

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 22, SERIES 2024**

**A RESOLUTION APPROVING AGREEMENT FOR ROAD IMPACT STUDY
AND FUTURE ROADWAY MAINTENANCE**

WHEREAS, the Town Council of the Town of Timnath (“Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, attached hereto as Exhibit A is the Agreement For Road Impact Study and Future Roadway Maintenance with BHS Solar, LLC (the “Agreement”);

WHEREAS, BHS Solar plans to construct a solar energy generation facility in the Town of Severance (the “Project”), and BHS Solar seeks access to the such Project via Weld County Road 15, a portion of which roadway is located in and maintained by the Town;

WHEREAS, the Agreement would allow BHS Solar to use Weld County Road 15, in accordance with the terms of the Agreement, including a requirement for BHS Solar to repair any damage to the road from use for the Project beyond normal wear and tear; and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOW:

Section 1. Approval

The Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON FEBRUARY 27, 2024.

TOWN OF TIMNATH, COLORADO




Mark J. Soukup, Mayor

ATTEST:

A handwritten signature in blue ink, reading "Milissa Peters-Garcia", is written over a horizontal line.

Milissa Peters-Garcia, CMC

Town Clerk

EXHIBIT A

**AGREEMENT FOR ROAD IMPACT STUDY
AND
FUTURE ROADWAY MAINTENANCE**

This Agreement For Road Impact Study and Future Roadway Maintenance (“Agreement”) is dated this 27th day of February, 2024, and is by and between the Town of Timnath, a Colorado home rule municipal corporation (“Town”), and BHS Solar, LLC, a Delaware limited liability company (“BHS Solar”, and together with the Town, the “parties” or “Parties”).

RECITALS

1. BHS Solar seeks to construct a solar energy generation facility on certain real property situated in the Town of Severance (“Project”).
2. The Project is located adjacent to the municipal boundaries of the Town.
3. BHS Solar seeks access to the Project via County Road 15, a portion of which roadway is located in and maintained by the Town, and depicted on Exhibit 1 attached hereto and incorporated herein by reference (“Town Road”).
4. The Town desires to allow BHS Solar to use the Town Road in accordance with the terms and conditions set forth herein.

THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and BHS Solar agree as follows:

1. **Baseline Study.** BHS Solar shall, at its sole expense, contract with a neutral third-party traffic consultant (“Consultant”) qualified to conduct studies to assess the condition of the Town Road prior to the use of the Town Road for BHS Solar’s construction activity (“Baseline Study”). The Baseline Study shall include the following specific components:
 - a. The Consultant will enlist the services of a Colorado Department of Transportation-certified pavement testing company to perform a High-Speed Profiler (“HSP”) surface roughness survey of any asphalt-paved segments of the Town Road that may be used by BHS Solar to access the Project. The results of the HSP studies will be provided to the Town.
 - b. Following the Consultant’s review of the HSP roughness survey findings, the Consultant will then perform a visual inspection to further correlate HSP results to observations and measurement of pavement distress features. The visual inspection as well as the HSP results will qualify the type, severity, nature and general extent of pavement distress present along the Town Road. All visual inspections performed by the Consultant will be preserved photographically.

2. **Follow-up Study.** Consultant will follow up with a study identical to the Baseline Study described in Paragraph 1 above, within thirty (30) days after BHS Solar has substantially completed the construction of the Project (“Follow-Up Study”).

3. **Study Purpose.** The Baseline Study and Follow-Up Study will assess whether BHS Solar’s activity results in impacts to the Town Road. Consultant will prepare and provide to the Town and BHS Solar a written report containing data from both the Baseline Study and the Follow-Up Study. The Consultant’s report may compare results of the studies with data from a similar road to determine the level of road deterioration that would have been expected from normal use of the Town Road in the absence of BHS Solar’s activities related to the Project. In the event the Baseline and Follow-up Studies, or the dispute resolution process set forth in Section 4 below, indicate damage beyond normal wear and tear to the Town Road as a result of BHS Solar’s activities, BHS Solar shall repair the Town Road to the condition described in the Baseline Study. Such repairs shall begin no later than sixty (60) days after BHS Solar is furnished with written notice from Town indicating the repairs required, which timeframe may be extended, in the Town’s discretion if weather concerns warrant additional time. BHS Solar shall be required to obtain a right-of-way permit from the Town and comply with all applicable Town regulations, standards and specifications for the repairs.

4. **Dispute Resolution.** If the Consultant finds no damage to the Town Road as a result of BHS Solar’s activities, and the Town disputes the Consultant’s conclusion, the Parties will meet to discuss the dispute and attempt in good faith to agree upon a mutually-amenable resolution. If the Parties are unable to agree upon a resolution, the Parties may, in their discretion and without limiting any other rights the Town may have, retain a neutral third-party expert to ascertain whether damage has occurred and split the cost of such third-party expert. Nothing herein shall prevent the Town from securing the services of a pavement management professional to independently monitor and report on the effects of BHS Solar’s activities on the Town Road.

5. **Routine Maintenance.** BHS Solar agrees to regularly and promptly maintain the Town Road during BHS Solar’s construction activity of the Project. If the Town, in its reasonable discretion, determines the Town Road is not being properly maintained, the Town shall give BHS Solar notice describing the issue and BHS Solar will have ten (10) days to begin to cure the issue (followed by diligent completion of the cure), except in cases of an imminent threat to public health, safety or welfare, in which case BHS Solar will immediately take steps to repair the road. If after 48 hours BHS Solar has not cured the imminent threat to public health, safety or welfare, then Town may cure the imminent threat to public health, safety or welfare and forward an invoice for the cost of cure to BHS Solar, payable within thirty (30) days.

6. **Intentionally deleted.**

7. **Term.** This Agreement will commence upon the date indicated above and will continue in full force and effect until BHS Solar has substantially completed its construction activity of the Project, and has completed all reasonably necessary general maintenance, repair, or rehabilitation to the Town Road caused by BHS Solar’s activity contemplated herein.

8. **Miscellaneous.** This Agreement embodies the complete agreement between the parties with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements, or representations by or between the parties, written or oral, related to the subject matter hereof. Each party represents that it has full right and authority to enter into this Agreement. No amendment to this Agreement shall be effective unless in writing, signed by the parties. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect. No consent or waiver, express or implied, by the Town to or of any breach or default by BHS Solar in the performance of its obligations shall be deemed or construed to be a consent or waiver to or of any other breach or default by the Town. Failure on the part of the Town to complain of any act or failure to act by BHS Solar, irrespective of how long such failure continues, shall not constitute a waiver by the Town of its rights hereunder.

9. **No Assignment.** Except as otherwise provided herein, no party to this Agreement may sell, assign, or transfer its interest in this Agreement, or any of its right, duties, or obligations hereunder, without the prior written consent of the other party. Whenever the consent or the approval of a party is required herein, such party will not unreasonably withhold, delay, or deny such consent or approval.

10. **Notice.** Any notice given by one party to the other in connection with this Agreement will be in writing and will be by personal delivery; sent by registered mail or certified mail; or by United States Mail, return receipt requested, postage prepaid; to:

TOWN:

Town of Timnath
Attention: Director of Planning
4750 Signal Tree Drive

With a copy to:

Carolyn Steffl, Town Attorney
Dietze and Davis, P.C.
2060 Broadway, Suite 400
Boulder, CO 80302

BHS SOLAR:

BHS Solar, LLC
300 Spectrum Center Drive, Suite 1020
Irvine CA 92618

11. **No third-party Beneficiaries.** This Agreement is not intended to, and does not, create any right, benefit, responsibility or obligation enforceable by any non-party. Provisions of this Agreement shall apply to all successors and assigns of BHS Solar with respect to the Project.

12. **Venue and Choice of Law.** This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall exclusively lie in Larimer County, State of Colorado.

13. **BHS Solar Responsibility.** BHS Solar assumes full risk and responsibility for any and all damages caused by BHS Solar's use of the Town Road and exercise of its activities under by this Agreement. BHS Solar agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of BHS Solar or any invitees, guests, agents, employees or subcontractors of BHS Solar, whether brought by any of such persons or any other person arising from BHS Solar's activities. BHS Solar shall maintain and keep in force during the Term of this Agreement one or more policies of liability insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado.

14. **No Waiver of Governmental Protections.** The Parties agree that the Town is relying on, and does not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Constitution, Colorado Governmental Immunity Act, §§ 24-10-101 *et. seq.*, C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.


15. **Attorney Fees.** In the event either Party initiates suit to enforce or interpret this Agreement, and in such litigation substantially prevails, the substantially prevailing Party shall be entitled to an award of attorney fees and costs by the court, in addition to any other relief granted.

16. **Counterpart Execution.** This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by a duly authorized representative on the date first set forth above.


BHS Solar, LLC
a Delaware limited liability company

By: Hanwha Energy USA Holdings
Corporation, a Delaware corporation

By: 
Name: Cliff Graham
Title: CDO
Date: February 21, 2024

THE TOWN OF TIMNATH

ATTEST:

DocuSigned by:
By: 
Name: Mark J. Soukup
Title: Mayor

DocuSigned by:
By: 
Name: Milissa Peters,
Title: Town Clerk

EXHIBIT 1

Map of Weld County Road 15

