RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Daly City
333 90th Street
Daly City, CA 94015
Attn: City Manager

THIS SPACE ABOVE FOR RECORDER'S USE

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF DALY CITY AND CORMORANT ENERGY STORAGE, LLC

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is entered into this [_]th day of [month], 2025, between CORMORANT ENERGY STORAGE, LLC, a Delaware limited liability company ("**Developer**"), and the CITY OF DALY CITY ("**City**"), pursuant to the authority of Sections 65864 et seq. of the California Government Code.

RECITALS AND FINDING

This Agreement is based on the following facts, understandings and intentions of the parties:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the California Legislature enacted the Development Agreement Statute (Government Code, Section 65864 et seq.), which authorizes any city to enter into binding, long-term agreements with persons or entities having legal or equitable interests in real property, for which agreements provide for the development of the property.

B. Developer is a unit of Arevon Energy, Inc., a leading renewable energy company with a proven track record of safely constructing and operating utility-scale energy projects across the United States.

C. Developer proposes to build a 250 MW battery energy storage system ("**BESS**") in two phases using Tesla's advanced Megapack 2XL batteries in battery storage containers at the Project Site (defined herein) commonly known as 2150 Geneva Avenue; a transmission line ("**Gen-Tie**") connecting the BESS to the Martin substation primarily underground through Carter Street, Martin Street, and Schwerin Street; and ancillary facilities pertinent to the operation of a BESS, including but not limited to racks of batteries, battery augmentation units, control units, fire prevention and fire protection equipment, voltage transformers and inverters, a small on-site substation, and the public infrastructure associated with the Project Site, all in accordance with this Agreement, the Exhibits thereto, and the other Project Approvals (defined herein) (collectively, "**Project**"). This state-of-the-art energy storage system will support grid reliability and help maximize

the use of clean, renewable energy sources. By storing excess renewable energy when it is abundant and dispatching it back to the grid when it is needed most, the Project will play a vital role in enhancing the stability and resilience of the local power grid and reducing reliance on fossil fuels.

D. In addition to this Agreement, the Project includes a General Plan Amendment and Zone Change pursuant to Chapter 17.48 of the Daly City Municipal Code ("**DCMC**"), a Use Permit pursuant to Chapter 17.44 of the DCMC, and Design Review pursuant to Chapter 17.45 of the DCMC, and authority for the Project to encroach in the public ROW. Such approvals are including in the Project Approvals as further defined in Article 1.

E. The Project and the Agreement are consistent with the goals and policies of the 2030 Daly City General Plan, as amended by the 2015 Housing Element, for the reasons described in the findings for the other Project Approvals and the land use chapter of the Project's CEQA documentation, all incorporated by reference herein.

F. On [month] [day], 2025, after a duly noticed public hearing, the City's Planning Commission voted to recommend approval of the Project Approvals, including the proposed General Plan Amendment GP-11-22-015959, Zone Change ZC-11-22-015960, Use Permit UPR-11-22-015962, Design Review DR-11-22-015961, Development Agreement, and ROW encroachment authority, as well as the Project's Mitigated Negative Declaration.

G. [PLACEHOLDER FOR CITY COUNCIL ACTION: On [month] [day], 2025, after a duly noticed public hearing, the City Council voted to approve the Development Agreement via the Enacting Ordinance (defined herein) and the other Project Approvals, including the proposed General Plan Amendment GP-11-22-015959, Zone Change ZC-11-22- 015960, Use Permit UPR-11-22-015962, Design Review DR-11-22-015961, Development Agreement, and ROW encroachment authority, as well as [environmental approval] via Resolutions ____, ____, ____,]

H. [PLACEHOLDER FOR CITY FINDING OF CONSISTENCY, IF SO FOUND: The City Council hereby finds that this Development Agreement furthers the public health, safety and general welfare and is consistent with the City's General Plan as amended. The City Council further finds that the City has taken all necessary proceedings in accordance with the City's ordinances, rules and regulations for the approval of this Agreement.]

AGREEMENT

ARTICLE 1: DEFINITIONS

Section 1.1 "**City**" is the City of Daly City, a municipal corporation organized and existing under the laws of the State of California.

Section 1.2 "**City Council**" is the City Council of the City.

Section 1.3 "**City Manager**" is the City Manager of the City or the City staff person (s)he designates to carry out all or part of the City's responsibilities for implementing this Agreement.

Section 1.4 "**City Planning Manager**" is the senior City official authorized to administer the City's planning and development procedures and projects, including its development agreements.

Section 1.5 "**Conflict**" with any Project Approvals shall mean (1) an express inconsistency with the Project Approvals or (2) a material limitation on or interference with the ability of Developer, whether it be technical, economic, or otherwise, to construct and operate the Project according to the Project Approvals.

Section 1.6 "**Days**" shall refer to calendar days.

Section 1.7 "**Developer**" is Cormorant Energy Storage, LLC, a Delaware limited liability company, and its successors and assigns, with a legal or equitable interest in the Project Site as an optionee to lease the Project Site from Syufy Enterprises.

Section 1.8 "**Development Impact Fees**" shall mean monetary exactions which are charged by City in connection with any approval, permit or entitlement relating to development, for the purpose of financing all or a portion of the cost of public facilities, programs or services related to the Project, including but not limited to any Fair Share Fees, other Assembly Bill 1600 fees (pursuant to the Mitigation Fee Act [California Government Code section 66000 et seq]), general facilities fees, parks facilities fees, fire fees, sewage fees, water fees, or police fees.

Section 1.9 "**Effective Date**" is the date this Agreement is executed by the City Manager.

Section 1.10 "**Enacting Ordinance**" means City Ordinance No. [New Ord #], enacted by the City Council on [date], 2025, approving this Agreement. This Agreement shall constitute a part of the Enacting Ordinance as if incorporated therein in full, and a copy of this ordinance is attached hereto as Exhibit F.

Section 1.11 "**Existing Ordinances**" means Ordinances in effect as of the Vested Rights Date of this Agreement. City has separately compiled the Existing Ordinances and intends to maintain them in an appropriate file indexed to this Agreement. Developer has reviewed said compilation, as of the time of this Agreement, and agrees thereto; for convenience, some of

the Existing Ordinances are attached hereto in Exhibit E. Developer shall have the right to waive its vested rights as to any particular vested law, regulation, development standard, Existing Ordinance or other requirement, at its sole discretion, consistent with the terms of Section 3.2 of this Agreement.

Section 1.12 "**Fair Share Fees**" shall be those existing fees for development enacted pursuant to Daly City Municipal Code Chapter 3.36, including any fees for City administrative facilities, fire facilities and equipment, libraries, police facilities and equipment, community recreation centers, street improvements, and water and sewage facilities.

Section 1.13 "**Force Majeure Event**" refers to delay or other circumstances that materially and negatively impact Developer's ability to develop this Project as contemplated in the Project Approvals, including this Agreement and its Exhibits, including but not limited to: acts of God, including without limitation floods, earthquakes, fires, pandemics, casualties; acts of war or civil unrest, a public enemy, terrorism, insurrections, riots, mob violence, sabotage, and malicious mischief; strikes, walk-outs, labor disputes, and other labor stoppages; unfavorable market conditions, including without limitation a recession or depression, that render development economically and otherwise infeasible; delay attributable to the actions or inaction of any governmental agency, including without limitation delays in the issuance of permits, approvals, or other actions required for development of the Project, including without limitation Project Approvals and Subsequent City Approvals, or the enactment of conflicting state or federal laws or regulations; delays of the City in processing any Subsequent City Approval beyond periods of time permitted by law or required by this Agreement; boycotts or other shortages or limits on the availability of necessary equipment, materials, or supplies; failure of transportation (but not attributable to a mere increase in price unless such price is commercially unreasonable and will extend for a period of time under the circumstances); a development moratorium (including but not limited to a sewer or water moratorium) approved by the City or other entity having jurisdiction; environmental conditions on the Project Site or other properties in the vicinity; any litigation, administrative action, or judicial or administrative decision, ruling, or order preventing or delaying the development of the Project or adversely affecting the ability of the City, Developer to obtain financing for the Project; the commencement of circulation of an initiative or referendum petition or the filing of any court action to set aside or modify this Agreement, the Project Approvals, or any Subsequent City Approvals; delay attributable to insufficient water available to serve the Project or any phase or portion thereof; or any delay claimed by a party in the performance of any term, covenant, condition or obligation under this Agreement caused by a default of the other party. For the purpose of this definition, a cause shall be

beyond the control of the party whose performance would otherwise be obligated only if such cause would prevent or hinder the performance of an obligation by any reasonable person similarly situated and shall not apply to causes peculiar to the party claiming the benefit of a Force Majeure Event (such as the failure to order materials in a timely fashion).

Section 1.14 "**Future Ordinances**" means Ordinances enacted after the Vested Rights Date of this Agreement (including amendments which may be made to Existing Ordinances). Any ordinance amendment to the Project Approvals that is sought by Developer and approved by the City shall not be considered a "Future Ordinance."

Section 1.15 "**Ordinances**" means the ordinances, resolutions, codes, rules, regulations and official policies of City governing the permitted uses of land, density, design, improvement, and construction standards and specifications applicable to the use and development of the Project Site. Said Ordinances include without limitation City's General Plan, Zoning Ordinance, and construction codes.

Section 1.16 "**Planning Commission**" is the Planning Commission of the City.

Section 1.17 "**Project**" means the planned development of the Project Site or a portion thereof as an energy storage system, as further described in Recital C and in the Project description in the CEQA document analyzing development at the Project Site, both incorporated herein by reference.

Section 1.18 "**Project Approvals**" shall mean this Agreement and its Exhibits; a General Plan amendment; a Zone Change; a Use Permit; Design Review; ROW encroachment authority any other land use entitlements or agreements related to the Project that are considered and approved by the City concurrent with this Agreement; and any and all amendments to the foregoing that are sought by Developer and approved by the City. As used in this Agreement, the phrase "other Project Approvals" shall refer to the Project Approvals other than this Agreement. The other Project Approvals cover all phases and aspects of development and operation of the Project as described in the Project description.

Section 1.19 "**Project Site**" or "**Site**" means that certain real property graphically depicted on Exhibit A and legally described in Exhibit B.

Section 1.20 "**Subsequent**" means occurring after the Effective Date.

Section 1.21 "**Subsequent City Approvals**" means any subsequent land use or development permits, approvals, or entitlements applied for by Developer or its successors in interest, assigns, agents, development

partners, lessees, licensees, or sublessee with respect to development of the Project Site, including but not limited to:

(a) Development Applications and Conformance Review, including Design Review

(b) Amendments to the Project Approvals

(c) Site Improvement Plans

(d) Environmental Review pursuant to the California Environmental Quality Act

(e) Ministerial grading permits, building permits, demolition permits/approvals, and/or certificates of occupancy for all phases of the Project.

Section 1.22 "**Vested Rights Date**" means December 1, 2025.

ARTICLE 2: LIST OF EXHIBITS

[PROPOSED EXHIBIT LIST]

EXHIBIT A: SITE MAP

EXHIBIT B: LEGAL DESCRIPTION OF PROJECT SITE

EXHIBIT C: MITIGATION MONITORING AND REPORTING PROGRAM

EXHIBIT D: FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

EXHIBIT E: COPY OF EXISTING ORDINANCES

EXHIBIT F: ENACTING ORDINANCE

EXHIBIT G: ROW ENCROACHMENT AUTHORIZATION

ARTICLE 3: DEVELOPMENT OF PROJECT SITE

Section 3.1 General Vested Right. Developer shall have the vested right to develop the Project on the Project Site in accordance with the Applicable Ordinances, Project Approvals, and any subsequent amendments to the Project Approvals that are sought by Developer and approved by the City, and City shall have the right to regulate development and use of the Project Site in accordance with the provisions of this Agreement.

Section 3.2 Applicable Ordinances. Subject to the terms of this Agreement and the other Project Approvals and any amendments thereto, the Existing Ordinances shall control the permitted uses of the Project Site, the density and intensity of such uses, the maximum height and size of proposed buildings, the requirements for reservation and dedication of land for public purposes, and development standards. Except as otherwise provided in exceptions to vested rights below, to the extent that any Existing or Future Ordinances purport to be applicable to the Project Site but are in conflict with this Agreement or the other Project Approvals, the Agreement and Project Approvals shall prevail. Developer shall have the right, at its sole election, to waive any of the foregoing vested rights, in whole or in part, in conducting construction or operations on the Project Site or in pursuing any particular Subsequent City Approval or other entitlement or permit. The ordinances that govern pursuant to this Section 3.2 shall be known as the "**Applicable Ordinances**."

The parties acknowledge that Developer cannot at this time predict when or at what rate the Project will be constructed. Such decisions depend upon numerous factors that are not all within Developer's control. In exchange for Developer's Extraordinary Benefits identified herein, DCMC Section 17.44.100 regarding the expiration of a use permit if not initiated within a year shall not be applicable to the Project and is therefore not an Applicable Ordinance.

Section 3.3 City Conditions. This Agreement shall not prevent the City from denying or reasonably conditioning approval of any application for a Subsequent City Approval on the basis of Applicable Ordinances and Project Approvals, and which do not conflict with the same. In the event of a conflict between a Project Approval and any conditions of approval for the Project or Subsequent Project Approvals, the Project Approvals, including this Agreement, shall prevail.

Section 3.4 Processing of Subsequent City Approvals. The parties recognize that in order to implement the development of the Project Site as contemplated in this Agreement, Developer may require subsequent approvals, including without limitation the Subsequent City Approvals. Provided that Developer pays all required processing fees and files full and complete applications in conformity with this Agreement, the other Project Approvals, and Applicable Ordinances, as set forth in Section 3.2, City shall expeditiously review and process all applications for Subsequent City Approvals required to develop the Project consistent with the terms of this Agreement, the other Project Approvals, and Applicable Ordinances. City shall use its best efforts to process and act upon all such applications within the time periods set forth in the Project Approvals, or in the Applicable Ordinances for those approvals not addressed in the Project Approvals.

Notwithstanding any other provision of this Agreement, no future amendment of any Existing Ordinance or resolution or any subsequent ordinance, resolution or moratorium, enacted either by the City Council or by voter approved initiative, that purports to impose or result in a limitation on the Project, imposed by City, shall apply to govern, or regulate the Project or development or use of the Property during the Term. In the event of any such subsequent action by City, Developer shall continue to be entitled to apply for and receive Subsequent Development Approvals in accordance with the Applicable Ordinances.

Section 3.5 Fair Share Fees and Exactions. Except as otherwise provided in this Agreement, the development of the Project under the Project Approvals, and the Subsequent City Approvals shall be subject only to those types of Fair Share Fees, exactions, and amounts of Fair Share Fees and exactions which are in effect at the time of the Vested Rights Date, subject to adjustment of fee amounts only for inflation and deflation where the Existing Ordinances have established inflation adjustment indexing. Any such Fair Share Fees applicable to an industrial battery energy storage system project shall only apply to the square footage of the battery energy storage system containers.

To the extent the City subsequently repeals or otherwise reduces a Fair Share Fee in existence at the time of the Vested Rights Date, said fee shall be reduced or no longer apply to the Project.

Section 3.6 Timing of Payment for Fair Share Fees. Any Fair Share Fees paid by Developer shall be paid at the time of issuance of building permit on a building-by-building basis.

Section 3.7 City Pass Through Fees. Sections 3.5 and 3.6 of the Agreement shall not apply to any City fees that are pass-through fees from non-City governmental agencies. For any Project Approvals or Subsequent City Approvals that incur a pass-through fee, Developer shall pay the fee lawfully required for all similarly situated projects at the time of the approval, permit, or entitlement. As used in this section, a “pass-through fee” refers to any fee, the amount of which is set by a non-City governmental agency, and is either collected by the City for the purposes of transmitting to that same non-City governmental agency or is collected by the City for the purposes of recouping payments in the fee amount already made by the City to the non-City governmental agency.

Section 3.8 Other Governmental Permits. At its sole expense, Developer shall apply for and obtain such other permits and approvals, including without limitation Project Approvals, as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be

required for the development of, or provision of services to, the Project consistent with this Agreement. City shall cooperate in good faith with Developer to obtain such permits and approvals.

Section 3.9 Application, Processing, and Inspection fees. All Subsequent City Approvals shall be subject to generally applicable application, processing, and inspection fees (including any reimbursement policies for work performed by outside plan checkers) in effect at the time the Subsequent City Approvals are issued or, if any such fees are due prior to issuance thereof, at the time the application(s) for such Subsequent City Approvals is/are filed.

Section 3.10 Exception to Vested Rights –Construction Codes. Ordinances establishing construction requirements and specifications, including without limitation the California Building Code, California Energy Code, California Green Building Standards, California Electrical Code, California Plumbing Code, California Fire Code, and California Mechanical Code, which are adopted or revised during the term of this Agreement shall apply as of the time of application for the construction and building permits for development of the Project.

Section 3.11 Exception to Vested Rights -- State and Federal Requirements. This Agreement shall not preclude the application of changes in Ordinances, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations as provided in Government Code section 65869.5, to the development and use of the Project Site. In the event that State or Federal laws, or regulations enacted after the Vested Rights Date of this Agreement, or actions by any governmental jurisdiction other than City, prevent or preclude compliance with one or more provisions of this Agreement, or require changes in Project Approvals or Subsequent City Approvals issued by City, this Agreement shall be automatically modified, extended, and/or suspended to the extent reasonably necessary to comply with such State or Federal laws or regulations.

Section 3.12 Developer's Extraordinary Benefit Obligations – Corporate Goodwill Contributions Community Organizations Developer shall provide at least $250,000 in corporate goodwill donations (including donations made prior to the Effective Date of the Agreement) that benefit the public within five years of issuance of a certificate of occupancy for phase one of the Project. Developer has and shall continue to make a good faith effort to work closely with elected officials, community leaders, and local stakeholders to identify and prioritize the initiatives that will best serve the needs and interests of local residents. Such initiatives may include, but are not limited to, sponsorship packages and donations to local organizations, participation in local community engagement events to strengthen community ties and

actively engage with residents, and the awarding of STEM scholarships to students graduating from Jefferson and Westmoor High Schools. Any time after the fifth anniversary of the certificate of occupancy on the phase one of the Project, upon written request from the City, Developer shall provide the City's Director of Finance and Administrative Services Department an itemized accounting of at least $200,000 in corporate goodwill donations (including donations made prior to the Effective Date of the Agreement.)

Section 3.13 Developer's Extraordinary Benefit Obligations – Corporate Goodwill Contributions to Recreational Community Organizations. Developer shall provide at least $250,000 in corporate goodwill donations supporting partnerships with local community-based organizations with a mission to expand recreational opportunities within five years of issuance of a certificate of occupancy for phase one of the Project. Any time after the fifth anniversary of the certificate of occupancy on the phase one of the Project, upon written request from the City, Developer shall provide the City's Director of Finance and Administrative Services Department an itemized accounting of at least $250,000 in corporate goodwill donations to one or more local community-based organizations with a mission to expand recreational opportunities.

Section 3.14 Developer's Extraordinary Benefit Obligations – Sales Tax Guarantee.

(a) During the Term of this Agreement, to the extent feasible and allowed by applicable law, Developer agrees to use commercially reasonable efforts to maximize the total amount of all Sales and Use Tax Revenue received by the City from development and construction of the Project, for the purchase, sale or use of any and all materials, equipment, fixtures or other items upon which sales or use tax is due, including any and all sales or use tax due from any third party vendors or other contractors involved in the development and construction of the Project pursuant to the terms and conditions of a contractual agreement with Developer or its contractors ("**Project Sales and Use Tax Revenue**"). It is anticipated the City will receive a total of at least Three Million Dollars ($3,000,000.00) in Project Sales and Use Tax Revenue in the Project's first development phase and One Million Dollars ($1,000,000.00) in the Project's second development phase. At the end of the first full City fiscal year following completion of each phase of the Project to its operational stage connected to the electrical grid, once the data is available, the City shall provide Developer with an accounting, identifying the amount of all Project Sales and Use Tax Revenue received in relation to the Project, including funds received in preceding City fiscal years prior to completion of the Project as applicable. If the City determines that amount of Project Sales and Use Tax Revenue received by the City is less than $3,000,000.00 for the first phase or $1,000,000.00 for the second phase, the

City shall invoice Developer for the difference (i.e., $3,000,000.00 *less* the amount of Project Sales and Use Tax Revenue actually received for phase one and $1,000,000.00 *less* the amount of Project Sales and Use Tax Revenue actually received for phase two) and provide Developer with the information relied upon by the City in making such determination. Developer shall have thirty (30) days to either remit payment to the City's Director of Finance and Administrative Services Department or provide any comments or additional information to the City regarding the amount of the Project Sales and Use Tax Revenue, which the City shall consider in good faith. No later than thirty (30) days following the receipt of any such information from Developer, the City shall notify Developer in writing whether its determination of the Project Sales and Use Tax Revenue has changed and, if so, issue a revised invoice to Developer. Developer will remit payment to the City's Director of Finance and Administrative Services Department within thirty (30) days of receipt of such notice, regardless of whether or not the invoice has been revised.

(b) Developer shall timely report and pay all sales and use taxes relating to the Project in accordance with the laws, rules and regulations applicable to such payment.

(c) Once available to Developer, Developer shall supply the City with information to assist the City in determining the Project Sales and Use Tax Revenue. Such information may include (i) sales and use tax returns filed with the California Department of Tax and Fee Administration ("**CDTFA**") by Developer or its contractors, (ii) invoices relating to Developer's or its contractors' purchase of taxable items in connection with the development or operation of the Project, (iii) business records reflecting payment of sales or use tax to vendors or the CDTFA relating to purchase or use of taxable items in connection with the development or operation of the Project, and/or (iv) names of contractors, vendors, or other parties who may remit sales or use tax to the CDFTA in connection with the development or operation of the Project. For the avoidance of doubt, nothing in this Section 3.14(c) shall require Developer to provide each of the items enumerated in this subsection or prohibit Developer from providing additional information as contemplated by Section 3.14(a).

(d) Project Sales and Use Tax Revenue shall be deemed to have been received by the City if and to the extent the CDTFA elects to offset the payment of any such Project Sales and Use Tax Revenue against any other obligations of the City. Section 3.14. Developer's Extraordinary Benefit Obligations – Contribution to Improvement of City Parks and Open Space. Prior to the issuance of the occupancy permit for phase one of the Project, Developer shall tender to the City's Director of Finance and Administrative Services Department a $400,000.00 contribution for the City's use in

improving the City park and open space areas ("**Park Projects**"). Prior to the issuance of the occupancy permit for phase two of the Project, Developer shall tender to the City's Director of Finance and Administrative Services Department a $100,000.00 contribution for the City's use in improving the Park Projects. For the sake of clarity, the Park Projects are City public improvement projects with independent utility from the Project, for which the City is responsible for processing all necessary entitlements. The City shall include Developer in, and publicly recognized Developer's contribution during, all groundbreaking or other ceremonies celebrating any City Park Project improvement funded or partially funded pursuant to this Agreement.

Section 3.14. ROW Encroachment Authorization. By entering into this Agreement, the City hereby grants Developer encroachment authorization into, under, over and through City rights-of-way and public service easements for development of the Gen-tie line and appurtenant project facilities in accordance with the terms of the ROW Encroachment Authorization attached hereto as Exhibit G.

Section 3.15. Development Intensity, Permitted Uses, Maximum Height and Size, Dedication of Land for Public Purposes. Consistent with Government Code Section 65865.2, the Project's development intensity, permitted uses, maximum height and size limitations, and any applicable requirements for dedication of land for public purposes are those described in the other Project Approvals and are incorporated herein by reference. Section 3.16. City Support for Gen-Tie Line Easement. City shall support Developer's application to the Housing Development Finance Agency for approval of a Grant of Easement in a form and substance substantially similar to the Easement Agreement attached hereto as Exhibit H, including all related approvals. Nothing herein shall be interpreted as obligating the Housing Development Finance Agency to grant the Easement Agreement. Both Parties acknowledge that the Housing Development Finance Agency's determination shall be independent and informed on the merits following a public hearing.

Section 3.17. City's Extraordinary Benefit for Easement Agreement. Developer shall provide an additional $25,000 to the City for the same purposes as those identified in Section 3.13 should the Housing Development Finance Agency grant the Easement Agreement and all related approvals, and Developer applies for and is granted a building permit to develop within the easement area described in the Easement Agreement. Payment shall be tendered to the City within five (5) business days of either (i) City issuance of a certificate of occupancy for phase one of the Project, or (ii) City granting a building permit pursuant to this Section of the Agreement, whichever is later.

Section 3.18. Gen-Tie Route Options. Developer shall have the option to develop the gen-tie line through either the easement area described in Easement Agreement or any other location that substantially conforms to the location depicted in the Project's approved site plan. Substantial conformance shall be liberally construed to effectuate the purpose of allowing the efficient transmission of power between the battery energy storage system and the electrical grid.

ARTICLE 4: PERIODIC REVIEW OF AGREEMENT

Pursuant to Government Code Section 65865.1, the City's Planning Manager shall conduct an annual review of this Agreement to ascertain the parties' good faith compliance with its terms. Upon request, Developer shall provide the City's Planning Manager with information reasonably necessary to carry out this determination. If the Planning Manager finds, after an administrative review, that Developer is in good faith compliance with this Agreement, the Planning Manager shall issue Developer a certificate of compliance. If the Planning Manager finds Developer is not in good faith compliance with this Agreement, then the Planning Manager shall notify Developer and schedule a meet and confer with the Developer to discuss the alleged non-compliance. Following the meeting, if the Planning Manager determines the Project is in fact not it compliance, then the Planning Manager shall notify the Developer in writing. Developer shall 30 days to either submit a written plan for bringing the Project back into compliance or appeal the notice of non-compliance to the City Council. If after such hearing the City Council determines Developer is not in good faith compliance with this Agreement, City may pursue available rights and remedies in accordance with this Agreement. If the Planning Manager does not initiate an annual review in any given year, Developer shall be deemed to be in good faith compliance with this Agreement.

ARTICLE 5: AMENDMENT

Section 5.1 In General. This Agreement may be canceled, modified or amended only by mutual written consent of the parties, in accordance with the provisions of Government Code Sections 65867, 65867.5 and 65868. No amendment shall disturb the Vested Rights Date, scope, or other element of the rights vested under Article 3 of this Agreement.

Section 5.2 Major Amendments. Any amendment to this Agreement concerning the legal boundaries of the Project Site as depicted in Exhibits A and B, Developer's obligations as stated in Sections 3.12, 3.13 or 3.14, or the Agreement's provisions regarding fees and exactions in Section 3.5 shall be considered a Major Amendment and shall require giving of notice and a public hearing before the Planning Commission and City Council pursuant

to the provisions of Section 5.1 above. Any amendment to any of the other Project Approvals shall be governed by the terms of those documents and shall not require any amendment to this Agreement.

Section 5.3 Minor Amendments. The parties acknowledge that refinement and implementation of the Project might demonstrate that certain minor changes might be appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the parties find that clarifications, minor changes, or minor adjustments are necessary and do not constitute a Major Amendment under Section 5.2, they shall effectuate such clarifications, minor changes, or minor adjustments through a written Minor Amendment approved in writing by Developer and the City Manager. Unless otherwise required by law, no such Minor Amendment shall require prior notice or hearings, nor shall it constitute an amendment to this Agreement as defined by the Government Code.

ARTICLE 6: GENERAL PROVISIONS

Section 6.1 Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project Site, and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Project Site and all successors in interest to the parties hereto.

Section 6.2 Term. The Term of this Agreement shall commence upon the Effective Date and extend until the expiration of thirty (30) years after the Effective Date.

Notwithstanding the foregoing, the Term of this Agreement shall be automatically extended for the period that development is prevented or delayed, in whole or in part, due to a Force Majeure Event. At any time, any party claiming an extension as a result of a Force Majeure Event shall provide the other party with written notice of such extension, the reason for the delay and an estimated length of delay. Upon the other party's receipt of such notice, the period of time for performance of any obligation or duty shall be automatically extended for the period of the Force Majeure Event, unless the other party objects in writing within thirty (30) days after receiving the notice. In the event of such objection, the parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached at the conclusion of the meet and confer session(s), either party may initiate dispute resolution proceedings as set forth in Section 6.7 of this Agreement.

The Term may also be extended upon mutual written consent by both parties.

Expiration of this Agreement shall have no legal effect on any other Project Approval, including but not limited to the General Plan Amendment, Zone Change, Use Permit, ROW encroachment authorization and Design Review, and their applicability to the Project.

Section 6.3 Default: Remedies; Termination. Failure or unreasonable delay by either party to perform any obligation under this Agreement for a period of thirty (30) days after written notice thereof from the other party shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the prior paragraph, after notice and expiration of the thirty (30) day period without cure, the other party to this Agreement, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868. Following any such City notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code Sections 65865.1, 65867 and 65868. Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, the City may give written notice of termination of this Agreement to the other party.

For any default relating to the Project, any such remedies shall be limited to specific performance, injunctive or declaratory relief (and the right to recover reasonable attorney's fees in connection with such proceedings). The waiver by either party of any default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

Section 6.4 Enforced Delay: Extension of Time of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to a Force Majeure Event.

Section 6.5 Cooperation in the Event of Third-Party Legal Challenge. In the event of any legal or equitable action or proceeding instituted by a third

party challenging the validity of any provision of this Agreement or the procedures leading to its adoption or the issuance of Project Approvals or Subsequent City Approvals for the Project, the parties hereby agree to cooperate in defending said action or proceeding.

Section 6.6 Effect of Termination. Except as otherwise provided in this Agreement, termination of this Agreement shall not affect Developer's obligation to comply with the standards, terms and conditions of any other Project Approvals or Subsequent City Approvals issued with respect to the Project Site or any portion thereof; nor shall it affect any covenants of Developer which are specified in this Agreement to continue after termination.

The following provisions of this Agreement shall survive and remain in effect following termination or cancellation of this Agreement for so long as necessary to give them full force and effect: (1) Section 6.5 (Cooperation in the Event of Third-Party Legal Challenge) and (2) Section 6.7 (Legal Actions; Remedies; Attorney's Fees).

Termination of this Agreement shall have no legal effect on any other Project Approval, including but not limited to the General Plan Amendment, Zone Change, Use Permit, Design Review, and ROW encroachment authorization.

Section 6.7 Legal Actions; Remedies; Attorney's Fees. Subject to the provisions of Section 6.3, in addition to any other rights and remedies, either party may institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, and enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the parties hereto. In no event shall either party or its officers, agents or employees be liable for monetary or other damages for any breach or violation of this Agreement, it being expressly understood and agreed that the sole legal remedy available to either party for a breach or violation of this Agreement by the other party shall be a legal action in mandamus, specific performance, injunctive or declaratory relief to enforce the provisions of this Agreement. In any such legal action, the prevailing party, as defined in CCP § 1032, shall be entitled to recover all litigation expenses, including reasonable attorney's fees and court costs.

Section 6.8 Construction of Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California and City, as they may be amended, provided that such amendments do not substantially alter the rights granted to the parties by this Agreement. Both parties and their legal counsel have reviewed this Agreement and agree that any rule that ambiguities are to be construed against the drafting party shall

not apply. This Agreement, including the text and all Exhibits hereto, is intended to be interpreted as an integrated whole. Where provisions appear to be in conflict, they will be harmonized if possible. In the event that an irreconcilable conflict exists between the Agreement text and one or more of the Exhibits, the text shall control. In the event that an irreconcilable conflict exists between the Agreement and one or more of the other Project Approvals or Mitigation Monitoring and Reporting Program, the Agreement shall control.

Section 6.9 No Joint Venture, Partnership or Agency. It is specifically understood and agreed by City and Developer that the development of the Project Site is a non-City development. No partnership, joint venture, agency or other association of any kind between City and Developer is formed by this Agreement. The only relationship between City and Developer is that of a governmental entity regulating the development. City and Developer agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers, partners or agents of one another.

Section 6.10 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

Section 6.11 Further Documents. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement.

Section 6.12 Notices. Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto,

designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth on the below:

City: City of Daly City
333 90th Street
Daly City, CA 94015
Attn: City Manager

with a copy to: City of Daly City
333 90th Street
Daly City, CA 94015
Attn: City Attorney

Developer: Cormorant Energy Storage, LLC
c/o Arevon Energy
8800 North Gainey Center Drive
Suite 100
Scottsdale, AZ 85258
Attn: Director of Development – Energy Storage

with a copy to: Sheppard, Mullin, Richter & Hampton LLP
501 W. Broadway, 18th Floor
San Diego, CA 92101
Attn: Jeffrey W. Forrest, Esq.

Section 6.13 Assignment; Collateral Transfer; Mortgagee Protection.

(a) The rights and obligations of Developer hereunder shall not be assigned or transferred, except that on no less than thirty (30) days written notice to City, Developer may assign all or a portion of Developer's rights and obligations hereunder to any person or persons, limited liability company, partnership, corporation, or any other entity who purchases all or a portion of Developer's right, title and interest in the Project, provided such assignee or grantee assumes in writing each and every obligation of Developer hereunder yet to be performed with respect to the assigned portion of the Project, and such assignee or grantee shall have the same assignment and transfer rights and obligations. The notice to City shall include the identity of any such assignee or grantee and a copy of the written assumption of the assignor's or grantor's obligations hereunder pertaining to the portion assigned or transferred. After such notice, the assignor or grantor shall have no further obligations or liabilities hereunder. Notice under this Section shall not be required for an assignment or transfer to the extent

resulting from a restructuring or name change involving Developer and affiliated entities. Notwithstanding anything in this Agreement, Developer may implement its obligations under this Agreement through the use of Developer employees, representatives, agents, contractees, and other third parties selected by Developer. In the event of a partial assignment, a default of the assignee shall not be deemed a default of the Developer and a default of the Developer shall not be deemed a default of the assignee.

(b) Without limiting the generality of the foregoing, Developer may, without prior written notice to the City, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement and/or the Project and its related facilities to any Mortgagee (defined below). However, Developer shall give the City notice information as to any Mortgagee, and thereafter, the City shall deliver any Notice of Default to any Mortgagee at the same time it delivers any Notice of Default to Developer. Each Mortgagee shall have the right, but not the obligation, to cure the Event of Default. The cure period available to Mortgagee shall be extended for the time period reasonably required for Mortgagee to obtain possession of the Property, provided that Mortgagee diligently and continuously proceeds to use commercially reasonable efforts to so obtain possession of the Property and to complete such cure. Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the Mortgage or deed of trust, or deed in lieu of such foreclosure, or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement. However, in the event a court determines this Agreement is terminated due to the bankruptcy or insolvency of Developer, upon the written request of any Mortgagee, the City shall agree to a development agreement with such Mortgagee(s) on substantially similar terms and conditions as agreed to herein). "**Mortgagee**" as used herein shall mean a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security device, a lender, or any party providing tax equity financing in connection with the Project, and each of their respective successors and assigns.

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

Section 6.14 Authorized Applicants for Project Approvals. Notwithstanding anything else in this Agreement, the following may apply for Subsequent City Approvals: successors, assignees, or grantees of Developer; and any third party with the written consent of Developer, including without limitation any agents, joint development partners, lessees, licensees, or sublessees.

Section 6.15 Right to Lease Project Facilities. Notwithstanding anything else in this Agreement, the parties acknowledge and agree that nothing in this Agreement prohibits Developer from leasing or licensing any portion of the Project Site (each a "**Project Component**") to affiliated or third parties for any purpose consistent with the terms of this Agreement, including, but not limited to constructing, operating, subleasing, and any other permitted use. Any such lease, license, or sublease of a Project Component will not require any notification to or consent by the City provided that the tenant or occupant is required, in the subject lease, license, or sublease, to comply with the obligations and requirements of this Agreement that would be applicable to the Project Component occupied or used by such tenant, licensee or occupant. The parties agree that, if Developer and a third party enter into a lease or license (or like rights to use and operate) for a Project Component, then if a default occurs that is caused by the use or operation of such Project Component, then any enforcement or remedy for such default other than specific enforcement, declaratory relief and any attorney's fees and costs for such proceedings, shall be further subordinated to the interests of any ground lease tenant, leasehold mortgagee or other interest holder in the Project Component, and the City will enter into a subordination agreement confirming such subordination in the form reasonably required by the interest holder in such Project Component.

Section 6.16 Entire Agreement. This written Agreement, including the Exhibits hereto, contains all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior or contemporaneous correspondence, drafts, memoranda, agreements, warranties or representations are superseded in total by this Agreement. This Agreement also supersedes any previous development agreements or land use entitlements that may affect or govern the Project Site or its development.

Section 6.17 No Third Party Beneficiaries. This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement, including without limitation its Exhibits, for any cause whatsoever.

Section 6.18 Recitals Not Incorporated. The Recitals preceding this Agreement are not incorporated into this Agreement and are not part of the representations or the entire agreements between the parties with respect to the subject matter hereof.

Section 6.19 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

Section 6.20 Warranty of Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

Section 6.21 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one and the same Agreement.

Section 6.22 Recordation. Within ten (10) days after the Enacting Ordinance takes effect, the City Manager shall execute this Agreement on behalf of City, and the City Clerk shall record this Agreement with the San Mateo County Recorder. If this Agreement is terminated, modified or amended pursuant to Article 5 or 6 of this Agreement, the City Clerk shall record notice of such action with the San Mateo County Recorder.

Section 6.23 No Obligation to Construct. Nothing herein shall be interpreted as requiring Developer to construct phase one or phase two of the Project and Developer shall not be required to fulfill extraordinary benefit obligations related to any phase not constructed.

Section 6.24 No Discrimination. Developer covenants that, by and for itself, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry in the performance of this Agreement.

Section 6.25 Estoppel Certificates. Either party hereto (or a Mortgagee) may at any time during the Term deliver written notice to the other party requesting an estoppel certificate ("**Estoppel Certificate**"):

(a) certifying that the Agreement is in full force and effect and is a binding obligation of the parties hereto;

(b) certifying that the Agreement has not been amended or modified or, if so amended or modified, identifying such amendments and/or modifications;

(c) certifying that there are no existing defaults under the Agreement to the actual knowledge of the party signing the Estoppel Certificate, or if there are any, identifying the same; and

(d) containing any other reasonable certifications that may be requested by either Party (or a Mortgagee).

A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within ten (10) business days after receipt of the request. Failure to timely deliver an Estoppel Certificate shall be deemed to certification of the requested certifications ("**Deemed Estoppel Certificate**"). An Estoppel Certificate or Deemed Estoppel Certificate may be relied on by Developer's assignees and Mortgagees.

Section 6.26 Warranty & Representation of Non-Collusion. No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code §§ 1091 or 1091.5.

(*Signature Pages Follow*)

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

Developer: CORMORANT ENERGY STORAGE, LLC,
a Delaware limited liability company

By: _____

Name: _____
Title: _____

City: CITY OF DALY CITY,
a municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form: CITY ATTORNEY

By: _____
Name: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF SAN MATEO

On _____, 202__, before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF _____

COUNTY OF _____

On _____, 202__, before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF SAN MATEO

On _____, 2025, before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

EXHIBIT A

[PLACEHOLDER FOR SITE MAP]

EXHIBIT B

[PLACEHOLDER FOR LEGAL DESCRIPTION]

EXHIBIT C

[PLACEHOLDER FOR MITIGATION MONITORING AND REPORTING PROGRAM]

EXHIBIT D

[PLACEHOLDER FOR FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT]

EXHIBIT E

[PLACEHOLDER FOR COPY OF EXISTING ORDINANCES]

EXHIBIT F

[PLACEHOLDER FOR ENACTING ORDINANCE]

EXHIBIT G

ROW ENCROACHMENT AUTHORIZATION

[SEE PAGE THAT FOLLOWS]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Cormorant Energy Storage, LLC
c/o Arevon Energy, Inc.
8800 N. Gainey Center Dr., Suite 100
Scottsdale, AZ 85282
Attn: Asset Management

THIS SPACE ABOVE FOR RECORDER'S USE

ENCROACHMENT AGREEMENT

This Encroachment Agreement (this "**Agreement**") is entered into as of _____, 202__, (the "**Effective Date**") by and between the City of Daly City, a municipal corporation of the State of California (the "**City**"), and Cormorant Energy Storage, LLC, a Delaware limited liability company (collectively with any successors-in-interest "**Cormorant**"). The City and Cormorant may be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Cormorant is leasing certain real property located within the City for purposes of developing and operating a battery energy storage system (the "**Project**").

B. Cormorant desires to install, operate and maintain a generation interconnection line and related appurtenances within certain of the City's public rights-of-way in connection with Cormorant's operation of the Project, as further set forth herein.

C. The City has the authority to regulate the terms and conditions for the use of public rights-of-way within the City consistent with applicable law and has determined that the rights granted to Cormorant herein will not adversely affect the City's obligation to provide for and protect the public health, safety and general welfare.

D. Subject to the terms and conditions of this Agreement, the City is willing to grant Cormorant the right to encroach into certain public rights-of-way, as further set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual covenants of the Parties, the legal sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

This Agreement shall run with the land.

The City hereby grants Cormorant the right to encroach into those certain public rights-of-way more commonly known as [Carter Street, Martin Street and Schwerin Street] (collectively, the "**ROW**") within that certain area more particularly described on Exhibit A attached hereto and incorporated herein and depicted on Exhibit B attached hereto and incorporated herein (such area, the "**Encroachment Area**") for purposes of (the following purposes, the "**Permitted Purposes**") installing, inspecting, operating, repairing, replacing, removing from time-to-time, modifying and maintaining a generation interconnection line and related appurtenances (the "**Encroachment**").

Cormorant shall conduct the Permitted Purposes in a safe and sanitary manner at the sole cost, risk and responsibility of Cormorant.

With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorneys' fees, damages, expenses or payments that the City may sustain or incur in any manner for damages or injuries, including those to any person (including disability, dismemberment, illness damages, or death) or property, arising from, related to, or resulting from the Permitted Purposes or presence of the Encroachment within the ROW, Cormorant agrees to defend, indemnify, protect and hold harmless the City, its agents, officers, and employees from and against any and all liability.

Also covered by this Section 4 is liability arising from, related to, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees that may be in combination with active or passive negligent acts or omissions of Cormorant, its employees, agents or officers, or any third party. Cormorant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

Cormorant further agrees to pay any and all costs the City incurs to enforce the indemnity and defense provisions of this Section 4.

If the City reasonably determines that the Encroachment interferes with, impairs or otherwise impedes the City's use of the ROW and any abutting private property, then Cormorant shall work with the City to determine a commercially feasible plan for the relocation of the Encroachment to a new encroachment area within the City's public right(s)-of-way at Cormorant's sole expense (the "**Relocation Plan**"). Cormorant shall include anyone with legal and/or financial interest in the Project in the preparation of the Relocation Plan. The Relocation Plan shall be prepared within sixty (60) days of the City's written notice to Cormorant that relocation is reasonably required, and Cormorant shall commence relocation of the Encroachment within thirty (30) days of receiving all necessary permits and/or approvals. Cormorant shall complete the relocation of the Encroachment within three hundred and sixty-five (365) days of Cormorant's receipt of all necessary permits and/or approvals. The City's request to relocate the Encroachment shall not be arbitrary or without reason, and the City shall give as much notice as possible to

Cormorant in the event the City reasonably determines that the Encroachment must be relocated. The City and Cormorant shall mutually agree to a new encroachment area within the City's public rights-of-way as aforesaid, and the Parties shall enter into a replacement agreement approving such new encroachment area on substantially the same terms and conditions as agreed to herein.

If the Encroachment is located over or under a public facility within the ROW, Cormorant agrees to provide an alternate right-of-way on Cormorant-controlled property or assist the City in obtaining new right-of-way, as well as relocate said public facility to a new alignment, all without cost or expense to the City, whenever it is reasonably determined by the City that the public facility cannot be economically placed, replaced, or maintained due to the presence of the Encroachment.

All rights and obligations that were acquired by the City with respect to the ROW shall remain and continue in full force and effect and shall in no way be affected by this Agreement.

Cormorant shall maintain a policy of liability insurance with the City and its respective elected officials, officers, employees, agents, and representatives named as additional insureds, in an amount approved by the City. Such policy shall protect the City from any potential claims that may arise from the Encroachment.

The terms and conditions of any permit or approval required by the City in connection with the Project, including but not limited to any permit required pursuant to Chapter 12 of the City's Municipal Code, shall be consistent with the terms and conditions of this Agreement. In the event that any permit or approval issued by the City in connection with the Project is inconsistent with this Agreement, this Agreement shall control.

This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement. This Agreement shall be recorded in the Official Records of the County of San Mateo, California.

(*Signature Pages Follow*)

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

CITY:

City of Daly City,
a municipal corporation of the State of California

_____
Thomas J. Piccolotti, City Manager

ATTEST:

_____
K. Annette Hipona, City Clerk

APPROVED AS TO FORM:

_____
Rose Zimmerman, City Attorney

IN WITNESS WHEREOF, Cormorant has caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

CORMORANT:

Cormorant Energy Storage, LLC,
a Delaware limited liability company

By:_____
Name:_____
Title:_____

ACKNOWLEDGEMENT

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

State of _____)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

Legal Description of Encroachment Area

(*See Attached*)

EXHIBIT B

Depiction of Encroachment Area

(*See Attached*)

EXHIBIT H

FORM OF EASEMENT AGREEMENT

[SEE PAGE THAT FOLLOWS]