

## **AMENDED AND RESTATED LICENSE AGREEMENT FOR TRANSMISSION LINES**

This AMENDED AND RESTATED LICENSE AGREEMENT FOR TRANSMISSION LINES ("Agreement"), is entered into as of \_\_\_\_\_, 2025 ("Effective Date") by and between the CITY OF COMMERCE, a municipal corporation ("City"), and COMMERCE ENERGY STORAGE, LLC, a Delaware limited liability company, and its heirs, assigns, and successors-in-interest ("CES"). City and CES may each be referred to as a "Party" and collectively as the "Parties".

WHEREAS, City and CES entered into that certain License Agreement for Transmission Lines dated June 28, 2022 (the "Original Agreement"), as evidenced by that certain Memorandum of License Agreement for Transmission Lines recorded November 2, 2023 in the Official Records of Los Angeles County as Instrument No. 20230751367.

WHEREAS, City and CES now desire to amend and restate the Original Agreement in its entirety.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following:

### **A. GENERAL.**

1. City has granted entitlements and approvals for multiple Commerce Energy Storage projects at 6904 E. Slauson Avenue and 6920 E. Slauson Avenue (collectively, the "Project") as fully set forth in Planning Commission Resolution Nos. 22-05 and 24-05, respectively ("Approvals"). The Approvals include, among other things, conditional use permits (the "CUP"), variances, encroachment permit and related mitigated negative declarations and mitigation monitoring and reporting programs and other conditions imposed by regulatory or governmental bodies with applicable jurisdiction.

2. The Project includes a high-voltage electric transmission line, communications line, splice vaults, and related facilities and equipment to connect to the Southern California Edison Laguna Bell substation located at: 6319-6337 Garfield Avenue in the City of Commerce (the "Tie-Line"). A portion of the Tie Line is to use and cross a portion of the Garfield Avenue right of way as described in the Legal Description and Plot Map attached hereto as Exhibit "A-1" and Exhibit "A-2", respectively (the "Premises"). For purposes of this Agreement, (a) "Facilities" means the portion of the Tie-Line that is situated in the Licensed Area in accordance with this Agreement, and (b) "Licensed Area" means the area on and under the Premises in which the Facilities are located in compliance with the Approvals and all Applicable Laws, which is expected to include a nominal (x) seven (7) foot by four (4) foot area below, and (y) two thousand and one hundred (2,100) linear foot distance along, the surface of the Premises and the as built location of which will be attached in Exhibit "B" hereto as provided therein, and as may thereafter be adjusted from time to time at the request of CES with the approval of the City Manager (which approval shall not be unreasonably withheld, conditioned or

delayed), including, but not limited to, for avoidance of any improvements or other conditions within the Premises.

3. City hereby grants CES a non-exclusive License (the “License”) to construct, operate, use, replace, improve, remove, relocate, and maintain the Facilities within the Licensed Area, which grant is subject to all rights, interests, and estates of third parties that are of record as of the “Effective Date” of the Original Agreement, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and which grant is made on the terms and conditions set forth in this Agreement.

4. Except as permitted by the Approvals, CES shall not materially interfere with the City’s improvements on the Premises.

5. CES shall use the Licensed Area solely for the purposes permitted in this Agreement, and not for any other purpose.

6. Any contractors or subcontractors performing work on the Facilities or entering the Premises on behalf of CES shall be deemed servants and agents of CES for purposes of this Agreement (collectively, “CES Related Parties”) and shall not be considered employees or independent contractors of the City. CES and CES Related Parties shall have no power to incur any debt, obligation, or liability on behalf of the City or otherwise act on behalf of the City as an agent. Neither the City nor any of its agents shall have control over the conduct of any CES Related Parties. CES shall not, at any time, or in any manner, represent that it or any of CES Related Parties are in any manner agents or employees of the City.

## **B. LICENSE FEE.**

7. As compensation for the License granted hereunder, CES shall pay to City the following License Fee for under this Agreement: (i) A non-refundable, guaranteed, lump sum portion of the License Fee (“Guaranteed Term License Fee”) for each of the Initial or Extension Terms, due as provided in this Section 7, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) each; and (ii) subject to the annual increases provided for in Section 8 of this Agreement, the annual sum of Forty-Two Thousand Dollars (\$42,000.00) (“Annual License Fee”). Following the execution of the Original Agreement and prior to the Effective Date hereof, CES made a payment of the (a) Guaranteed Term License Fee for the Initial Term, and (b) Annual License Fee for each of 2022, 2023 and 2024. Subsequent payments of the Annual License Fee shall be due on each anniversary of the effective date of the Original Agreement (i.e., June 28, 2022) for the duration of the Term. If CES elects to extend the Term as provided in Section 11, then CES shall pay the Guaranteed Term License Fee associated with the Extension Terms prior to commencement of the applicable Extension Term. The Guaranteed Term License Fee shall not apply to any Annual Renewals, as defined under Section 11, after the Second Extension Term.

8. On each anniversary of the effective date of the Original Agreement (i.e., June 28, 2022) for the duration of the Term, the Annual License Fee shall increase by a

percentage equal to the change in Consumer Price Index (CPI) for the Los Angeles-Long Beach-Anaheim area. However, the Annual License Fee shall not (a) decrease in the event of a decrease in the CPI for any given year, nor (b) increase more than five (5%) on a year over year basis, nor (c) nor increase by less than three percent (3%) per year.

9. Should CES's interest in this Agreement voluntarily or involuntarily be assigned or transferred without the prior written consent of the City when required, the total of all remaining Annual License Fee payments for the remainder of the Initial Term or the applicable Extension Term, depending upon the period in which the assignment or transfer occurs, shall become due within fifteen (15) business days of the effective date of the transfer or the assignment ("Acceleration Payment"). In terms of the Acceleration Payment, the Annual License Fee for each year of the remainder of the current Term shall be calculated as the rate of the most recent Annual License Fee payment. In the event CES's interest was assigned or transferred without the consent of the City when required, any successor-in-interest to CES shall be responsible for the remainder of the Term for the calculation and payment of any difference in the Annual License Fee actually due (taking into account annual CPI increases thereon under the preceding Section 8) and the Acceleration Payment previously paid and applicable to any given year for the remaining Term ("Successor Payments"), and the License Fee of any subsequent or Extension Terms. This provision shall be binding upon any successor-in-interest to CES and any failure to provide the Successor Payments shall be considered a default under Section 24(a) of this Agreement.

10. CES also acknowledges that the late payment of the License Fee will cause City to incur accounting and other processing costs not contemplated by this License, the exact amount of which is extremely difficult to accurately estimate. Therefore, if any installment of License Fee due from CES is not received by City on or before the date such License Fee becomes due, CES shall be charged an additional one-hundred fifty dollars (\$150.00) to compensate for the additional cost and inconvenience associated with handling the past due License Fee. City and CES agree that this late charge represents a fair and reasonable estimate of costs that City will incur by reason of the late payment by CES.

### **C. TERM.**

11. This Agreement shall commence on the Effective Date and shall continue for an initial period of twenty (20) years ("Initial Term"), or until CES provides notice that it will cease to use the Licensed Area subject to prior termination as hereinafter described. Prior to the expiration of the Initial Term, CES may, at its discretion, elect to extend the Term by written notice to City for a period of ten (10) years ("First Extension Term") with the written consent of the City, which consent the City shall give if no Event of Default has occurred and is then continuing. Prior to the expiration of the First Extension Term, CES may, at its discretion, elect to extend the Term for an additional period of ten (10) years ("Second Extension Term"; together with the First Extension Term, the "Extension Terms" and each, an "Extension Term") with the written consent of the City, which consent the City shall give if no Event of Default has occurred and is then continuing. Following the expiration of the Second Extension Term, this Agreement shall renew automatically for

successive additional periods of one (1) year each (each, an “Annual Renewal” and, collectively, the “Annual Renewals”) unless either Party provides the other Party written notice 180 days prior to the conclusion of the Term, of its intent to terminate this Agreement at the conclusion of the Term. The Effective Date shall be the date this Agreement has been fully executed on behalf of each Party. For purposes of this Agreement, “Term” means the Initial Term, as may be extended by the Extension Terms and Annual Renewals (each as applicable), or otherwise sooner terminated in accordance with this Agreement.

**D. ENCROACHMENT PERMIT.**

12. Prior to the commencement of construction of the Facilities, CES or its authorized agents shall obtain, an encroachment permit for the construction, operation and maintenance of the Facilities within the Licensed Area and, where applicable, other areas of the Premises (including, but not limited to, temporary access to the other areas of any public right of way during such construction, operation and maintenance) in accordance with, and subject to the requirements of, applicable City ordinances and regulations as of the Effective Date and any and all encroachment permit conditions. Such encroachment permit is also an “Approval” for purposes of this Agreement. CES agrees to grind 3 inches of the existing pavement along the full width of Garfield Avenue and the entire length of the Licensed Area and subject to approval by the City.

**E. COMPLIANCE WITH LAWS.**

13. CES shall observe and comply with any and all federal, state, and local laws, statutes, regulations, ordinances, resolutions, rules, policies, orders, covenants, conditions, restrictions, or decisions of any court of competent jurisdiction (“Applicable Laws”) applicable to the construction, maintenance, and use of the Facilities and its use of the Premises, including but not limited to any mitigation measures issued by a regulatory body with competent jurisdiction over the Facilities.

**F. RIGHTS OF CITY.**

14. City excepts and reserves the right, to be exercised by City and any other parties who may obtain written permission or authority from City:

(a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises in a manner consistent with the continued use of the Licensed Area by CES for the purpose specified in Section A above and using reasonable efforts to avoid any material interference with such use; or,

(b) to use all areas of the Premises (other than the Licensed Area) in any manner as the City in its sole discretion deems appropriate, provided City uses reasonable effort to avoid any material interference with the use of the Licensed Area by CES for the purpose specified in Section A above.

15. City shall reserve the right, on not less than 180 days' prior written notice to CES, to relocate or otherwise alter the path of Garfield Avenue for any reason without otherwise affecting CES's rights to the Licensed Area under this Agreement. In addition, without any expense to City, CES shall relocate the Facilities, if and when made necessary by any proper governmental use, including but not limited to a change of grade, alignment, or width of any public street, way, alley, or place, including the construction of any subway or viaduct, by City. Prior to requiring any relocation of the Facilities, City shall use best efforts to provide CES with (a) as much prior notice thereof as is reasonably practicable, and (b) a replacement license for the Facilities on similar terms of a comparable size and in a location reasonably acceptable to CES.

#### **G. CES'S OPERATIONS.**

16. CES shall construct, operate, and maintain the Facilities in the Licensed Area, and use the Premises in connection therewith, in compliance with the Approvals and all Applicable Laws. CES shall perform any installation, operation, or maintenance of the Facilities in a clean, safe and secure manner. If any of the Facilities are visible from the surface of the Premises (e.g. street-grade vaults), then emergency contact information shall be clearly identified and maintained. CES accepts the condition of the Premises "as is", and during the Term of this License, City shall not be required or be under any obligation to maintain, or make any repairs, improvements, or replacements of any nature to the Facilities. CES hereby accepts responsibility and agrees to bear the cost of any such repairs or improvements, including any required by any statute or law in effect at the time of execution of this License, or which may hereafter be enacted during the duration of the License. Any repairs, maintenance or construction of the Facilities must be completed by qualified, trained, experienced, licensed contractors or other qualified personnel. Additionally, CES at its cost and expense shall ensure its street grade Facilities flush with the street grade at all times and adjust its Facilities to grade upon a 48-hour notice and at no cost to the City.

(a) Within thirty (30) days of CES's request to City from time to time, City will provide CES any information that City has in the possession of the City Engineer concerning the existence and approximate location of City's underground utilities and pipelines, or those underground utilities and pipelines installed by others, at or near the vicinity of the Premises. Prior to conducting any such work, CES will review all such material. City does not warrant the accuracy or completeness of information relating to subsurface conditions and CES's operations will be subject at all times to the liability provisions herein. In accordance with California Government Code Sections 4215 et seq., owners of subsurface installations must join a regional notification center (e.g. Underground Service Alert ["USA"]) or 811, which requires contractors to contact such regional notification center prior to excavation, facility owners to mark their underground subsurface installations when notified, and sets civil penalties for failure to comply therewith. Prior to construction, CES shall contact USA to verify the location of existing subsurface installations, and provide proof of registration with USA for its Facilities in the Licensed Area. CES shall be required to mark its Facilities upon notification by USA due to any utilities (SCE, Gas, Cable, Water, etc.) work in the area.

17. Prior to commencing construction of the Facilities, CES shall file with or provide to the City and thereafter continuously maintain throughout the Term a surety bond, letter of credit or other security reasonably acceptable to the City in the amount of \$500,000 with the City.

18. Upon termination of this Agreement, CES shall, at its sole cost and expense:

(a) Remove the Facilities and all appurtenances thereto on the Premises pursuant to this Agreement, or, at the reasonable discretion of the City, fill and cap or otherwise appropriately decommission the Facilities to be left in place with a method satisfactory to City; and

(b) Restore any damage to the Premises arising from, growing out of, or connected with CES's use of the Premises, including but not limited to restoring the public right of way in a condition satisfactory to the City Engineer.

(c) As Built Plans – CES shall provide a digital / electronic copy of As Built Plans with the City's Public Works Department for its Facilities in the Licensed Area (the "As Built Survey") within 30 days of completion.

#### **H. LIABILITY.**

19. To the fullest extent permitted by law, CES shall, and during construction, operation and/or maintenance of the Facilities shall cause its contractors and subcontractors that enter the Premises for purposes of such construction, operation and/or maintenance (as applicable) to indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers (collectively and individually, an "Indemnatee") from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation, costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise (collectively "Liabilities") of any nature arising out of or in connection with CES' negligence, recklessness or willful misconduct in the performance of work and scope of CES's operation hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is a condition on the Premises not caused or exacerbated by CES, its contractors or subcontractors, or to the extent of the active negligence or willful misconduct of the City or any party this is not a CES Related Party. Should conflict of interest principles preclude a single legal counsel from representing both City and CES, or should City otherwise find CES' legal counsel unacceptable, then CES shall reimburse the City its costs of defense, including without limitation, reasonable legal counsel fees, expert fees and all other costs and fees of litigation. CES shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined in such final judgment to the extent attributable to CES' negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.



Upon written notice from City or claim tender by City's third-party administrator, CES agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered in this section for which CES has an obligation to assume liability for and/or save and hold harmless any Indemnitee. CES shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, expert fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

## **I. INSURANCE.**

20. Prior to the beginning of and through the duration of the construction of the Facilities (the "Work"), CES and its subcontractors shall maintain insurance in conformance with the requirements set forth below. CES will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth herein, CES agrees to amend, supplement, or endorse the existing coverage to do so.

CES acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CES in excess of the limits and coverage identified in this Agreement and which is applicable to a given loss, claim or demand, will be equally available to City.

(a) CES shall provide the following types and amounts of insurance:

Without limiting CES' indemnification of City, and prior to commencement of Work, CES shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below.

**General liability insurance.** CES shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$5,000,000 per occurrence, \$10,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile liability insurance.** CES shall maintain automobile insurance at least as broad as Insurance Services Office Form CA 00 01 covering bodily injury and property damage for all activities of CES arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

**Workers' compensation insurance.** CES shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance

(with limits of at least \$1,000,000) for CES's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code.

CES shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

**Pollution liability insurance.** Environmental Impairment Liability Insurance shall be written on a CES Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 dollars per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

(b) Other provisions or requirements

**Proof of insurance.** CES shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the Term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time. Prior to commencing any construction activities related to this Agreement, CES shall furnish to City certificate(s) of insurance for the required coverage, endorsements, and amendments.

**Duration of coverage.** CES shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CES, its agents, representatives, employees or subcontractors. CES must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. City and its officers, officials, employees, and agents shall continue as additional insureds under such policies.

**Primary/noncontributing.** Coverage provided by CES shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.



**Agency's rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by CES. In the alternative, City may cancel this Agreement.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CES or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CES hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of contract provisions (non estoppel).** CES acknowledges and agrees that any actual or alleged failure on the part of the City to inform CES of non-compliance with any requirement imposes no additional obligations on the AGENCY nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features, or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If CES maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by CES. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

**Notice of cancellation.** CES agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and

volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

**Separation of insureds.** A severability of interests provision must apply for all additional insureds ensuring that CES's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass through clause.** CES agrees to ensure that its subconsultants, subcontractors, and any other party involved with the Project who is brought in or involved in the project by CES, provide the same minimum insurance coverage and endorsements required of CES. CES agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CES agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

**Agency's right to revise requirements.** The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving CES a ninety (90) day advance written notice of such change. If such change results in substantial additional cost to CES, the City and CES may renegotiate CONTRACTOR's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

**Timely notice of claims.** CES shall give AGENCY prompt and timely notice of claims made or suits instituted that arise out of or result from CES's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** CES shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

**J. NO WARRANTIES.**

21. City's duties and warranties are limited to those expressly stated in this Agreement and shall not include any implied duties or implied warranties, now or in the

future, no representations or warranties have been made by City other than those contained in this Agreement; CES hereby waives any and all warranties, express or implied, whether known or unknown, with respect to the Premises or which may exist by operation of law or in equity, including, without limitation, any warranty of merchantability, habitability or fitness for a particular purpose, and the provisions of California Civil Code Section 1542 ("Section 1542"):

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

By initialing below, CES hereby acknowledges that it has read and is familiar with the provisions of Section 1542 and hereby waives the provisions of Section 1542 solely in connection with the matters which are the subject of the foregoing waivers.

**Initials**

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**K. QUIET ENJOYMENT.**

22. City does not warrant its title to the property nor undertake to defend CES in the peaceable possession or use thereof.

**L. DEFAULT.**

23. CES shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by CES on the Premises. City is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of City to take any such action shall not relieve CES of any obligation or liability under this section or any other section of this Agreement. CES shall pay when due any and all taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Facilities by any governmental or quasi-governmental body or any Taxes levied or assessed against City or the Premises that are attributable to the Facilities. In the event that City is audited by any Federal or State agency regarding the independent status of CES and the audit in any way fails to sustain the validity of a wholly independent CES relationship between City and CES (which, for this purpose, means that City does not have any ownership interest in CES), CES agrees to reimburse City for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

24. City may declare each of the following events a default by CES hereunder and a material breach of this Agreement (each, an "Event of Default"):

- (a) If CES shall fail to pay the License Fee within three (3) working days of receiving written notice from the City of CES past due obligation.
- (b) If CES shall use the Licensed Area for any purpose that does not conform to the uses authorized by the provisions of this License and does not commence correction of the violation within three (3) working days of receiving written notice or complete such corrections within a commercially reasonable time period; or
- (c) If CES violates any permit, conditions or applicable laws with regards to Licensed Area, and does not commence correction of the violation within five (5) working days of receiving written notice or complete such corrections within a commercially reasonable time period; or
- (d) After CES has completed construction of the Facilities, if CES abandons or otherwise, subject to delays or lack of use due to the occurrence of an event of casualty or force majeure, fails to use the Licensed Area for a period of three (3) months or longer; or
- (e) Unless otherwise specified in this Agreement, if CES shall fail to duly keep, perform, and observe any other covenant, condition, or agreement in this License and failure to commence a cure within five (5) working days of receiving written notice or complete such cure within a commercially reasonable time period.
- (f) Failure by CES to adhere to the terms and conditions of this Agreement and all Applicable Laws may result in administrative costs to the City that will be extremely difficult to calculate. Therefore, in the event of the occurrence of any of the scenarios listed under Sections 24 (b) or (c), CES or their successor-in-interest shall be liable to the City for liquidated damages in the amount of Two Hundred Fifty Dollars (\$250.00) for each day that the Licensed Area is not in compliance with these provisions. The preceding constitutes a reasonable, good faith estimate of administrative costs to the City in the event such material breaches occur. The liquidated damages listed in this section shall not be construed as a limitation on any other remedies, damages, claims, or causes of action available to the City under this Agreement of under all Applicable Laws.

#### **M. TERMINATION.**

25. This Agreement may be terminated by City in the event an Event of Default has occurred while it is continuing subject to Section 28(a) below, by serving a written Notice of Termination on CES and each Interest Holder, setting forth in detail the Event of Default. For sake of clarity, City has the right to terminate this Agreement if and while an Event of Default remains uncured after the expiration of all applicable cure periods with respect thereto provided in (a) Section 24 in favor of CES and (b) Section 28(a) in favor of any Interest Holders. This Agreement may also be terminated by CES for any reason on written notice to City, provided CES complies with the requirements of Section 18 above.

26. Termination shall not release CES from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

27. If CES has not obtained all required permits and approvals necessary to commence construction of the Facilities within eighteen (18) months after the Effective Date of this Agreement, or for an additional six (6) months if an extension to the CUP expiration has been granted by the City, either Party may terminate this Agreement by providing the other Party with a written notice of termination effective thirty (30) days after delivery of such notice.

#### **N. ASSIGNMENT.**

28. CES may, upon notice to the City, assign, mortgage, collaterally assign, sublease as part of a sale-leaseback financing transaction, or otherwise encumber and grant security interests in all or any part of its interest under this Agreement: (i) to an Affiliate, (ii) to a mortgagee in conjunction with financing related to the Project (including, but not limited to, structures related to off-balance sheet financings, leasing arrangements, and project or other financings in respect of the Project); or (iii) to another entity which purchases the Project. The foregoing security interests are referred to in this Agreement as “Mortgages” and the holders of the Mortgages and their designees, successors and assigns are referred to in this Agreement as “Mortgagees”. As used in this Section, an “Affiliate” of CES means any other entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with CES. For purposes of the foregoing, “control,” “controlled by,” and “under common control with,” with respect to an entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, partnership or member interests, by contract, or otherwise. Except as specified above, CES shall not assign its rights or obligations under this Agreement, in whole or in part, without City’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. In the event of an assignment with the consent of City in accordance with this Section or otherwise if such consent is not required under this Section, CES shall be automatically released from its obligations and liabilities under this Agreement arising on and after the date of such assignment. All recipients of any assignment in accordance with this Section (each, an “Assignee”; together with any Mortgagees, an “Interest Holders” and each, an “Interest Holder”) shall have the rights of CES set forth in this Agreement.

(a) Interest Holder Protection. Any Interest Holder, upon delivery to City of notice of its name and address, for so long as the lien of its Mortgage (or other interest in this Agreement) is in existence shall be entitled to the following protections, which shall be in addition to those granted elsewhere in this Agreement:

(i) Right to Cure Defaults/Notice of Defaults. To prevent termination of this Agreement or any interest in this Agreement, each Interest Holder shall have the right, but not the obligation, at any time prior to termination of this Agreement, to perform any act necessary to cure any default and to prevent the termination of this Agreement

or any interest in this Agreement in accordance with Section M. City shall give written notice of any default under this Agreement to each Interest Holder of which it has received notice concurrently with delivery of such notice to CES, specifying in detail the alleged default and the required remedy, and each Interest Holder shall have the same amount of time to cure the default as is given to CES, and the cure period for each Interest Holder shall begin to run upon the later to occur of (i) delivery by City to the Interest Holder of notice of the default, and (ii) the end of the cure period given to CES in this Agreement.

(ii) Acquisition of License. Any Interest Holder (which term includes the Mortgagee or other party who acquires the License or CES's or another Interest Holder's interest in this Agreement pursuant to foreclosure or assignment in lieu of foreclosure and their successors and assigns) shall not be liable to perform the obligations imposed on CES by this Agreement incurred or accruing after such party no longer has ownership of the Agreement or use of the License except for payment of any delinquent License Fee owed to City and other defaults can be cured by payment of then ascertainable amounts of money.

(iii) Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right (i) to assign its Mortgage, (ii) to enforce its lien by any lawful means, and (iii) to perform all obligations to be performed by CES or an assignee under this Agreement or the License, as the case may be, or to cause a receiver to be appointed to do so. City's consent shall not be required for any of the foregoing, and, upon acquisition of the interest in this Agreement or the License, as the case may be, by an Approved Successor, City shall recognize the Approved Successor as CES's or the Assignee's proper successor, and this Agreement and any such license shall remain in full force and effect. For purposes of this Agreement, "Approved Successor" means the party designated by a Mortgagee or other Interest Holder that acquires CES's interest under this Agreement and any such license, and which, together with its affiliates, upon its acquisition of the same (x) (A) controls and/or operates energy generation and/or storage assets with aggregate nameplate capacities of not less than one hundred (100) megawatts or (B) has engaged a third party operations and maintenance provider that, together with its affiliates, provides operations and maintenance services for energy generation and/or storage assets with aggregate nameplate capacities of not less than one hundred (100) megawatts, and (y) holds assets with a value of not less than Ten Million Dollars (\$10,000,000.00)..

(iv) Liability. If (i) a Mortgagee elects to perform CES's or an Assignee's obligations under this Agreement or the License, as the case may be, or (ii) a Mortgagee (through its designated Approved Successor) elects to (x) continue to use the Licensed Area, or (y) enter into a new Agreement or licenses as the case may be as provided in Section 26(a)(vi), then the Mortgagee shall not have any personal liability to City, and City's sole recourse against Mortgagee shall be to execute against such Mortgagee's interest in the Agreement or the License, as the case may be, including by terminating this Agreement in accordance with Section 25 above.

(v) Bankruptcy. Neither the bankruptcy nor the insolvency of CES shall be grounds for terminating this Agreement or the License so long as all payments and all



other monetary charges payable by CES under this Agreement, are paid by the trustee or receiver for CES or by the Mortgagee in accordance with the terms of this Agreement, and commercially reasonable efforts are being made to obtain CES's interest under this Agreement and, thereafter, to cure any of CES's nonmonetary defaults hereunder.

(vi) New Agreement. If this Agreement or the License or any interest therein, as the case may be, terminates for any reason, then, so long as an Interest Holder has cured any monetary default and paid the Acceleration Payments and is making commercially reasonable efforts to cure any non-monetary default, City shall, immediately upon written request from such Interest Holder received within ninety (90) days after the termination, rejection, or disaffirmance, without demanding additional consideration therefor, enter into a new Agreement or grant a new License as the case may be, in favor of such Interest Holder, which new Agreement or new License shall (i) contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by CES or an assignee prior to the termination, rejection, or disaffirmance), (ii) be for a term commencing on the date of the termination, rejection, or disaffirmance and continuing for the remaining portion of any Term of this Agreement, before giving effect to the termination, rejection, or disaffirmance, and (iii) enjoy the same priority as this Agreement and License have over any lien, encumbrance or other interest created by City, and, until such time as the new Agreement or License is executed and delivered such Interest Holder may enter, use and enjoy the Licensed Area as if this Agreement and the License were still in effect. At the option of the Interest Holder, the new Agreement may be executed by a designee of the Interest Holder, with the Interest Holder assuming the burdens and obligations of CES or an assignee thereunder. If more than one Interest Holder makes a written request for a new Agreement or License, as the case may be, under this section, then the new Agreement or License shall be delivered to the Interest Holder whose lien is senior in priority, and such Interest Holder shall grant to the other applicable Interest Holders rights substantially similar to their rights therein as their rights under this Agreement and the License.

## **O. NOTICES.**

29. Any notice required or permitted to be given hereunder by one Party to the other Party shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, (ii) by electronic mail or (iii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the Party to be notified at the address for such Party specified below, or to such other address as the Party to be notified may designate by giving the other Party no less than thirty (30) days' advance written notice of such change in address.

If to City:                      City of Commerce  
Ernie Hernandez, City Manager  
2535 Commerce Way  
Commerce, Ca. 90040

With a copy to:

Lena Shumway, City Clerk  
2535 Commerce Way  
Commerce, Ca. 90040

If to CES: Commerce Energy Storage, LLC  
2121 N. California Blvd., Suite 1000  
Walnut Creek, CA 94596  
Attn: Jonathan Hichborn  
Email: [jhichborn@revrenewables.com](mailto:jhichborn@revrenewables.com)  
Phone: (925) 201-5250

And to: Commerce Energy Storage, LLC  
212 Carnegie Center Drive, Suite 208  
Princeton, NJ 08540  
Attn: Legal Department  
Email: [legalnotices@revrenewables.com](mailto:legalnotices@revrenewables.com)

With a copy to (which shall not constitute notice):

Reed Smith LLP  
1901 Avenue of the Stars, Suite 700  
Los Angeles, CA 90067  
Attn: Stephane Nguyen  
Email: [snguyen@reedsmith.com](mailto:snguyen@reedsmith.com)

30. Neither termination nor expiration will release either Party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Facilities are removed and the Premises are restored to its condition as of the Effective Date.

**P. RECORDATION.**

31. CES shall prepare, subject to City's reasonable review and approval, and City shall subsequently record, a Memorandum of Amended and Restated Agreement with the Office of the Recorder of Los Angeles County.

**Q. APPLICABLE LAW.**

32. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the substantive laws of the State of California without regard to conflicts of law provisions. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. However, the Parties may agree to submit any dispute to non-binding arbitration.

**R. SEVERABILITY.**

33. To the maximum extent possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

**S. INTEGRATION.**

34. This Agreement and all applicable Approvals are the full and complete Agreement between City and CES with respect to all matters relating to CES's use of the Licensed Area, and supersedes any and all other agreements between the Parties relating to CES's use of the Licensed Area as described herein.

**T. NO DISCRIMINATION.**

35. CES herein covenants by and for itself, its successors, and assigns, and all persons claiming under or through it, and this Premises is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises herein Licensed. Nor shall CES, or any person claiming under or through Licensee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of CES, licensees, sub-licensees, or sublessees or vendees in the Premises herein Licensed.

**U. MODIFICATION.**

36. This License shall not be modified except by written amendment duly executed by the Parties.

**V. MISCELLANEOUS.**

37. The waiver by City of the breach of any provision herein by CES shall in no way impair the right of City to enforce that provision for any subsequent breach thereof.

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

IN WITNESS WHEREOF, this Agreement has been duly executed, in duplicate, by the Parties hereto as of the day and year first above written.

**COMMERCE ENERGY STORAGE, LLC**

By: Mark Strength

Name: Mark Strength

Title: SVP

Date: 07/29/2025

**CITY OF COMMERCE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: Noel Tapia

Title: City Attorney

Attest:

By: \_\_\_\_\_

Name: Lena Shumway

Title: City Clerk

**EXHIBIT “A-1”**

**LEGAL DESCRIPTION (PREMISES)**

*<See next page>*

Those portions of Garfield Avenue lying within a portion of Rancho San Antonio recorded in Book 1, Page 389 of Patents as shown on a map marked Exhibit "A", Map of East Laguna, and attached to Decree of Partitions in Los Angeles County Superior Court Case No. B-81961, as shown on Clerk's Filed Map 988, in the Office of the Recorder of the County of Los Angeles, in the County of Los Angeles, State of California. The 100.00 foot width of said Garfield Avenue being 50.00 feet as measured at right angles on each side of the centerline being more generally described as follows:

Parcel 1:

COMMENCING at the general centerline intersection of Garfield Avenue and Slauson Avenue; thence from said point of commencement along the general centerline of Garfield Avenue Southwesterly, 742.00 feet to a point designated herein as Point 'A'; thence continuing along said general centerline Southwesterly, 125.00 feet to a point designated herein as Point 'B'; thence continuing along said general centerline Southwesterly, 1275.00 feet to a point designated herein as Point 'C'; thence continuing along said general centerline Southwesterly, thence continuing along said general centerline Southwesterly 758.00 feet to a point designated herein as Point 'D'.

Parcel 2:


The Northwesterly 50.00 feet together with the Southeasterly 50.00 feet of said Garfield Avenue from the hereinabove described Point 'A' to the hereinabove described Point 'B'.

Parcel 3:

The Southeasterly 45.00 feet of the Northwesterly 50.00 feet of said Garfield Avenue from the hereinabove described Point 'B' to the hereinabove described Point 'D'.

Parcel 4:

The Northwesterly 5.00 of the Northwesterly 50.00 feet of said Garfield Avenue from the hereinabove described Point 'C' to the hereinabove described Point 'D'.

  
Adam R. Weirich, L9182

10.30.24  
Date





## **EXHIBIT "A-2"**

### **PLOT PLAN (PREMISES)**

Premises include three connected areas as shown below:

- Blue (Parcel 2): Curb to curb on Garfield Avenue adjacent to a portion of the Project site (approx. 100' wide x 125' long)
- Green (Parcel 3): Centerline to west curb extending from Blue section south to Laguna Bell Substation (approx. 45' wide x 2033' long)
- Red (Parcel 4): Westerly boundary of City property/right of way to curb on west side of Garfield Avenue (approx. 5' wide x 758' long)

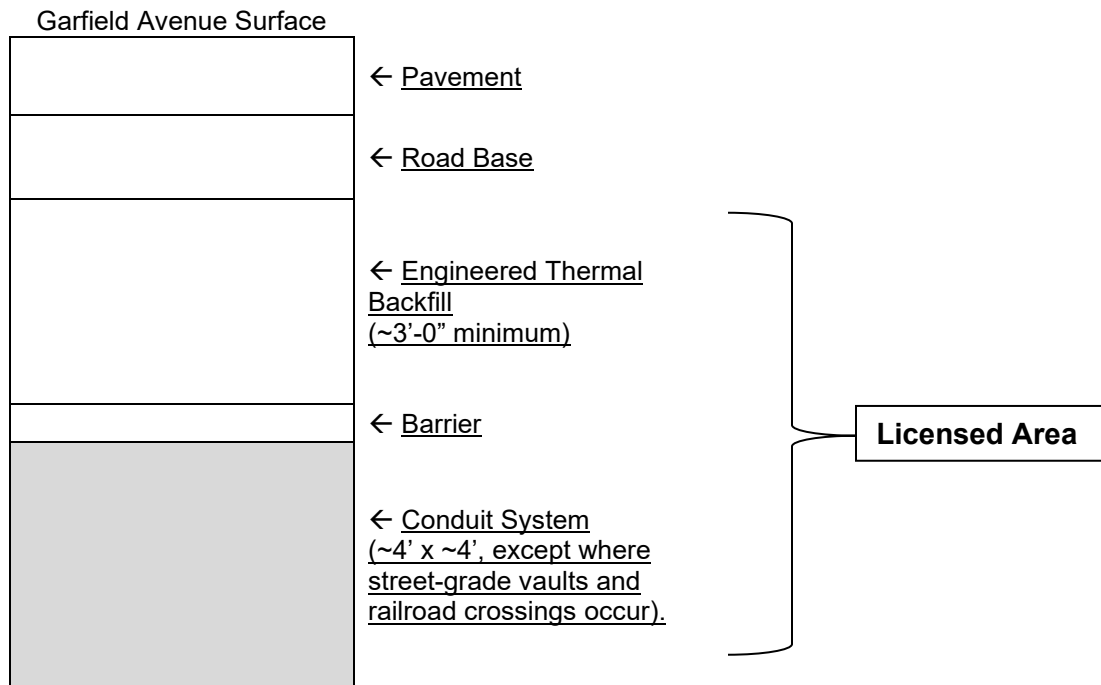


## EXHIBIT “B”

### PRELIMINARY DESCRIPTION OF LICENSED AREA

Note: This is a preliminary description of the Licensed Area. A final description of the Licensed Area will be attached hereto as Exhibit “B” after delivery of As Built Survey as provided in Section 18(c) based on actual location of the Facilities shown therein within the Premises.

The Licensed Area is planned to be a nominally 7' x 4' subsurface area as shown below within the Premises at varying depths, except where street-grade vaults occur (approximately one 11' 4" x 27' 4" x 9' 4" vault is anticipated), extending a linear distance of approximately 2,100 feet from the Project site to the SCE Laguna Bell substation.



# RevRenewables - Commerce - AR License Agreement with the City of Commerce (compiled execution version)

Final Audit Report

2025-07-29

Created:	2025-07-29
By:	Jessica Reid (JReid@revrenewables.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAALevgPdxqXfSuquSScezCMstrmdtTfGIP

## "RevRenewables - Commerce - AR License Agreement with the City of Commerce (compiled execution version)" History



Document created by Jessica Reid (JReid@revrenewables.com)

2025-07-29 - 5:46:05 PM GMT



Document emailed to Mark Strength (mstrength@revrenewables.com) for signature

2025-07-29 - 5:46:12 PM GMT



Email viewed by Mark Strength (mstrength@revrenewables.com)

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Document e-signed by Mark Strength (mstrength@revrenewables.com)

Signature Date: 2025-07-29 - 6:15:51 PM GMT - Time Source: server



Agreement completed.

2025-07-29 - 6:15:51 PM GMT



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