

NOVEMBER 3, 2022

SPECIAL SESSION

PULASKI COUNTY COMMISSIONERS

The Pulaski County Commissioners met for a special session on November 3, 2022 at 9:00am EST at the Pulaski County Highway Garage conference room pursuant to Ind. Code 36-2-2-8. Commissioners present were Charles Mellon, Maurice Loehmer, Michael McClure with County Auditor Laura Wheeler and County Attorney Kevin Tankersley.

Also present were Jeff Richwine, Nathan Origer, Joe Moyer, Karla Redweik, Ed Cotner, Megan Galbreath, Gayle Lambert, Larry Lambert, Connie Ehrlich, Jenny Keller, Terry Young, Todd Schmicker, Gary Kruger, Tom Murray, Darrin Jacobs, Keith Davis, Chris Shelmon, Mitch Columbe, and Chris Schramm.

The Special Session was called by the President of the County Executive to consider the Road Use Agreement and Decommissioning Agreement with Mammoth Solar, and to approve or disapprove said agreements depending on the vote of the board.

President Mellon opened the meeting with the Pledge of Allegiance.

County Attorney Tankersley explained the separation of the Road Use and Maintenance Agreement and Drainage Agreement and stated that the Road Use Agreement (RUMA) is the same as previously approved with minimal changes with the revised agreement circulated to Commissioners and Highway at least two days ago. Tankersley also claims all relative parties (Drainage Board attorney, County Surveyor and Highway Superintendent) were involved in developing the agreement according to the UDO.

Charles Mellon made such motion to revoke the previously approved "Road Use and Maintenance/Drainage Agreement", Michael McClure seconded. Motion passed with Maurice Loehmer recusing himself.

The new "Agreement for Use, Repair, and Improvement of Roads" presented for approval and reads as follows:

AGREEMENT FOR USE, REPAIR, AND IMPROVEMENT OF ROADS

THIS AGREEMENT FOR USE, REPAIR, AND IMPROVEMENT OF ROADS ("**Agreement**") is made and entered into this 3rd day of November, 2022 by and between PULASKI COUNTY, INDIANA ("**County**"), acting by and through its Board of Commissioners, and Mammoth Central, LLC and Mammoth South, LLC a Delaware limited liability companies (collectively "**Developer**"), the County and Developer being referred to herein, collectively, as the "**Parties**" and, individually, as a "**Party**"; (Mammoth Central LLC, and Mammoth South LLC are new Limited Liability Companies set up for organizational purposes and they assume all the previous obligations agreed to by Starke Solar LLC, under the applications and agreements previously reached with the County regarding this commercial solar development).

WITNESSETH:

- A. WHEREAS, Developer intends to develop, construct, and operate solar-powered electric generating facilities in Pulaski County, Indiana, consisting of photovoltaic panels, inverters, underground electrical systems, communications system, transmission lines, substations, switchyards, meteorological stations, operation and maintenance facilities, access roads, lay-down and staging yards, and related facilities totaling approximately 900 MWac of generating capacity (the "**Project**"); (this amount subject to change by agreement of the parties) and
- B. WHEREAS, in connection with the development, construction, operation, or maintenance of the Project, it may be necessary for Developer and its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns (Developer and, while in the performance of work for Developer, such other persons, collectively, the "**Developer Parties**") to: (i) transport heavy and/or oversized equipment and materials over designated haul routes on roads located in the County, which may in certain cases be in excess of the design limits of such roads; (ii) transport certain (locally sourced if available and at competitive pricing, defined hereafter as "**locally sourced**") materials, such as concrete and gravel, on such roads; (iii) temporarily widen such roads and make certain modifications and improvements (both temporary and permanent) to such roads (including to certain culverts, bridges, road shoulders, crest corrections, and other related fixtures) to permit such equipment and materials to pass; and (iv) place certain electrical and/or communication cables for the Project over, along, adjacent to or under certain roads for the purposes of carrying electrical current to, from, between and among various parts of the Project; and
- C. WHEREAS, Developer acknowledges that it may not conduct the above activities without the express consent and permission of the County, which has exclusive authority and control over County roads, bridges, culverts, and other County property; and
- D. WHEREAS, the County will permit the Developer Parties to perform the above activities in connection with the Project on County roads, culverts, bridges, and to intersect or pass over or through said County drains associated with those improvements, pursuant to the terms and conditions as set forth in this Agreement.
- E. WHEREAS, all submittals as provided for herein shall be made prior to commencement of the construction of the project;

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

**ARTICLE I
APPLICABILITY OF AGREEMENT; ESTABLISHMENT OF PRE-CONSTRUCTION
CONDITIONS**

Section 1.1 Roadway Conditions. With respect to any County road that is identified on Appendix A, (together with appurtenant bridges, culverts, road shoulders, intersections, and all other County-owned or controlled property, each a "Designated Road" and, collectively, the "Designated Roads"), Developer will, at its expense, hire an independent third-party professional camera crew and videographer (who need not be engineers) to create a detailed video record and textual narrative of the pre-existing condition of such Designated Road (the "Road Condition Report"). Developer shall deliver the Road Condition Report to the County prior to the earlier of

(i) Developer's commencement of any improvement to such Designated Road, and (ii) any use by a Developer Party of such Designated Road for the operation of a motor vehicle or other equipment weighing more than one (1) ton related to construction mobilization. The Pulaski County Highway Superintendent ("Highway Superintendent") or his designee may participate reasonably in production of Road Condition Report; provided, that such participation shall not unreasonably delay the production of the Road Condition Report. The Highway Superintendent shall have twenty (20) days after such delivery to review the Road Condition Report. The Highway Superintendent shall be deemed to have accepted the Road Condition Report except to the extent that, and only with respect to specifically stated objections on particular Designated Roads as to which, the Highway Superintendent determines that the Road Condition Report is not a complete and accurate depiction of the pre-existing condition of the Designated Roads. If the Highway Superintendent makes such a determination, the Highway Superintendent shall, within such twenty (20) day period, provide Developer in writing its specific objections to portions of the Road Condition Report detailing such determination, whereupon Developer may provide reasonable further documentation of the condition of the Designated Roads. If Developer disagrees with the Highway Superintendent's determination, the Parties shall promptly meet to confer and attempt to reach agreement; provided further, that failure of Developer and the Highway Superintendent to reach agreement with respect to the condition of the portion of the Designated Roads to which the Highway Superintendent has specifically objected shall not prevent Developer from using other Designated Roads or portions thereof for which the Road Condition Report has been accepted by the Highway Superintendent or delay the County's or the Highway Superintendent's granting of any further permits, authorizations, or consents, except to the extent that construction of the Project would produce an immediate, material and adverse effect on any portions of the Designated Roads for which the Road Condition Report has not been accepted by the Highway Superintendent. If the Highway Superintendent does not give written notice of any objection to the completeness and accuracy of the Road Condition Report within such twenty (20) day period, the Road Condition

Report shall be deemed accepted by the Highway Superintendent.

Section 1.2 [Intentionally Omitted].

Section 1.3 County Use of Drain Location Map. This Agreement incorporates the Drain Location Map to be produced in the Agreement for Use and Repair of Drainage Facilities (the map "Drain Location Map") (the agreement "Drainage Agreement"), and may be used as required for crossings and use that cover or affect both roads and drainage. Developer shall not warrant the accuracy or completeness of the Drain Location Map. The County shall not use the Drain Location Map as an official County document or otherwise rely on the Drain Location Map, except with respect to this Agreement, and is responsible for confirming all information on the Drain Location Map.

Section 1.4 County Approval of Site Plan. The Project crossings identified on the Drain Location Map of regulated drains shall be subject to the reasonable approval of the County with respect to the proximity of Project infrastructure to County open drains and subsurface drain tiles to the extent they relate to Designated Roads.

**ARTICLE II
USE OF DESIGNATED ROADS BY DEVELOPER**

Section 2.1 Use of Designated Roads by Developer. In connection with the development, construction, operation, and maintenance of the Project, the County hereby acknowledges and agrees that the Developer Parties may use the Designated Roads at any time, seven (7) days a week, 365 days a year, beginning upon the Commencement of Construction (as defined in Section 2.2) and for the duration of the development, construction, operation, and maintenance of the Project. Such use may include the movement and transportation of overweight and oversized vehicles, equipment, loads, and other necessary equipment and materials to and from the Project. No separate permit from the County for use of the Designated Roads by overweight or over-size vehicles listed on Appendix A shall be required. In addition to identifying the Designated Roads, Appendix A identifies the routes, driveways and road entrances over the Designated Roads that will be used for: (i) transportation and delivery of solar generation equipment and components and other materials and equipment to be used in connection with the Project; (ii) truck transportation leaving the Project site following delivery of equipment and materials; and (iii) transportation and delivery of locally sourced materials, including concrete and gravel. If Developer desires to include additional roads or portions thereof as Designated Roads, Developer shall (i) submit an updated version of Appendix A to the County that includes such additional roads; and (ii) to the extent appropriate, revise or supplement (A) the Road Condition Report in order to report on the pre-existing conditions of such additional roads or portions thereof as required by Section 1.1, (such updated Appendix A and any such supplemental report being an "Appendix A Update"). With respect to any change to Appendix A or the Road Condition Report, the Highway Superintendent shall have twenty (20) days after such delivery to review the Appendix A Update. The Highway Superintendent shall approve the Appendix A Update except to the extent that, and only with respect to particular Designated Roads as to which, the Highway Superintendent determines that the Appendix A Update proposes a usage of such Designated Roads that would differ substantially and materially from usage already approved by the County as provided under the (as provided for the original report, in Section 1.1). If the Highway Superintendent makes such a determination, the Highway Superintendent shall, within such twenty (20) day period (with respect to any change to Appendix A or the Road Condition Report) provide Developer with written objection to the Appendix A Update detailing such determination, whereupon Developer may provide reasonable further documentation in support of the Appendix A Update. If Developer disagrees with the Highway Superintendent's determination, the Parties shall promptly meet to confer and attempt to reach agreement; provided, that failure to reach agreement shall not prevent Developer from conducting any Project construction activity or using Designated Roads located in areas depicted on the portion of the Drain Location Map which the Drainage Board has determined is complete and accurate and for which the Highway Supervisor has approved a Road Condition Report, and or delay the County's or the Drainage Board's granting of any further permits, authorizations, or consents with respect to areas depicted on the portion of the Drain Location Map which the Drainage Board has determined is complete and accurate and Designated Roads for which the Highway Supervisor has approved a Road Condition Report. If the Highway Superintendent does not give written notice of any objection to the completeness and accuracy of the Appendix A within (20) twenty days, the Appendix A Update shall be deemed accepted by the Highway Superintendent. The County hereby provides an exemption for any County Ordinance or Law regarding construction of the Project.

Section 2.2 Construction Period Meetings. Beginning prior to commencement of construction of the Project, and once a every other week thereafter, unless agreed to otherwise, and any other time upon the reasonable request of a Party, Developer and a representative from the County (a "Designee") shall meet (via teleconference if necessary) to discuss the expected use of the Designated Roads, including the construction schedule and the haul routes to be used. The Designee shall have authority to act on behalf of the County. To the extent necessary, the Designee and Developer may invite certain landowners to attend the meetings if their property is near or adjacent to the areas of use. Within ten (10) days after the execution of this Agreement by the Parties, the County shall provide the name and contact information for its Designee. For purposes of this Section 2.2, Commencement of Construction of the Project shall mean commencement of construction of access roads, solar generation facilities, and associated facilities on the Project Site and shall not include testing and surveying (including geotechnical drilling and meteorological testing) by Developer to determine the adequacy of the Project Site for construction.

**ARTICLE III
SAFETY RESPONSIBILITIES; ROAD CLOSURES**

Section 3.1 Speed Limits. All vehicles driven by the Developer Parties shall abide by all local, state, and federal speed limits as posted or, if not posted, as otherwise applicable.

Section 3.2 Signage. During construction of the Project, Developer shall be responsible for placing and maintaining signage in compliance with applicable provisions of the then-current Indiana Manual on Uniform Traffic Control Devices.

Section 3.3 Notice to School Corporations and Emergency Agencies. Developer shall provide to the Winamac, Star City, Buffalo/Liberty Township, and Salem Fire Departments, and North Judson/Wayne Township Fire Department, Pulaski County Sheriff's Office, Pulaski County EMA, Pulaski County Surveyor's Office, Pulaski County Highway Department Highway Superintendent, Pulaski County Building Inspector, Eastern Pulaski School Corporation, West Central School Corporation, North Judson-San Pierre School Corporation, Pulaski County Community Development Commission and any other agency or office reasonably designated by the County, (i) notice of Designated Road closures (including time and expected duration) by e-mail if notice is required to be given to the Highway Superintendent as provided in Section 3.4, and (ii) current maps of the Designated Roads.

Section 3.4 Transportation Coordinator: Notice of Road Closures. Developer shall monitor the Designated Roads for damage, appropriateness of signage, and other safety issues. Developer shall designate a person to coordinate the transportation-related activities of the Developer Parties during construction of the Project (the "Transportation Coordinator"). In the event that Developer plans a proposed road closure or limited access to a Designated Road or right-of-way that is anticipated to exceed fifteen (15) minutes or may affect public safety or convenience, the Transportation Coordinator shall notify the Highway Superintendent at least forty-eight (48) hours prior thereto. If, within eight (8) business hours after receipt of such notice, the County objects to such closure or limited access on grounds public safety or substantial public inconvenience, the Parties shall cooperate reasonably to find an alternative to the planned closure or limited access or otherwise minimize disruption to County road traffic and Developer's construction activities and schedule. If the County does not so object within such time, the County shall be deemed to have no objection to such planned closure. In the event that the County plans a proposed road closure or limited access to a County road or right-of-way that could be reasonably anticipated to affect construction, maintenance, and operations activities related to the Project, the County shall notify Developer at least forty-eight (48) hours prior thereto. For purposes of this Section 3.4, an e-mail shall suffice as written notice if properly addressed (directed to an e-mail address, provided for such purpose by the Party receiving notice).

Section 3.5 Use of Designated Roads and Non-Designated Roads. Vehicles used by Developer Parties during and after construction mobilization weighing more than one (1) ton shall travel only on the Designated Roads identified on attached Appendix A unless express written authorization for limited one-time access. In the event any such vehicles are used by Developer Parties on any County non-Designated Roads, then Developer (a) said road shall be deemed added to Appendix A and Developer shall increase the bond to cover the additional road length if the non-Designated Road utilized was covered in the Road Condition Report, or (b) Developer shall be strictly liable for damage and, after the third occurrence, shall be subject to the fines set forth in Section 8.2.

Section 3.6 Dust Control. During the entire construction of the Project, Developer shall as needed use a commercially recognized dust palliative to control airborne dust created or contributed to by the Developer Parties on gravel Designated Roads, after Developer completes the improvements and modifications required under Article IV herein but prior to any traffic used for construction, operation and maintenance of the Project as permitted herein. Watering alone may be considered a sufficient dust control measure unless the Highway Superintendent or his designee provides a written request for additional dust control measures at a particular location, in which case a satisfactory alternative means will be utilized or applied at an agreed upon date as soon as practical.

**ARTICLE IV
IMPROVEMENT AND MODIFICATIONS TO DESIGNATED ROADS**

Section 4.1 Improvements and Modifications to Designated Roads. Prior to Developer's use of a Designated Road as permitted in Article II herein, Developer shall complete, and the County hereby acknowledges and agrees and consents to Developer's completion of, such temporary modifications and permanent improvements to such Designated Road as are reasonably necessary to accommodate the then-anticipated use of such Designated Road by the Developer Parties. Such temporary modifications and permanent improvements may include the widening of certain roads, the strengthening and/or spanning of existing culverts and bridges, and other improvements and modifications reasonably necessary to accommodate the heavy equipment and materials to be transported on the Designated Roads.

Section 4.2 Compliance with Standards and Designs. Developer agrees that all necessary modifications and improvements to Designated Roads, including any temporary turning radius, corner or intersection wide-out, intersection or corner improvement, or driveway or entrance onto a Designated Road, shall comply with all applicable engineering standards and stamped engineering drawings that are submitted by Developer to the County prior to the commencement of the modifications and improvements. Developer may install driveways and entrances for ingress and egress to and from Designated Roads at locations shown on attached Appendix C, at Developer's cost. If Developer desires to update Appendix C, Developer shall (i) submit an updated version of Appendix C to the County. With respect to any change to Appendix C, the Highway Superintendent shall have twenty (20) days, and with respect to any revised or supplemented Drain Location Map. The Highway Superintendent shall approve the Appendix C Update except to the extent that the Highway Superintendent determines that the Appendix C Update proposes an Installation that would differ substantially and materially from the Installation already approved by the County. If the Highway Superintendent makes such a determination, the Highway Superintendent shall, within such twenty (20) day period (with respect to any change to Appendix C), provide Developer with written objection to the Appendix C Update detailing such determination, whereupon Developer may provide reasonable further documentation in support of the Appendix C Update. If Developer disagrees with the Highway Superintendent's the

Parties shall promptly meet to confer and attempt to reach agreement; provided, that failure to reach agreement shall not prevent Developer from conducting Project construction activities or using Designated Roads that are not affected by the Highway Superintendent's determinations, or delay the County or the Highway Superintendent's granting of any further permits, authorizations, or consents with respect to Project construction activities in areas which are not described in the Highway Superintendent's. If the Highway Superintendent does not give written notice of any objection to the Appendix C Update within the applicable time period, the Appendix C Update shall be deemed accepted by the Highway Superintendent.

Section 4.3 Removal of Temporary Improvements. Upon completion of the portion of the Project requiring any temporary modifications, all such temporary modifications shall be removed by Developer. However, upon written request from the County prior to removal, any such temporary modifications may permanently remain as property of the County, or as a part of a county right-of-way, to the extent that such improvements are not intended to be used by Developer elsewhere within the Project, and so designated by Developer.

Section 4.4 Collection System Cabling, Communication Cabling and Overhead Transmission Line. The County acknowledges that Developer intends to install certain (i) wires, cables, conduits, and/or lines (and their associated equipment) related to the transmission of electricity at a voltage of up to 345 kV from the Project ("Collection System"), (ii) communication wires, cables, and/or lines relating to the Project ("Communication Cabling"), and (iii) overhead wires, cables, conduits, and/or lines, foundations, poles, guy wires, and cross arms; and their associated equipment related to the transmission of electricity at a voltage of up to 345 kV from the Project ("Overhead Transmission Line") (collectively, the "Installation") and may desire to (i) route portions of the Collection System and Communication Cabling below ground, either by boring or by cutting a trench at locations adjacent to, along, above, or under (including across) the Designated Roads or under (including attached to or suspended from) bridges on Designated Roads (such locations being identified on Appendix B), or over (including across) the Designated Roads or across (including attached to or suspended from) bridges on Designated Roads (such locations being identified on Appendix B). The Developer shall comply with the Pulaski County "Road Cut Ordinance" number 05-2010 in the following limited manner: Developer shall first explore all options for boring under existing paved roadways, which includes asphalt roads, chip and seal roads, or concrete roads. If the Developer determines that boring is highly impractical in any given circumstance, they will contact the Highway Superintendent to discuss boring versus road cutting options. The Highway Superintendent must approve any road cutting, said approval not to be unreasonably withheld, and any disputes to be resolved by the Pulaski County Board of Commissioners. This provision shall supersede the current Pulaski County Ordinance 05-2010 regarding the cutting of public roadways. In connection with the Installation, the County hereby grants to Developer all such authorizations and approvals from the County as are necessary to complete the Installation, subject only to i) Developer's obtaining such private land rights as are necessary to permit Developer to complete the Installation and make the modifications and improvements to the Designated Roads contemplated by this Agreement, including obtaining all necessary land rights from private landowners adjacent to the Designated Roads and ii) compliance with the County's Road Cut Ordinance. The Installation across Designated Roads shall be completed through trenching and not through plowing. Each trench cut across and along a County road shall be backfilled, compacted, and otherwise repaired as reasonably required to restore the County road to its structural condition prior to such cut. If Developer desires to update Appendix B, Developer shall submit an updated version of Appendix B to the County. With respect to any change to Appendix B, the Highway Superintendent shall have twenty (20) days, and with respect to any revised or supplemented Drain Location Map. The Highway Superintendent shall approve the Appendix B update except to the extent that the Highway Superintendent determines that the Appendix B update proposes an Installation that would differ substantially and materially from the Installation already approved by the County. If the Highway Superintendent, the Highway Superintendent shall, within such twenty (20) day period (with respect to any change to Appendix C) provide Developer with written objection to the Appendix B Update detailing such determination, whereupon Developer may provide reasonable further documentation in support of the Appendix B Update. If Developer disagrees with the Highway Superintendent's determination, the Parties shall promptly meet to confer and attempt to reach agreement; provided, that failure to reach agreement shall not prevent Developer from conducting Project construction activities or using Designated Roads that are not affected by the Highway Superintendent's determinations, or delay the County or the Highway Superintendent's granting of any further permits, authorizations, or consents with respect to Project construction activities in areas which are not described in the Highway

Superintendent's objections. If the Highway Superintendent does not give written notice of any objection to the Appendix B update within the applicable time period, the Appendix B update shall be deemed accepted by the Highway Superintendent. However, notwithstanding any provision herein to the contrary, Developer and the Developer Parties shall not install any of its Collection System or Communication Cabling less than five feet (5') directly under any open County regulated drain or one foot (1') directly under any County regulated tile drain related to a Designated Road.

ARTICLE V ROAD AND DRAIN REPAIR

Section 5.1 Developer's Obligation to Repair County Roads. If any County road or related appurtenances, including bridges, culverts, signage, or other road fixtures, or any County-owned drainage tile or open ditch (associated or related to a such roads and related appurtenances), is damaged by the Developer Parties, County (at the expense of Developer) shall repair (or cause to be repaired) such damage and, as near as is reasonably possible, restore the damaged road or other property to the condition it was in prior to such damage, including any improvements required by this Agreement. With respect to damage to a County road or related appurtenance, the Parties shall rely upon the Road Condition Rep01t to determine whether the repair has been performed in accordance with the standard set forth in this Section 5.1. Subject to considerations of safety, the presence of emergency conditions, and the costs of such repairs, any repair and restoration shall commence and be completed as soon as reasonably feasible by the County. Following completion of such repair, the Highway Superintendent and Developer shall jointly inspect the repair to confirm that it has been completed satisfactorily. The County understands and agrees that Developer is not responsible for any damage to County roads, County-owned drainage tile, or related appurtenances that is not caused by a Developer Party. For purposes of this Section 5.1, damage to any County-owned drainage tile or open ditch may also include damages occurring within the County's seventy-five (75) foot maintenance right-of-way under LC. § 36-9-27-33, if such damage either denies, impedes, or affects the County's ability to exercise drain maintenance within its right-of-way and results in additional costs to the County.

Section 5.2 County's Obligation to Repair Drains and Structures. No later than sixty (60) days prior to the initiation of construction (based on the final Appendix A and upon written notice from Developer of the anticipated start of construction), An "Independent Engineer" will be retained by the County at the Developer's expense. The Independent Engineer retained by the county with the assistance of the Highway Superintendent and County Surveyor or their designees will create a list of drains, tiles, culverts, and structures that are of questionable structural integrity necessary to sustain the increased volume of vehicles anticipated by the project within the County road right-of-way. The Developer, Independent Engineer, Highway Superintendent, and County Surveyor shall agree on what repairs or full replacements are necessary to ensure safe use of the roadways. These drains, tiles culverts, and structures with the estimated costs of repair or replacement and a reasonable allocation of the estimated costs

NOVEMBER 3, 2022 PULASKI COUNTY COMMISSIONERS SPECIAL SESSION (continued)

between the County and Developer based on the existing condition and the anticipated use, will be put into a list called the "Drain Tile and Culvert Payment Agreement" and will be Appendix "F" to this agreement. Any disputes shall be construed in a light most favorable to the County and the "Independent Engineer" shall have the final decision. The County shall repair, or cause to be repaired all of the items on Appendix "F" with the following general guidelines:

a. County Tile Drains: Any drain tile to be replaced shall be the length of such drain within the County road right-of-way, of existing size, with virgin HDPE dual-wall tile, I

b. Culverts and Structures: All County culverts and structures to be replaced will comply as follows: Ten (10) gauge corrugated pipe shall be used for all culverts and purchased from either the County or a vendor designated by the County.

Based on a list of repairs, tiles, culverts and structures needing attention to be agreed upon by both parties, Developer will reimburse the County for the work described in this Section 5.2 no later than forty-five (45) days after completion of this work, pursuant to the Drain Tile and Culvert Payment Schedule in Appendix F attached hereto.

The County shall provide a name and budget for the Independent Engineer for the reasonable approval of the Project. Project shall pay the reasonable cost of the Independent Engineer when work is completed pursuant to Appendix F attached hereto.

Section 5.3 All Necessary Repairs. The County will have the right to do all the necessary repairs or improvements contemplated by this agreement. If the County is unable to complete the work due to time constraints, manpower, or material shortages, or any other reason, the Highway Superintendent may request in writing that Developer perform such repair. If Developer fails to commence such repairs within thirty (30) days (subject to weather and the availability of materials) or as soon as feasible and thereafter to maintain reasonable progress in the performance of such repairs, then the County may hire a third-party contractor to complete repairs and shall invoice Developer for costs incurred in connection with the repair. To the extent that the County makes such repairs itself (rather than engaging an outside contractor to do so), then notwithstanding anything to the contrary in this Agreement, the reimbursement of costs may include allocable, direct internal labor costs (not administrative personnel or expenses) and reimbursement for usage of powered equipment (based on commercially reasonable equipment rental rates). Developer shall pay such invoiced amounts within forty-five (45) days following receipt of the invoice.

**ARTICLE VI
FINAL REPAIR APPROVAL**

Section 6.1 Approval of the Final Road Condition. The condition of a Designated Road shall be subject to the approval by the Highway Superintendent, but only to the extent that such repair work is not performed by the County Highway Department. If the Highway Superintendent does not give written notice to Developer detailing any objections to the condition of such Designated Road within three (3) business days after notification by Developer that such Designated Road has been repaired in final form, the condition of such Designated Road shall be deemed acceptable by the Highway Superintendent. If the Highway Superintendent objects in writing as designated the Developer will re-repair the portion of the designated road that was unsatisfactory.

Section 6.2. [Intentionally Omitted].

Section 6.3 [Intentionally Omitted].

ARTICLE VII PERFORMANCE ASSURANCE

Section 7.1 Performance Assurance. Developer shall post reasonable assurance of performance in the amount described in Section 7.4 (the "Performance Assurance") no later than the date on which Developer issues to its contractor an unlimited notice to proceed with commencement of improvements and modifications to Designated Roads pursuant to Article IV herein. The Performance Assurance shall be made payable to the County and shall be posted in the form of a surety bond in the amount equal to the following formula: Three Hundred Thirty Thousand Dollars (\$330,000.00) for every mile of hot mix asphalt; One Hundred Fifteen Thousand Dollars (\$115,000.00) for every mile of chip and seal road; and Forty-Five Thousand Dollars (\$45,000.00) for every mile of gravel/stone road being utilized on Exhibit "A" issued by a corporation licensed to do business in Indiana and approved by the County, or cash deposit of equal value which Performance Assurance shall remain in full force and effect during Developer's construction of the Project and continuing in full force and effect for one (1) year after the final completion of construction of the Project, provided Developer has performed all repair obligations pursuant to this Agreement. The Performance Assurance is intended to provide the County with assurance that it will be paid by Developer for its obligations under this Agreement, but shall not in any way limit the amount of Developer's obligations or liability under this Agreement. Developer may utilize the same Performance Assurance for this Agreement and the Drainage Agreement, provided that the amount of such Performance Assurance is equal to or greater than the amounts required in the aggregate for each agreement.

Section 7.2 Cash Deposit. If the Performance Assurance is in the form of a cash deposit, it shall be held in an interest-bearing escrow account at a mutually acceptable financial institution, with any interest earned thereon payable to Developer at reasonable times and intervals.

Section 7.3 Draw on Performance Assurance. The County may draw upon the Performance Assurance only if and to the extent that Developer fails or refuses to perform repairs or to pay the cost of performing repairs under Article V of this Agreement after notice and failure to cure within 60 days. Draw conditions for the Performance Assurance shall include the following: The Highway Superintendent, a member of the County's Board of Commissioners, or a member of the County Council shall certify that all draw conditions, which shall include the following, have been met: (i) that the Highway Superintendent has complied with the requirements of Section 5.3, (ii) that Developer has failed or refused to perform repairs or to pay the cost of performing repairs under Article V of this Agreement, (iii) that the County has performed such work (or had such work performed for it), (iv) that the County has incurred expenses for the performance of such work, and (v) that the County has evidenced to Developer the amount of such expenses. If the County draws upon the Performance Assurance, the Highway Superintendent shall provide a full accounting of the amount of the draw(s) and costs of repair to Developer.

Section 7.4 Amount of Performance Assurance. The Performance Assurance provided in may be decreased as mutually agreeable to the parties on or after the date that is sixty (60) days after the Final Delivery Date (the date on which all solar and substation components, not including replacement components or spare parts,) have been delivered to the installation sites; provided, that Developer has performed all of its then existing repair obligations hereunder. If, within seven (7) days after its receipt of such notice from Developer, the County sends written notification to Developer that there is then-existing damage to a County road and/or drain that Developer is required by this Agreement to repair, the Performance Assurance may not be decreased until Developer has completed such remaining repair obligations. Upon such a change in the amount of the Performance Assurance, and upon expiration of the requirement for Performance Assurance one (1) year after final completion of construction of the Project, (i) any previous Performance Assurance shall be extinguished and of no further effect, and (ii) the County shall return to Developer any original instrument evidencing such previous Performance Assurance.

ARTICLE VIII FINES

Section 8.1 Imposition of Fines. Upon written notice to Developer (given by e-mail directed to an e-mail address provided by Developer for such purpose) of Developer's non-compliance with certain provisions of this Agreement and Developer's failure or refusal to abate, correct, or otherwise remedy such non-compliance, the County may impose a fine upon Developer, as indicated in Sections 8.2 and 8.3 below. Fines are imposed for each day of the same incident of non-compliance after expiration of the applicable notice/cure period.

Section 8.2 Amount of Fines; Notice and Cure. Provisions the non-compliance with which shall subject Developer to fines, the amount of such fines, applicable notice/cure requirements, and other relevant conditions shall be as follows:

Section 3.2	Amount	Notice/Cure Period
(signage)	\$500	24 hours for non-custom, non-specialty signs; 72 hours for custom or specialty signs. Provided, that to the extent that permanent sign is not available through the use of reasonable diligence, temporary signs are permissible effective in avoidance of any fine that might otherwise assessed
Section 3.5	\$1,000	No cure period. Fine applies to any use by Developer of a non-Designated Road, per vehicle (over one (1) ton), per trip, per mile or portion thereof, subject to the provisions of Section 3.5.
Section 3.6 b	\$500	For each 24 hours period of non-compliance after notice of deficiency
Article V	\$1,000	Reasonable notice under the circumstances, taking into account, among other factors, safety concerns, weather conditions, and nature of the repairs, but in any case, no less than thirty (30) days' notice.
Section 8.3		Payment of Fines. Developer shall pay all fines to the County within thirty (30) days of receipt of proper notice of a fine.

ARTICLE IX INDEPENDENT ENGINEER

The County may retain the "Independent Engineer" set forth in Section 5.2 at the developer's expense during construction of the Project. The Independent Engineer shall inspect Developer's repairs to Affected Drains and provide written acknowledgement that such repairs appear to have been made in accordance with this Agreement, where such is the case or, where such is not the case, so inform Developer and the Pulaski County Surveyor and act as liaison between Developer and the Pulaski County Surveyor in order to see that such repairs are brought into compliance with this Agreement, to the extent that such repairs were performed by Developer. The Independent Engineer shall inform Developer of any damage noted by the Independent Engineer in the performance of the Independent Engineer's duties. Developer shall reimburse the County for expenses that the County incurs which are related to retention of the Independent Engineer to perform such duties.

ARTICLE X WARRANTY

All materials supplied and workmanship performed by Developer Parties in the performance of Developer's obligations required under this Agreement shall meet the compliance standards set forth in Section 4.2 of this Agreement and be free from defects for a period of two (2) years after the completion of such work. THE WARRANTIES SET FORTH IN THE FOREGOING SENTENCE ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED BY Developer UNDER OR IN CONNECTION WITH THIS AGREEMENT, AND Developer DISCLAIMS ANY AND ALL OTHER IMPLIED OR STATUTORY WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE XI INDEMNITY

Developer shall indemnify, defend, and hold the County harmless for any and all claims, demands, suits, actions, proceedings, or causes of actions brought against County, its officers, Board of Commissioners, affiliates, agents, and employees and permitted assignees of any of the foregoing for any judgments, liabilities, obligations, fines, penalties, or expenses, including reasonable attorneys' fees and expenditures ("Losses"), including for personal injury or damage to third persons or property, but only to the extent that such Losses arise directly from or in the course of performance by Developer under or in relation to or connection with this Agreement.

ARTICLE XII UNIFIED DEVELOPMENT ORDINANCE; OTHER PERMITS

Section 12.1 Unified Development Ordinance. Developer acknowledges that the Project is subject to the provisions of the Pulaski County Unified Development Ordinance (hereinafter referred to as "Zoning Ordinance") and Developer will comply with the Zoning Ordinance, including procuring a Building Permit from the County prior to commencement of construction of the Project and formulating a decommissioning plan.

Section 12.2 Other Permits. The County hereby permits, authorizes, and consents to the Installation and to Developer's use, maintenance, and upgrading of the Designated Roads, as described in this Agreement and Appendices A through C, and Appendix D when completed. Except for the following permits, the County acknowledges and affirms that, as of the date of the Agreement, the County requires no further licenses, permits, or approvals issued or granted by the County for the Installation, or for such use, maintenance, and upgrading, of the Designated Roads, or for the construction, operation, and maintenance of the Project:

- a. Building Permit issued pursuant to the Zoning Ordinance's Solar Energy Conversion Systems Siting Regulations.
- b. Any drainage permits issued by the Drainage Board related to relocation of regulated drain, if requested.

Applications for all County permits not granted by this Agreement shall be subject to the County's customary review and permitting processes, if any, pursuant to statutory and regulatory authority, and in any case, processes applied consistently and in a fashion that treats Developer in a manner similar to other industrial users of County roads under similar circumstances.

Section 12.3 Evidence of Permitting of Oversized and Overweight Loads. Promptly upon the request of Developer, the County shall countersign a letter in the form of Appendix E hereto for use by the Developer Parties as evidence that the movement and transportation of overweight and oversized vehicles, equipment, loads and other necessary equipment and materials to and from the Project have been properly permitted by the County.

ARTICLE XIII EXCLUSION OF CERTAIN DAMAGES

The Parties waive all claims against each other (and against each other's parent company and Affiliates and their respective members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity (other than the indemnity obligations of Developer as set forth in Article XI with respect to Losses that arise from personal injury to third persons), contribution, strict liability or any other legal theory.

ARTICLE XIV FORCE MAJEURE EVENT

Whenever performance is required of a Party hereunder, such Party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if a Party's performance of its obligations under this Agreement is prevented, delayed, or otherwise impaired at any time due to any of the following causes, then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances: acts of God, war, civil commotion, riots, or damage to work in progress by reason of fire or other casualty, strikes, lock outs or other labor disputes; delays in transportation; inability to secure labor or materials in the open market; war, terrorism, pandemics, sabotage, civil strife or other violence; improper or unreasonable acts or failures to act of the County; the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after a complete and valid application for the same has been submitted; the effect of any law, proclamation, action, demand or requirement of any government agency or utility; or litigation contesting all or any portion of the right, title and interest of the County or Developer under this Agreement. If either Party experiences, or anticipates that it will experience, an event that, pursuant to this Article XIV, shall extend the time for performance by such Party of any obligation under this Agreement, then such Party shall provide prompt written notice to the other Party of the nature and the anticipated length of such delay.

ARTICLE XV MISCELLANEOUS PROVISIONS

Section 15.1 Project Termination. If Developer abandons or terminates construction of the Project, Developer shall provide written notice to the County of such abandonment or termination of construction. In such event, at either Party's request, the Parties shall meet to reach agreement with respect to termination of this Agreement. County may terminate this Agreement any time following Developer's failure to commence construction of the Project within twenty- four (24) months of the date of this Agreement first above written.

Section 15.2 Reimbursable Expenses. Except as otherwise expressly provided in this Agreement, where Developer is required to reimburse the County for any expense incurred by the County, Developer shall only be required to reimburse such County expenses as are reasonable, direct, reasonably documented, and which the County has incurred.

Section 15.3 Governing Law and Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. Any disputes arising under this Agreement between the Parties shall be decided by a court of competent jurisdiction in Pulaski County, Indiana. The Party prevailing in any such litigation shall also be entitled to recovery of its reasonable attorney fees incurred therein.

Section 15.4 Amendments and Integration. This Agreement (including Appendices) shall constitute the complete and entire agreement between the Parties with respect to the subject matter hereof. No prior statement or agreement, oral or written, shall vary or modify the written terms hereof. Except as set forth in Sections 2.1 and 4.4, this Agreement may be amended only by a written agreement signed by the Parties.

Section 15.5 Assignment.

a. Except as is set forth below, or as is otherwise permitted by Ind. Code § 6-1.1-12.1- 5.4(f), the rights and obligations contained in this Agreement may not be assigned by Developer or any affiliate thereof without the express prior written consent of the County, which consent may not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, the County's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of Developer pursuant to this Agreement. Any transfer or assignment pursuant to this Section shall be subject to the assignee agreeing in writing to be bound by the terms of this Agreement. So long as an assignee assumes in writing all assigned obligations under this Agreement, Developer may be released from liability for the assigned obligations hereunder.

b. No direct or indirect change of control of the ownership interests of Developer or any of its direct or indirect affiliates, a reorganization of Developer or any of its direct or indirect affiliates, or any other sale or transfer of direct or indirect ownership interests in Developer or any of its direct or indirect affiliates (including any tax equity investment or passive investment) or the foreclosure by any Financing Party (as defined below) on any Collateral Assignment (as defined below) shall constitute an assignment requiring the consent of the County under this Agreement.

c. Notwithstanding the foregoing, with prior written notice to the County but without the need for consent of the County, Developer may assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement, to a (i) public utility, or (ii) any other company or other entity, provided in the latter instance that such assignee shall have demonstrated experience in constructing and operating an energy generation project in the United States and a net worth of a minimum of \$10,000,000 as confirmed by audited financial statements as of the most recent fiscal year.

d. Developer may, without the prior approval of the County, by security, charge or otherwise, encumber its interest under this Agreement and any amendments thereto for the purposes of financing the development, construction, operation of or investment in the Project, including entering into any partnership or contractual arrangement, including but not limited to, a partial or conditional assignment of equitable interest in Developer or its parent to any person or entity, including but not limited to tax equity investors, or by security, charge or otherwise encumber its interest under this Agreement (each a "Collateral Assignment"), provided that Developer shall have provided County with written notice upon making such Collateral Assignment. Promptly after agreeing upon a Collateral Assignment, Developer shall notify the Governing Bodies in writing of the name, address, and telephone numbers of each party in favor of which Developer's interest under this Agreement has been encumbered (each such party, a "Financing Party" and together, the "Financing Parties"). Such notice shall include the names of the account managers or other representatives of the Financing Parties to whom written and telephonic communications may be addressed. After giving the County such initial notice, Developer shall promptly give the County notice of any change in the information provided in the initial notice or any revised notice. If requested by the Financing Parties, the County shall execute and deliver any reasonably requested consents or estoppels related to the Collateral Assignment(s) providing for cure periods and other rights reasonably afforded to the Financing Parties under such consents.

e. If Developer encumbers its interest under this Agreement and any amendments thereto and provides the notice described in the immediately preceding paragraph, then from and after the Governing Bodies' receipt of such notice, the Governing Bodies shall provide the Financing Parties notice of any payment or other default by Developer under the Agreement and an opportunity to cure the same.

f. Notwithstanding the foregoing, Developer may elect to split the Project into two separate projects. In the event of Developer's election, Mammoth South, LLC would be responsible for designated roads related to its project and Mammoth Central, LLC would be responsible for designated roads related to its project, provided that however, all county structures covered under this Agreement related to the Project are covered under the split projects.

Section 15.6 Notices. All notices, which may be given pursuant to the provisions of this Agreement shall be sent by regular mail, postage prepaid, and shall be deemed to have been given or delivered when so mailed to the following addresses:

If to the County, to: Pulaski County, Indiana
112 E. Main Street Winamac, IN 46996
Attn: Board of County Commissioners

With copies to: Kevin C. Tankersley, Esq.
637 N. Highway 35
Winamac, IN 46996
Attn: Kevin Tankersley, Esq.
Email: service@tanklaw.com
And

Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204
Attn: Richard Hall, Esq.
Email: Richard.Hall@btlaw.com

If to Developer, to: Mammoth South, LLC
Mammoth Central, LLC Attn: Legal Counsel
2 Logan Square
Philadelphia, PA 19103

with copy to: Gutwein Law
250 Main St. Ste 590
Lafayette, Indiana 47901
Attn: Christopher D. Shelmon
Chris.Shelmon@gutweinlaw.com

Any party may change its contact or address for receiving notices by giving written notice of such change to the other party. Notice may be sent by a party's counsel.

Section 15.7 Exercise of Rights and Waiver. The failure of a Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by a Party of any provisions her of be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

Section 15.8 Independent Contractor, Relation of the Parties. The status of Developer under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, Developer and its officers, agents, employees, representatives, and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives, or servants of the County. As an independent contractor, Developer shall accept full responsibility for providing to its employees all statutory coverage for worker's compensation, unemployment, disability or other coverage required by law.

Section 15.9 Severability. In the event that any clause, provision or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired, or invalidated and shall remain in full force and effect.

Section 15.10 Headings and Construction. The section headings in this Agreement are inserted for convenience of reference only and shall in no way effect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement may have been prepared by one of the Parties, the Parties confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting Party shall not apply. All Appendices referenced in this Agreement are incorporated in and form a part of this Agreement.

Section 15.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 15.12 No Third-Party Beneficiary. No provisions of this Agreement shall in any way inure to the benefit of any person or third party so as to constitute any such person or third party as a third-party beneficiary under this Agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party hereto.

Section 15.13 Confidentiality. Subject to any laws pertaining to access to public records, all data and information acquired by the County from Developer (or its affiliates, representatives, agents or contractors) in connection with the performance by Developer of its obligations hereunder, including information regarding the Project, shall be confidential and will not be disclosed by the County to any third party, and upon request of Developer will be returned thereto, except that the County will not be obligated to return any such information contained in documents generated by the County that are stored electronically by the County. With respect to any such retained electronically stored confidential information, the County will continue to comply with the obligations of this Section 15.13. Notwithstanding the foregoing, the Parties acknowledge and agree that such confidential information may be disclosed to third parties as may be necessary for Developer and the County to perform their respective obligations under this Agreement. This provision will not prevent the County from providing any confidential information or in response to

the reasonable request of any government agency charged with regulating the County's affairs; provided, that if feasible, the County will give prior notice to Developer of such disclosure and, if so requested by Developer, will have used all reasonable efforts to oppose or resist the requested disclosure, as appropriate under the circumstance, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality.

Section 15.14 Extraordinary Events. The Parties acknowledge that during the expected life of the Project, circumstances may arise under which it will be necessary or advisable for Developer to replace major substation components or make repairs to solar facilities beyond ordinary maintenance ("Extraordinary Events"), and that transportation of substation components or other solar facilities on overweight or oversized vehicles on or across the Designated Roads may be necessary. The Parties agree that it is impossible to predict the timing, nature, or extent to which the Designated Roads may be damaged beyond the normal amount of wear and tear by such transportation. The Parties agree that at any time during the life of Project, when Developer determines Extraordinary Events reasonably, during any sixty (60) day period, require activities which will involve more than ten (10) movements of overweight or oversized vehicles on the Designated Roads, Developer will give advance written notice of the intended movements to the County. In such event, the County may in its reasonable discretion require Developer to provide an Appendix A Update, and Developer agrees to reasonably coordinate such activities in substantially the same manner provided for in this Agreement. If the Extraordinary Events require activities which will involve more than twenty (20) movements of overweight and oversized vehicles during any sixty (60) day period, the County and Developer will work in good faith to determine amount of any performance assurance to be reasonably required by the County based on the possible damage to the Designated Roads caused by such movements.

Section 15.15 Other Agreements. Developer shall materially comply with all terms of and fulfill its obligations under the Decommissioning Agreement and the Economic Development Agreement, and the Drainage Agreement.

Section 15.16 Compliance. While the Highway Superintendent, the County Surveyor, or either's designee, may make initial determinations of compliance with this Agreement, such determinations are appealable to the County Commissioners or Drainage Board, respectively, which body shall make the ultimate determination.

Charles Mellon made motion to approve the "Agreement for Use, Repair, and Improvement of Roads" as presented, Michael McClure seconded and motion passed with Maurice Loehmer recusing himself.

Christopher Shelmon signed the agreement as authorized agent of Mammoth Central, LLC.

Although this Special Meeting was advertised to include the "Decommissioning Agreement", said agreement is not complete.

With no other business to discuss, Maurice Loehmer made a motion to adjourn at 9:12am, Michael McClure seconded and motion passed unanimously.

APPROVED AND SIGNED THIS 7TH DAY OF NOVEMBER BY THE PULASKI COUNTY COMMISSIONERS.

CHARLES MELLON

MAURICE LOEHMER

MICHAEL MCCLURE

ATTEST: _____
LAURA WHEELER, AUDITOR, PULASKI COUNTY, IN