

ROAD USE AND MAINTENANCE AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into this ____ day of ____, 2023 by and between Gray County, Texas (the "County") and IP Meitner, LLC a Delaware limited liability company ("Developer"). The County and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties". The term "Developer Representative(s)" as used herein includes Developer, Developer's contractors and any such contractor's subcontractors, and each such party's respective agents, employees, representatives, suppliers or designees.

WHEREAS, Developer intends to construct a utility scale solar energy conversion, generation and storage system (the "Project"), and

WHEREAS, the Project may require the heavy use by Developer or certain Developer Representatives of one or more County roads and connected rights of way for movement of heavy equipment and materials, and

WHEREAS, the Parties mutually desire and intend that the Project shall not impair the future condition or use of any County roads, bridges and culverts, including shoulders, ditches and access aprons (collectively "County Roads"), and

WHEREAS, it is the mutual intent and understanding of the Parties that all use, improvement, remediation and repair of any and all County Roads by Developer or any Developer Representatives and the implementation of this Agreement shall be without material out-of-pocket cost to the County, and

WHEREAS, each of the Parties represents and warrants that the execution of this Agreement by its signatory below has been duly authorized by its respective governing boards, owners or managers.

NOW THEREFORE, in consideration of the mutual promises and representations herein and other good and valuable consideration, it is agreed as follows:

1. Developer and Developer Representatives may use and improve the County Roads as necessary to complete the Project. Appropriate documentation of the routes, equipment, and manner and timing of the Developer's use and/or improvement of the County Roads, including without limitation, widening of roads and driveways and installing driveways and / or turning aprons, as may be necessary for the completion of the Project, shall be provided to the County Commissioner for approval, which shall not be unreasonably withheld, as far in advance of the intended action as reasonably practical.
2. Prior to the commencement of the Project, the County's representatives, which shall include the County Commissioner and such other individual(s) as the County may designate, and a representative of the Developer shall perform a visual inspection and assessment of the County Roads to be utilized in the Project, and shall photograph and/or videotape, and otherwise document all relevant present conditions.
3. Except as otherwise set forth herein, during all phases of the Project, Developer Representatives shall ensure that Developer Representatives' activities do not interfere with the County Roads remaining at all times safely passable to motor vehicle and emergency vehicle traffic. During project

related activities, Developer Representatives shall ensure that appropriate signage, human flaggers and such other traffic control measures as may be required or appropriate under applicable regulations and/or industry customs or standards shall be utilized at all times. When necessary to ensure public safety in conjunction with the needs of the Developer and the Project, the Developer Representatives may interrupt traffic on the County Roads. All closures shall be limited to the minimum period necessary to ensure public safety, such as when trucks with oversize loads may need to access the County Roads, rendering them unsafe for public traffic. It is anticipated that such closures, to the extent they are necessary at all, will be of very short duration. In the event any Developer Representatives determines a need to temporarily close public access to the County Roads for any period of time longer than fifteen (15) minutes, such Developer Representative shall inform the Gray County Commissioner and the Gray County 911 Center as far in advance of the planned time of closure as reasonably practical.

4. In the event any use of the County Roads by any Developer Representatives during the Project results in any damage to the County Roads that potentially impairs safe public access and use of the County Roads, or the continued physical integrity of the County Roads, such Developer Representative shall use commercially reasonable efforts to expeditiously repair such damage to the extent necessary to ensure the public's safe access and use of the County Roads and / or the physical integrity of the County Roads during the continuing period of the Project. The County Commissioner shall be notified of any significant repairs within a reasonable time after they have occurred.
5. Following completion of the construction of the Project, the County Commissioner and such other individuals as the County may designate, and a representative of the Developer shall perform a visual inspection and assessment of the County Roads.
6. Following completion of the post-construction-Project assessment, the County will prepare a schedule of construction deemed necessary to remediate the condition of the County Roads, along with an estimate of costs associated therewith if completed pursuant to public contract, to return the County Roads to a condition at least equivalent to the condition as documented in the pre-Project assessment (the "Remediation Schedule"). Developer shall not be liable for any changed conditions due to normal wear and tear and superficial changed conditions, nor due to extraordinary wear and tear caused by individuals or companies who are not part of the Developer Representatives, and such changed conditions shall not be included on the Remediation Schedule. This Remediation Schedule shall be provided to the Developer upon its completion.
7. At the election of the Developer, the Developer shall either, 1) hire a qualified contractor or contractors to perform the work set forth in the Remediation Schedule, subject to the County's approval of the contractor(s) and the scope and specifications of the work, or 2) the Developer shall pay to the County the total estimated costs as set forth in the Remediation Schedule in which event the County shall contract with a qualified contractor for the completion of the items set forth in the Schedule. In such event the Developer shall reimburse the County for any costs of such work incurred by the County in excess of the amounts estimated in the Remediation Schedule, as invoiced by the contractor(s) who performed such work. In either event, the Developer shall reimburse the County for the cost of all reasonable fees incurred by the County for any engineering and related services for the repair of the County Roads, and for any other services directly related thereto. The Developer shall pay to the County all reimbursement amounts as stated by the County within thirty (30) days of the Developer's receipt of an invoice and notice from the County.

8. The Party performing the work, and/or its selected contractor(s), will be responsible for obtaining any necessary permits from agencies with jurisdiction over the post-construction work to be performed on the County Roads. The Developer shall reimburse the County for all permit fees, and all reasonable engineering and other consultant fees incurred by the County to secure any such permits.
9. During the course of the Project, the Developer agrees to immediately limit and/or suspend its or any Developer Representative's use of the County Roads upon written notice from the County that the Developer is in violation of the terms and provisions of this Agreement if such violations are not cured within five (5) days of such notice, or in the event the County, in its sole and absolute discretion, determines such action(s) are warranted in the interest of public safety. Upon receipt of such notice, the Developer agrees to comply with the terms thereof until such time as it receives written notice from the County that the conditions causing the suspension of the use of the County Roads no longer exist.
10. The Developer agrees to defend and indemnify the County, its boards, officers, employees, agents and representatives against liability for claims, demands, loss, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or act of the Developer or any Developer Representatives, arising out of the Developer or Developer Representative's use or improvement of the County Roads, and the Developer shall hold the County and its boards, officers, employees, agents and representatives harmless therefrom. The Developer's obligations under this paragraph shall survive the completion of the Project, including any remediation performed by Developer or Developer's Representatives pursuant to Paragraph 7. Notwithstanding the forgoing, the rights and obligations set forth in this Paragraph shall not apply to any negligent act or omission or willful misconduct of any other entity engaged to perform the remediation pursuant to Section 7(2).
11. At all times during construction of the Project, the Developer shall maintain general liability insurance including contractual liability coverage, naming the County as an additional insured, the coverage limits of such policy to be not less than two million dollars per occurrence for personal injury and wrongful death, and not less than five hundred thousand dollars in the aggregate for property damage. Limits may be satisfied through Excess/Umbrella liability. Such policy of insurance shall specifically insure against the liability assumed hereunder by the Developer and shall provide that it is primary insurance and not excess or contributory with any other valid, existing and applicable insurance in force for or on behalf of the County, and shall provide that the County shall receive at least thirty (30) days' notice, 10 days' notice for non-payment of premium, from the insurer prior to any cancellation or change of coverage. The Developer shall deliver to the County such policies of insurance or certificate(s) of insurance coverage in accordance herewith not less than three (3) days prior to the commencement of construction of the Project.
12. The Developer shall, upon written demand from the County, pay the County all expenses reasonably incurred by the County, including attorneys' fees and court costs, in enforcing the terms of this Agreement, provided that the County has prevailed in any legal action to enforce the terms of this Agreement.

13. This Agreement shall be binding upon the Parties and their respective heirs, executors, administrators, successors and assigns. All references herein to responsibilities and / or obligations of the Developer shall be deemed to include the Developer's contractors, agents, employees, and representatives.
14. This Agreement shall be construed under the laws of the State of Texas and shall constitute the entire understanding between the Parties hereto. No modification or amendment to this Agreement shall be permitted or effective unless in writing and executed by both Parties. The agreed upon jurisdiction and venue for any action brought by either party hereunder shall be the Supreme Court of the State of Texas sitting in Travis County District Court of the State of Texas sitting in Gray County.
15. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Facsimile and electronic signatures shall be deemed the equivalent of original signatures.
16. No waiver or modification of any condition or limitation herein contained shall be valid unless in writing and duly executed by both parties. No waiver of any term or condition of this Agreement shall be deemed or constituted as a waiver of any other term or condition nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach concerning any provision of this Agreement.
17. Any notice, demand or other communication required to be given under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by regular U.S. mail to the address of the other as given above. Such notice shall be deemed given upon deposit of same in a mail receptacle maintained by the United States Postal Service.

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IN WITNESS WHEREOF, the Parties have hereunto set their hands as of the day and year first above written.

IP Meitner, LLC

By: _____
Luke Dunnington
President

Gray County, Texas

By: _____
Chris Porter
County Judge

County Roads

The following list contains the potential County Roads that could be utilized for project and improvements:

County Road D

County Road B

County Road 23

County Road 21

County Road 19