

## ROAD USE AND MAINTENANCE AGREEMENT

THIS ROAD USE AND MAINTENANCE AGREEMENT ("Agreement") is entered into as of this 13th day of November, 2023 ("Effective Date") by and between the Board of County Commissioners of Bourbon County, Kansas (the "County"), a governmental entity in the State of Kansas, whose address for purposes of this Agreement is 210 S National Ave # 3, Fort Scott, KS 66701 and Hinton Creek Solar, LLC ("Developer"), a Delaware limited liability company, whose address is 700 Universe Boulevard, Juno Beach, FL 33408. County and Developer may each be referred to herein individually as a "Party", and collectively as the "Parties". For this Agreement, the term "Roads" means any County or township right-of-way, or other roads, alleys, or ways that are owned, operated, or maintained by the County or any township located within the County, including, but in no way limited to, gravel, pavement, ditches, culverts, and bridges.

### RECITALS

WHEREAS, Developer is developing a solar electrical generation and battery storage facility (the "Project") in one or more project companies or phases (each, a "Phase"), to be located on privately-owned land within that part of the County shown on the attached Exhibit A (the "Project Boundary"); and

WHEREAS, Developer intends to obtain the necessary approvals to build the Project; and

WHEREAS, in connection with the construction of the Project, the Parties desire to address certain issues relating to Roads over which it will be necessary for Developer and its agents, employees, or servants to, among other things:

- i. Transport heavy equipment and materials which may be in excess of local design limits of certain of the Roads;
- ii. Transport materials, such as concrete and gravel, or other project-related material or equipment;
- iii. Make specific modifications and improvements (both temporary and permanent, including various associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; and
- iv. Place electrical, electric transmission, signal, and communication cables and appurtenant components (collectively "Cables") for the Project adjacent to, along, above, under or across such Roads, and

WHEREAS, it is in the best interest of the public health, safety and welfare that Developer and the County reach an agreement to address possible issues pertaining to the Roads that will arise in, around, and near the Project; and

WHEREAS, Developer and the County wish to set forth their understanding and agreement relating to the use of Roads during construction of the Project;

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## TERMS AND CONDITIONS

**Section I. Developer Covenants.** Developer will use commercially reasonable efforts related to the following activities in accordance with the terms of this Agreement:

A. Within ten (10) days following the Effective Date of this Agreement, Developer will designate the name, address, email address and phone number of a company representative with authority to represent Developer. Developer may designate a new representative upon written notice to the County;

B. At least thirty (30) days prior to beginning construction of a Phase of the Project, provide the County Road and Bridge Supervisor with a transportation route for the Project equipment, subject to amendment;

C. Provide plans to the County Road and Bridge Supervisor for the widening of any corner radii necessary to facilitate the turning movements of the transport trucks used by Developer during construction of the Phase of the Project, make any necessary improvements, and at the conclusion of construction, at County's election either leave any improvements located on Roads in place in the condition required prior to Developer's initial use of the improvements, or remove any such improvements and restore the affected property;

D. Transport or cause to be transported oversize loads in a manner reasonably calculated to minimize adverse impact on the local traffic;

E. Developer will provide no less than forty-eight (48) hours' notice to the County Road and Bridge Supervisor when it is necessary for a Road to be closed for any reason relating to the construction of the Project, other than short-term closures to mitigate hazards, or accommodate vehicle turns or ingress or egress from Roads or road closures that are already noted in the plans described in Section I(C). Notwithstanding the foregoing, Developer will provide all materials and personnel necessary to close the Road;

F. Provide signage of all Road closures and work zones in compliance with the most current manual on Uniform Traffic Control Devices adopted by the State of Kansas and as may be required by the County;

G. Purchase and deliver applicable road materials for repairs to Roads that are damaged by Developer and/or Developer agents, employees, or servants during the hauling of materials and/or construction of the Project and bear all costs to restore and repair any Roads that are damaged by Developer and/or Developer agents, employees, or servants during the hauling of materials and/or construction of the Project;

H. Developer will cooperate with the County to reasonably mitigate safety hazards to public travel to the extent such hazards are caused by Developer and/or Developer's agents, employees, or servants during the hauling of materials and/or construction of the Project; and

I. The obligations and terms of this Agreement applicable to the initial pre-construction and construction period of the Phase of the Project also apply to any Post-Construction Activity (as defined in Section 4(C) below) and any decommissioning period.

**Section 2. County Covenants.** The County, in accordance with the terms of the Agreement, agrees that it shall:

A. Within ten (10) days following the Effective Date of this Agreement, designate the name, address, email address and phone number of a County representative with authority to represent the County. Such representative will coordinate with and keep the County Board of County Commissioners apprised of material information pertaining to this Agreement.

B. Perform reasonable routine and regular maintenance of the Roads in accordance with the County's usual maintenance practices and without unnecessarily hindering construction of the Project-related access points and Road crossings;

D. Within five (5) working days from the date they are submitted, or at the next scheduled meeting of the Board of County Commissioners, review and approve plans (if applicable) for all Project-related utility encroachments on County Roads;

E. If applicable, within five (5) working days after submission of such applications by Developer, issue master overweight and oversize permits for the Roads and waive overweight permit fees;

F. Authorize the designated County representative to agree on behalf of the County to revisions to any plans or schedules submitted by Developer as soon as practicable after revisions are submitted to the County by or on behalf of Developer.

**Section 3. Road Use and Planning Inventory.**

A. Road Use. The County hereby grants to Developer and its Representatives a non-exclusive road right of way to enter upon and utilize the Roads with vehicles or combined vehicles less than 80,000 pounds, or to have the Roads utilized by third-party courier or delivery services or by Developer and its Representatives for tree clearing or other site preparation activities ("Standard Road Use"). Unless expressly stated otherwise herein, Standard Road Use shall not be subject to the terms and conditions of this Agreement. County additionally hereby grants to Developer and its representatives, subject to the terms of this Agreement, a non-exclusive road right of way to enter upon and utilize the portion of the Roads identified pursuant to Section I.B with vehicles or combined vehicles equal to or greater than 80,000 pounds ("Heavy Haul Road Use"). Unless otherwise stated herein, the terms and conditions of this Agreement shall only apply to Heavy Haul Road Use.

B. Road Inventory.

1. Pre-Construction Inventory: At least fourteen (14) days prior to the Commencement of Construction of any Phase or commencement of any Post-

Construction Activity (as defined in Section 4(C) below), the Developer shall perform a survey to record the condition of the surface of all Roads which will be used in the transport of equipment, parts, and materials of the Phase of the Project (the "Pre-Construction Inventory"), and shall promptly submit such Pre-Construction Inventory to the County Road and Bridge Supervisor for review. Developer will notify the County Road and Bridge Supervisor in advance of, and allow the County Road and Bridge Supervisor to participate in, the Pre-Construction Inventory. During this survey, the entire length of the Roads selected for use in the Pre-Construction Inventory shall be videotaped and photographs taken by Developer. In addition, the County will provide Developer, if available, with copies of any plans, cross-sections and specifications relevant to the existing Road's structure if the same are requested by Developer. Copies of all preconstruction documentation shall be provided to each of the Parties. Developer will reimburse the County for all reasonable, documented costs associated with the Pre-Construction Inventory. For the purposes of this Agreement, "Commencement of Construction" shall be the date that Developer provides notice to the County that a notice to proceed for a Phase of the Project has been issued pursuant to the primary engineering, procurement, and construction agreement ("EPC Agreement") for such Phase.

## 2. Post-Construction Inventory:

(a) Following Completion of Construction of the Phase of the Project, the Developer will perform a post-construction inventory (the "Post-Construction Inventory"), and shall promptly submit such Post-Construction Inventory to the County Road and Bridge Supervisor for review. Developer will notify the County Road and Bridge Supervisor in advance of, and allow the County Road and Bridge Supervisor to participate in, the Post-Construction Inventory. The method of the Post-Construction Inventory shall be similar to that of the Pre-Construction Inventory described above. The two (2) sets of pre- and post-construction data will be compared to identify wheel lane rutting, cracking or other damage in excess of the Pre-Construction Inventory, and the Developer will determine the extent and cost of the repairs or improvements needed to return the Roads to pre-construction condition. Developer will reimburse the County for all reasonable, documented costs associated with preparing the Post-Construction Inventory. For the purposes of this Agreement, "Completion of Construction" shall be the first date that all of the following has occurred: (a) Developer provides notice to the County that the requirements for final completion have been satisfied pursuant to the EPC Agreement for the Phase of the Project, and (b) all Developer use of Roads has concluded for such Phase, except for Developer's use of Roads with typical vehicles used to manage and operate a solar energy project, none of which will be oversized or overweight (as defined by the Kansas Department of Transportation).

(b) As described further in subsections (i) and (ii) below, Developer will, and is obligated to, at County's sole option either make any or all repairs of damage caused by Developer or Developer's agents, employees, contractors, subcontractors, affiliates, and servants necessary to return the Roads to a pre-

construction condition, at its sole cost and expense, or provide a payment to the County for the amount of such repairs. Within 10 business days of the County's receipt of the Post-Construction Inventory, the County shall submit a written election to the Developer specifying whether Developer shall be responsible for making repairs as described in subsection (i) below, or whether the Developer shall provide a payment for the County to make such repairs as described in subsection (ii) below.

(i) In the event that the County opts for Developer to make such repairs, within twenty (20) calendar days following the completion of the Post-Construction Inventory for a Phase, Developer shall provide written notice to the County of when it will make any such repairs. The notice shall specifically identify the methods and materials for repairs identified in the Post-Construction Inventory and the expected date by which such repairs shall be completed. All identified repairs are to be completed within ninety (90) calendar days after the Post-Construction Inventory subject to day-for-day extension in the event that repair activities are actually delayed as a result of events beyond the reasonable control of Developer that Developer could not have foreseen with reasonable diligence. In order to provide for the safety of those using Roads, at least forty-eight (48) hours prior to making any such repairs Developer shall notify the County Road and Bridge Supervisor of the location of such repairs and the times when such repairs will be made. All such repairs shall be conducted in a manner reasonably calculated to minimize adverse impact on the local traffic.

(ii) In the event that the County opts to make such repairs at Developer's sole cost and expense, Developer shall, within twenty (20) business days of Developer's receipt of the County's election pursuant to Section 3(B)(2)(b) above, provide the County with a good faith estimate of the reasonable costs to purchase and deliver all road materials used by the County to complete the repairs specified in the Post-Construction Inventory, and costs incurred in obtaining the labor and equipment necessary to undertake and complete such repairs in a timely and workmanlike manner (the "Repair Estimate"). Developer shall pay an amount equal to the Repair Estimate to the County within twenty (20) business days of the County's acceptance of the Repair Estimate (the "Repair Payment"). As a condition to the County's receipt of the Repair Payment, the County shall certify in writing that the Developer's post-construction repair obligations have been completed to the County's satisfaction.

(c) If Developer fails to provide the notice to the County described in Section 3(B)(2)(b)(i) above within the time allotted or, after providing notice to County of its intention to undertake any such repairs, fails to complete the repairs within the period set forth in Section 3(B)(2)(b)(i), and there is no ongoing dispute between County and Developer regarding Developer's obligations hereunder, then after Developer fails to complete such repairs within 60 days after County provides notice of its intent to undertake such repairs, Developer shall be deemed to have

waived its rights to make any such repairs and County may immediately undertake all repairs necessary to return the affected Roads to a preconstruction condition at Developer's sole cost and expense. Such expense may include the reasonable costs to purchase and deliver all road materials used by the County to restore Roads to a pre-construction condition, and costs incurred in obtaining the labor and equipment necessary to undertake and complete such repair in a timely and workmanlike manner. Developer further agrees that County may, in its sole but commercially reasonable discretion, enter into agreements with one or more third party contractors specifically for the repair of those Roads which suffer damage caused or contributed to by any of Developer's activities undertaken in the construction of the Project, and that Developer will bear all commercially reasonable costs incurred by County in the retention of any such third party contractor(s).

(d) Within sixty (60) days following receipt of an invoice from the County, Developer shall reimburse County for all documented, reasonable amounts incurred by County in the purchase and delivery of all materials, and payment of the cost of labor, mileage and hourly machines costs, in connection with the repair and restoration of any Roads damaged as a result of the construction of any Phase of the Project, not repaired by the Developer, and which repair the County elected to undertake as provided in Section 3(B)(2)(c).

C. Routing and Access Coordination. As soon as practical after execution of this Agreement and as necessary throughout the construction of the Project, Developer and County shall meet to discuss routing for the oversized and overweight (as defined by the Kansas Department of Transportation) transportation of equipment to the Project, Project-related access points, Road crossings and Cable locations.

#### **Section 4. Financial Instrument to be established by Developer.**

A. Prior to commencement of construction of each Phase of the Project and its use of the Roads, Developer shall provide, from an agent selected by Developer and acceptable to County ("Agent"), a letter of credit, bond, or credit-worthy parent guaranty, securing payment of One Thousand Two Hundred and Fifty Dollars (\$1,250) per megawatt ("MW") of installed capacity in such Phase of the Project, subject to the conditions set forth herein or as otherwise negotiated by the Parties (such instrument being referred to herein as the "Financial Instrument") to secure Developer's payment and performance obligations hereunder.

B. All costs and expenses of maintaining the Financial Instrument, including the fees and expenses of the Agent, and the costs and expenses of making distributions pursuant to the Financial Instrument, shall be borne by Developer.

C. The Financial Instrument shall continue for a period of six (6) months after Completion of Construction of the applicable Phase. Upon delivery by Developer and County of notice certifying that the Project has been commercially operational for six (6) months after Completion of Construction of the applicable Phase, and the County has no outstanding claims for payments or reimbursements arising from Road repair and restoration necessitated by construction of the Project, the Financial Instrument shall terminate.

D. In the event that any post-commercial operation activity during the life of the Project with a projected cost exceeding \$500,000 requires i) delivery of oversize/overweight (as such terms are defined by the Kansas Department of Transportation) equipment or components; ii) crane mobilization; or iii) repowering the Project (collectively "Post-Construction Activity"), prior to commencing such Post-Construction Activity, Developer shall provide a letter of credit, bond, or credit-worthy parent guaranty that provides the same security as the Financial Instrument in an amount to be determined by Developer and the County that is commensurate with the potential impact of the Post-Construction Activity on the Roads (each a "New Financial Instrument"), but not to exceed the original Financial Instrument amount, and shall maintain such New Financial Instrument for a period of six (6) months after both the Post-Construction Activity has completed, and all Developer use of Roads with oversized or overweight traffic for Post-Construction activity has concluded. Upon delivery by Developer to County of notice certifying that the Post-Construction Activity has been completed for a period of six (6) months, cessation of use of Roads for Post-Construction Activity, and at the time of such certification by Developer the County has made no outstanding claims for payments or reimbursements arising from Road repair and restoration necessitated by Post-Construction Activity, any New Financial Instrument shall terminate.

E. All other terms and conditions concerning the Financial Instrument, any New Financial Instrument, and the provisions for making claim against same, shall be negotiated in good faith between County and Developer, and shall form the basis of a separate agreement.

#### **Section 5. Construction Cooperation.**

A. With Others: Prior to the commencement of construction of modifications or improvements to the Roads for each Phase, Developer shall hold a meeting and shall invite the County Road and Bridge Supervisor and any other applicable County public safety officials that the County may designate to discuss plans for the construction of the applicable Phase. Developer shall not commence construction of modifications or improvements to the Roads without approval by the County Road and Bridge Supervisor. The County Road and Bridge Supervisor shall provide such approval or comments within five (5) business days of the Developer's submission of proposed modifications or improvements, such approval not to unreasonably withheld or delayed. If such approval or comments have not been provided by County within 5 business days, proposed modifications will be deemed as accepted by County. County shall compile a list of contact persons who will need to be notified of any temporary Road closures that may have an effect on the daily routine or functioning of these agencies and/or departments. A copy of this list shall be furnished by the County to Developer.

B. Between the County and Developer: During construction of the Project, the County and Developer shall meet regularly to discuss Project activities, including anticipated oversized and overweight (as defined by the Kansas Department of Transportation) material and equipment deliveries.

#### **Section 6. Mutual Indemnification/Hold Harmless and Liability Insurance Provisions.**

A. Indemnity. Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold

harmless the other Party and such party's mortgagees, lenders, officers, employees and agents (the "Indemnified Party") against any and all losses, direct or indirect damages, claims expenses, and other liabilities resulting from or arising out of:

1. Any negligent act or negligent failure to act on the part of the Indemnifying Party or anyone else engaged in doing work for the Indemnifying Party, or
2. Any breach of this Agreement by the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by any negligent or willful act or omission on the part of the Indemnified Party.

B. Limitation of Liability. In no event shall Developer or any of its members, officers, directors or employees or the County or any of its boards, elected officials, officers or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to any Party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, nonperformance or delay in performance under this Agreement.

C. Required Insurance. Developer shall, upon commencement of construction of the Project and for the period of construction of the Project, maintain in full force and effect, commercial general liability insurance, naming Bourbon County as additional insured, in the aggregate amount equal to five million dollars (\$5,000,000.00). Developer may utilize any combination of primary and/or excess insurance to satisfy this requirement and may satisfy this requirement under existing insurance policies for the Project. Developer will annually provide a certificate of insurance evidencing the insurance limits and coverage to County upon written request by the County.

## **Section 7. Miscellaneous**

A. Use of County Right-of-Way. In consideration of the obligations assumed by the Developer under this Agreement, and in addition to the surface use of the Roads, the County hereby grants to the Developer a non-exclusive license, interest, right and privilege to utilize any County rights-of-way for the construction and location of driveways and other points of ingress and egress, installation, operation, maintenance, repair, and decommissioning of the Project and for the siting, installation, operation, repair, maintenance, and repowering of facilities that benefit the Project including, but not limited to, Cables, collection lines, electrical or data transmission lines or other facilities or utilities as may be beneficial for the operation of the Project, except that any use of the County right-of-way shall be limited to perpendicular crossings and in no instance shall Developer install facilities, whether temporary or permanent, along any length of the County right-of-way. In the event the Project requires facilities to be installed and operated within real property in which the County owns a fee simple interest, a leasehold interest, an easement interest, or some other real property interest, upon the request of Developer, the County agrees to enter into an insurable and recordable easement agreement with Developer to allow the



installation and operation of such facilities in the real property according to terms and conditions customary for energy projects without requiring additional payment from Developer.

B. Remedies and Enforcement. The Parties acknowledge that money damages would not be an adequate remedy for any breach or threatened breach of this Agreement. Each of the Parties hereto covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any Party (the "Defaulting Party"), which default is not caused by the Party seeking to enforce said provisions (the "Non-Defaulting Party") and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right to seek specific performance and/or injunctive relief or remedy or prevent any breach or threatened breach of this Agreement. The remedies of specific performance and/or injunctive relief shall be exclusive of any other remedy available at law or equity. With respect to the opportunity to cure a default, if a Party has failed to perform a material obligation under this Agreement, the other Party shall be required to provide written notice of default. The defaulting Party shall have a right to cure the default within thirty (30) days after having received notice of the default. Notwithstanding the forgoing, so long as the defaulting Party has initiated and is diligently attempting to cure the default, the defaulting Party's cure period shall extend for a time period beyond thirty (30) days as reasonably sufficient for the default to be remedied. If the default is not cured, then the non-defaulting party shall have the right to pursue all remedies.

C. Due Authorization. Developer covenants, represents and warrants to County that: (a) Developer has full power and authority to execute, deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement; and (b) this Agreement has been duly approved, executed and delivered on behalf of Developer. The County hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County.

D. Amendments. This Agreement constitutes the entire agreement and undertaking of the Parties and supersedes all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth herein. No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by both Parties to this Agreement. Time is of the essence regarding every obligation hereunder.

E. Notices. All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given or made in writing (including by telecopy) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by electronic mail with confirmation of receipt received, personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein.

To Developer:  
Business Manager

Hinton Creek Solar, LLC  
700 Universe Boulevard, FEW-JB  
Juno Beach, FL 33408

Copy to:

Alan Claus Anderson  
Polsinelli PC, 900 W 48<sup>th</sup> Place, Suite 900  
Kansas City, MO 64112  
(816)572-4761  
aanderson@polsinelli.com

To County:

Bourbon County Clerk  
210 S National Ave # 3  
Fort Scott, KS 66701

F. Assignment. This Agreement may be assigned only upon written consent of the Parties, which consent, shall not be unreasonably withheld, conditioned or delayed, except Developer may, without obtaining consent or approval from County, assign this Agreement to an affiliate or successor entity, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Developer shall provide County with written notice of any assignment within thirty (30) days of such assignment becoming effective.

G. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

H. Governing law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to conflicts of laws provisions.

I. Successor and Assigns. This Agreement shall inure to the benefits of and shall be binding upon the Parties hereto, their respective: successors, assignees and legal representative.

J. Severance. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect, and the Parties agree to take such additional action as may be beneficial to effectuate the intent of the Agreement.

K. No Waiver; Remedies Cumulative. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy shall operate as a waiver thereof. No single or partial exercise by any Party of any such right, power or remedy hereunder shall preclude any other further exercise of any right, power or remedy hereunder. The rights, powers and remedies expressly herein provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

L. Venue and Waiver of Jury Trial. Each Party waives all right to trial by jury and specifically agrees that trial or suits or causes of action arising out of this Agreement shall be to the applicable court with jurisdiction in this matter.

M. Further Assurances and Cooperation. Each Party will promptly, diligently and in good faith cooperate with the other Party during the Term, including without limitation delivering to such Party upon request proof of compliance with this Agreement, estoppel certificates, and further assurances, documents and reasonably-requested agreements.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed in their respective names by their duly authorized representatives and dated their signatures as shown below.

**DEVELOPER:**

HINTON CREEK SOLAR, LLC,  
a Delaware limited liability company

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

\_\_\_\_\_ Date

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

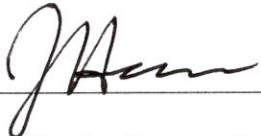
Title: \_\_\_\_\_

**THE COUNTY:**

THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

By: 

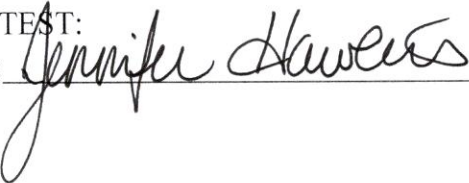
Name: Nelson Blythe, County Commissioner (District 1)

By: 

Name: Jim Harris, County Commissioner (District 2)

By: 

Name: Clifton Beth, County Commissioner (District 3)

ATTEST:  
By: 



*Reviewed and approved by:*  
\_\_\_\_\_