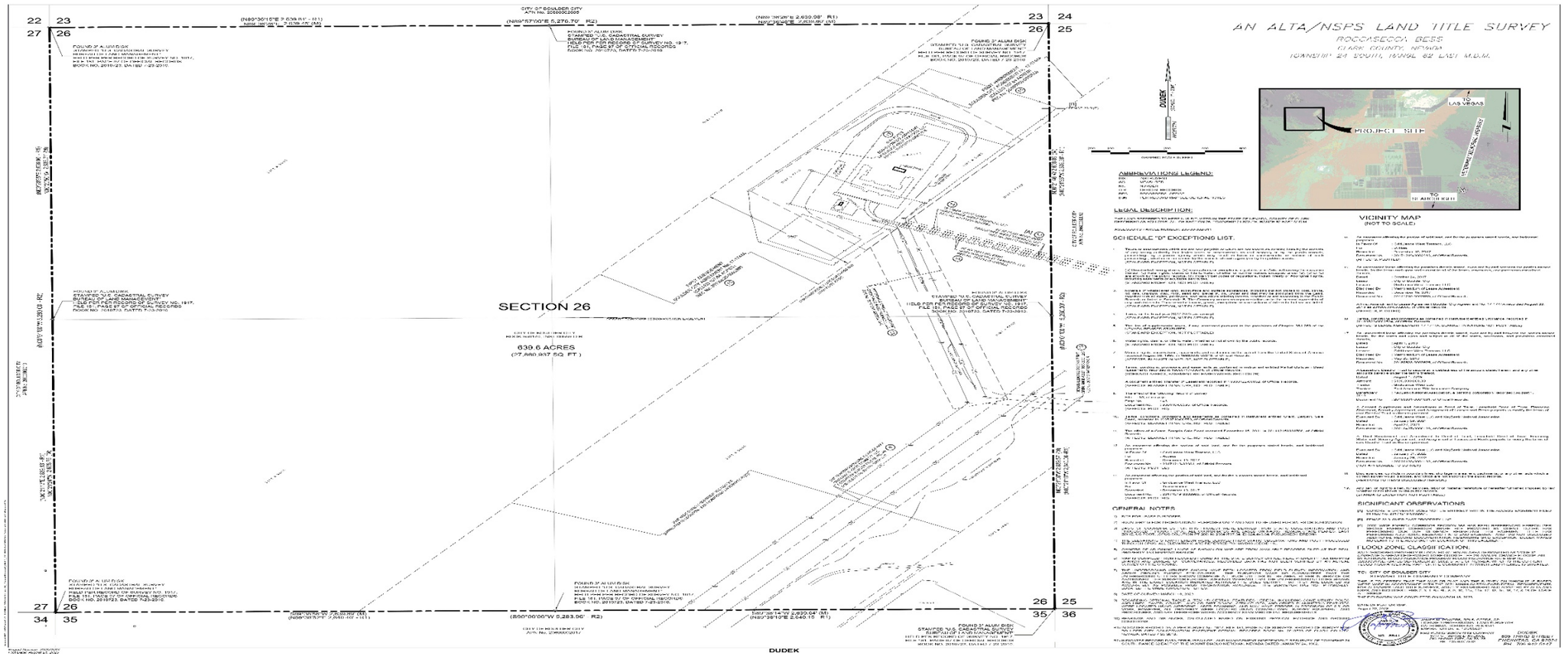
[ ]

By:

Name:

Title:

EXHIBIT "D"
ALTA Survey



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