

**AGREEMENT FOR
USE AND REPAIR OF DRAINAGE FACILITIES**

THIS AGREEMENT FOR USE AND REPAIR OF DRAINAGE FACILITIES ("**Agreement**") is made and entered into this 20 day of march, 2023, by and between PULASKI COUNTY, INDIANA ("**County**"), acting by and through its Drainage Board, and MOSS CREEK SOLAR, 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**".

WITNESSETH:

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 200 MW_{ac} of generating capacity (the "**Project**"); (this amount subject to change by agreement of the parties) and depicted on Appendix A and

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, in the course of performing said activities, intersect directly or pass over and upon certain private drains, public drains, open drains, or tile drains regulated by the County under I.C. § 36-9-27 and encroach within the County's seventy-five foot (75') drainage maintenance rights-of-way established I.C. § 36-9-27-33; and

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 regulated drains and other County property; and

WHEREAS, the County will permit the Developer Parties to perform the above activities in connection with the Project on County to intersect or pass over or through said County drains, pursuant to the terms and conditions as set forth in this Agreement.

WHEREAS, the Developer shall ensure that all well, crop and field tile that are private and on the private participating landowners property will be replaced and repaired as needed to the satisfaction of the landowners and ensure that no collateral flooding of non-participating landowners property is caused by the Project. The Developer shall comply with all responsible storm-water management practices during their construction and operation, failure to do so could result in action by the County or the requisite State agency.

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 Drainage System Conditions. Using such records and maps as may be provided by the County Surveyor (if available) regarding regulated open and tile drains, including regulated non-private lateral drains connecting directly thereto, as may be timely provided to Developer by the County, Developer shall, at Developer's expense, (i) determine which such regulated drains lie under, or within one hundred feet (100') of, any point at which any Developer Party may conduct any Project construction activity or operate a motor vehicle or other equipment weighing more than one (1) ton (the "**Affected Drains**"), and (ii) prepare one or more maps depicting all Affected Drains and all points of intersection with such construction activity, including road crossings (collectively, the "**Drain Location Map**"). The Drain Location Map will be attached hereto as Appendix B, when complete. The Drainage Board, being comprised of the same members as the Board of Commissioners, shall have thirty (30) days after delivery of the Drain Location Map to review it. (The Drainage Board may delegate certain decisions described in this Agreement to the County Surveyor so to the extent such authority exists, hereinafter any decisions of the Drainage Board may include those made by the County Surveyor as to the particular issue). The Drainage Board shall be deemed to have accepted the Drain Location Map except to the extent that, and only with respect to specifically stated objections on to the Drain Location Map as to which, the Drainage Board determines that the Drain Location Map is not a complete and accurate depiction of the pre-existing conditions, to-wit the conditions of the drains, tiles, culverts and ditches as they exist prior to the start of construction as set forth herein. If the Drainage Board makes such a determination, the Drainage Board shall, within such thirty (30) day period, provide Developer in writing its specific objections to portions of the Drain Location Map detailing such determination, whereupon Developer may provide reasonable further documentation within the Drain Location Map. If Developer disagrees with the Drainage Board's determination, the Parties shall promptly meet to confer and attempt to reach agreement; provided further, that failure of Developer and the Drainage Board to reach agreement with respect to the condition of the portion of the Drain Location Map to which the Drainage Board has specifically objected shall not prevent Developer from constructing on the portions of the Project for which the Drain Location Map has been accepted by the Drainage Board or delay the County's or the Drainage Board'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 Project for which the Drain Location Map has not been accepted by the Drainage Board. If the Drainage Board does not give written notice of any objection to the completeness and accuracy of the Drain Location Map within such thirty (30) day period, the Drain Location Map shall be deemed accepted by the Drainage Board and shall then authorize Developer to install infrastructure within and intersecting over and upon certain private

drains as identified by Developer, open drains, or tile drains regulated by the County under I.C. §36-9-27 and encroach within the County's seventy-five foot (75') drainage maintenance rights-of-way established by I.C. §36-9-27-33, to be provided in the Drain Location Map. Upon request of Developer, the County Surveyor's office shall provide any available information regarding open drains and legal drains.

Section 1.2 County Use of Drain Location Map. As set out in Section 1.1 above, with the assistance of the County Surveyor's office, the County understands and acknowledges that Developer will locate the regulated non-private drains and create the Drain Location Map for its own use and will provide the Drain Location Map to the County only for the County's convenience. Developer shall not warrant the accuracy or completeness of the Drain Location Map, except for the purpose of the development of the Project which is the subject of this agreement. 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 if reasonably possible.

Section 1.3 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.

ARTICLE II REVISIONS TO DRAIN LOCATION MAP

Section 2.1 Revisions to Drain Location Map by Developer. If the Project expands in either its scope or use of additional roads as may be permitted in a certain road uses agreement between Developer and County, Developer shall to the extent appropriate, revise the Drain Location Map in order to report the locations of any additional Affected Drains as required by Section 1.1. With respect to any change the Drainage Board shall have twenty (20) days after such delivery to review the revised Drain Location Map. The Drainage Board shall approve the revised the Drain Location Map unless it determines that any revised or supplemented report Drain Location Map submitted is not complete and accurate (as provided for the original map in Section 1.1). If the Drainage Board makes such determination, it shall within a twenty (20) day period (with respect to any revised or supplemented Drain Location Map), provide Developer with written objection to the supplemented Drain Location Map detailing such determination, whereupon Developer may provide reasonable further documentation in support of its supplement Drain Location Map. If Developer disagrees with the Drainage Board'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 in areas depicted on the portion of the Drain Location Map which the Drainage Board has determined is complete and accurate 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. If the Drainage Board does not give written notice of any objection to the completeness and accuracy of the supplemented Drain Location Map within twenty (20) of receipt, the revised or supplemented Drain Location Map shall be deemed accepted by the Drainage Board.

Section 2.2 Commencement of Construction. 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 IMPROVEMENT AND MODIFICATIONS TO DESIGNATED DRAINS

Section 3.1 Modifications to Regulated Drains. Developer shall submit any proposal to modify or relocate any drain under the Drainage Board's jurisdiction to the Drainage Board for review. Any modification or relocation proposal shall provide similar or superior drainage when complete and be constructed according to typical construction practices, with said modifications or relocations completed by the Developer or at Developer's expense.

Section 3.2 Compliance with Standards and Designs. Developer may install driveways and entrances for ingress and egress to and from Designated Roads at locations shown on attached Drain Location Map, at Developer's cost. If Developer desires to update Drain Location Map, and desired crossings shown on such map, it shall (i) submit an updated version to the County, and (ii) to the extent appropriate, revise or supplement the Drain Location Map in order to report the locations of any additional Affected Drains as required by Section 1.1 (such updated Drain Location Map through the process set for in Section 2.1).

Section 3.4 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 Project construction and transmission of electricity per the Drain Location Map. 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 Developer's obtaining such private land rights as are necessary to permit Developer to complete the Installation contemplated by this Agreement, including obtaining all necessary land rights from private landowners adjacent to the regulated drains, if necessary. The Installation across regulated drains shall be completed through trenching or bore and not through plowing. If Developer desires to the extent appropriate, revise or supplement the Drain Location Map in order to report the locations of any additional Affected Drains, it may do so as provided in Section 2.1. 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 five (5') directly under any County regulated drain tile.

ARTICLE IV DRAIN REPAIR

Section 4.1 Developer's Obligation to Repair Drains and Related Structures. If any regulated drainage tile or open ditch is damaged by the Developer Parties, the Developer shall repair (or cause to be repaired) such damage and, as near as is reasonably possible, restore the damaged drain, drainage structure, or other related property to the condition it was in prior to such damage. Developer shall seek input from the County as to the scope of work for any particular damage with the controlling principle being that the repair and restoration shall be to the prior engineering condition. 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. Following completion of such repair, the County Surveyor or any other designee as may be appointed by the Drainage Board 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-owned or regulated drainage tile, or related appurtenances that is not caused by a Developer Party. For purposes of this Section 4.1, damage to any County-owned or regulated drainage tile or open ditch may also include damages occurring within the County's seventy-five (75) foot maintenance right-of-way under I.C. § 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 4.2 Repair and Upgrade of Drains Prior to Construction. This Section hereby incorporates the requirements related to regulated drains and structures set forth in Section 5.2 of the Agreement for Use, Repair and Improvements of Roads. The parties to this Agreement acknowledge the existence of the Agreement for Use, Repair and Improvements of Roads negotiated between the Parties contemporaneously with this agreement for the Project described herein (the Road Use Agreement).

Section 4.3 Independent Engineer. No later than sixty (60) days prior to the Commencement of Construction (based on the final Appendix A of the Road Use Agreement 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 drain tiles, culverts, and structures that are of questionable structural integrity necessary to sustain the increased volume of vehicles anticipated by the Project. The Developer, Independent Engineer, Highway Superintendent, and County Surveyor shall agree on which repairs or full replacements are necessary to ensure safe use of the roadways. These drain tiles, culverts, and structures with the estimated costs of repair or replacement will be put into a list called the "Drain Tile and Culvert Payment Agreement" and will be Appendix D to the Road Use 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 D with the following general guidelines:

- a. County Tile Drains: Any drain tile intersecting any Designated Road or points of ingress or egress thereto shall be replaced to the extent necessary (for the length of such drain within the County Road right-of-way) with existing size virgin HDPE dual-wall tile.
- b. Culverts and Structures: All County culverts and structures intersecting any

Designated Road or points of ingress or egress thereto shall be replaced to the extent necessary with ten (10) gauge corrugated pipe (or alternatively industry standard or as otherwise agreed to by the County Surveyor and Highway Superintendent) for all culverts and shall be 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 shall perform the work described in this Section 4.3 no later than forty-five (45) days after completion of this work, pursuant to the Drain Tile and Culvert Payment Schedule in Appendix D 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 D attached hereto.

Section 4.4 Maintenance. County will have the right to perform all regular maintenance of its drains and ditches during construction of the Project. after reasonable advance notice and coordination with the Developer. The parties agree that the Developer will not build any permanent structures within the 75 foot easement necessary for tile, drain, and ditch maintenance, and will make every effort not to have temporary structures or use the easement area for storage or the parking of equipment and vehicles unless the Developer has employees on site ready to move these obstructions if necessary for parties contracted with the Surveyor to access the tile, drain, or ditch. The County Surveyor shall have a list of scheduled drain, tile, and ditch maintenance and repairs for 2024 and each subsequent year by no later than May 1st of that year. This list of scheduled maintenance and repairs shall be updated annually as necessary and provided to the Developer in writing. The Developer and the Surveyor will meet and confer periodically regarding the scheduled repairs and maintenance with the goal being to not delay the development of the Project, and to allow reasonable time for the maintenance and repair of County drain, tile, and ditches and access by the Developer to any easement as necessary. If additional work is required that is not on Exhibit C, the Developer and the Surveyor will meet to discuss the additional work and the Developer will ensure that unimpeded access is granted to the area necessary for repairs in a timely manner, with the goal being the prevention of any flooding to the area, or upstream.

ARTICLE V FINAL REPAIR APPROVAL

Section 5.1 Approval of The Final Drain Condition. The condition of a regulated drain repair and replacement shall be subject to the approval by the Drainage Board, but only to the extent that such repair work is not performed by the County. If the Drainage Board 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 regulated drain has been repaired in final form, the condition of such drain shall be deemed acceptable by the Drainage Board. If the Drainage Board objects in writing as designated the Developer will re-repair the portion of the designated road that was unsatisfactory.

Section 5.2 Section Corner Markers. To the extent that Section Corner Markers are damaged by Developer in the course of construction of the Project, Developer shall pay the County within forty-five (45) days of receipt of an invoice for the direct costs thereof, including reasonable administrative costs.

ARTICLE VI PERFORMANCE ASSURANCE

Section 6.1 Performance Assurance. Developer shall post reasonable assurance of performance in the amount described in Section 6.4 (the "**Performance Assurance**") no later than the date on which Developer issues to its contractor an unlimited notice to proceed with commencement of improvements related to the Project. 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 amount described in Section 6.4, but intended to cover repair of any inadvertent damage to regulated drains, 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 Agreement for Use, Repair, and Improvement of Roads, provided that the amount of such Performance Assurance is equal to or greater than the amounts required in the aggregate for each agreement

Section 6.2 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 6.3 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 4.3, (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 6.4 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 VII FINES

Section 7.1 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 7.2 and 7.3 below. Fines are imposed for each day of the same incident of non-compliance after expiration of the applicable notice/cure period.

Section 7.2 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:

<u>Section</u>	<u>Amount</u>	<u>Notice/Cure Period</u>
Article V	\$1,000	Failure to comply after 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 7.3 Payment of Fines. Developer shall pay all fines to the County within thirty (30) days of receipt of proper notice of a fine.

ARTICLE VIII INDEPENDENT ENGINEER

The County may retain the "Independent Engineer" set forth in Section 4.3 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 IX 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 X 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 XI ZONING ORDINANCE; OTHER PERMITS

Section 11.1 Zoning Ordinance. Developer acknowledges that the Project is subject to the provisions of the Pulaski County Zoning Ordinance ("**Zoning Ordinance**") and Developer will comply with the Zoning Ordinance, including procuring a Solar Building Permit from the County prior to commencement of construction of the Project and formulating a decommissioning plan.

Section 11.2 Other Permits. The County hereby permits, authorizes, and consents to the Installation and to Developer's crossings to be identified on the Drain Location Map, subject to the construction requirements provided herein. 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 crossings to be identified on the Drain Location Map, or for the construction, operation, and maintenance of the Project:

- a. Solar 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. As part of this approval, the County and Drainage Board hereby approve the Stormwater Pollution Protection Plan submitted by Developer and deem any submission submitted to IDEM and compliant with its regulations to be satisfactory. Developer shall comply with any Stormwater Pollution Protection Plan submitted to IDEM.

ARTICLE XII 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 X with respect to Losses that arise from personal injury to third persons), contribution, strict liability or any other legal theory.

ARTICLE XIII 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 XIII, 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 XIV MISCELLANEOUS PROVISIONS

Section 14.1 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 14.2 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 14.3 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 14.4 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 14.5 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 the 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.

Section 14.6 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: Moss Creek Solar, LLC
c/o NextEra Energy Resources, LLC
700 Universe Boulevard
Juno Beach, FL 33408
Attn: Business Manager

with copy to: Dentons Bingham Greenebaum LLP
10 West Market Street, Suite 2700
Indianapolis, IN 46204
Attn: Mary E. Solada, Esq.
Email: mary.solada@dentons.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 14.7 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 hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

Section 14.8 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 14.9 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 14.10 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 14.11 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 14.12 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 14.13 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 14.13. 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 14.14 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 Affected Drains 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 Affected Drains, 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 a revised Drain Location Map, 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 any Affected Drain caused by such movements.


Section 14.15 Other Agreements. Developer shall materially comply with all terms of and fulfill its obligations under the Decommissioning Agreement, Agreement for Use, Repair and Improvement of Roads and the Economic Development Agreement. This Drainage Agreement shall supersede all drainage related matters and requirements in the Agreement for Use, Repair, and Improvement of Roads, to the extent not referenced herein.

Section 14.16 Compliance. While the County Surveyor, or its designee, may make initial determinations of compliance, if appointed by the Drainage Board, with this Agreement, such determinations are appealable to the Drainage Board, which body shall make the ultimate determination.

[signatures appear on following pages]

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Agreement for Use and Repair of Drainage Facilities on the dates set forth below, to be effective as of the date first above written.

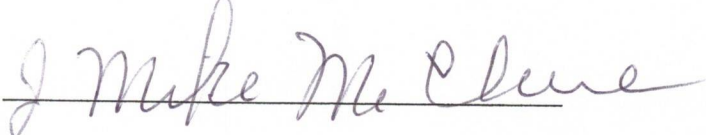
MOSS CREEK SOLAR, LLC,
a Delaware limited liability company

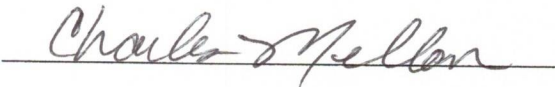
By: 
DocuSigned by: F5C968BD9C2148B...

Name: Anthony Pedroni

Title: Vice President

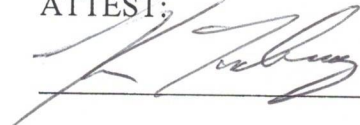
DRAINAGE BOARD
OF PULASKI COUNTY, INDIANA





Dated: 3/20/2023

ATTEST:



APPENDIX A
Project Map

[TO BE PROVIDED]

APPENDIX B

Drain Location Map

[TO BE PROVIDED PER SECTION 1.1]