

Road: CR 450S / 500E
County: Tippecanoe
Parcel: 1
Owner: Peabody Farms, Inc.

RIGHT-OF-ENTRY GRANT

WHEREAS, the COUNTY OF TIPPECANOE, INDIANA, by and through its Board of Commissioners ("County"), is currently developing plans for the reconstruction of County Roads 450S and 500E, including the construction of a new roadway alignment and detention ponds on and across the existing property owned by Peabody Farms, Inc. ("Owner"), as more fully shown in Exhibits A, B, and C (the "Project").

AND WHEREAS, it is desirable to begin construction without further delay in the 2023 construction season.

AND WHEREAS, all parties acknowledge that the Project is for a valid public use, and that any objections, present or future, to the entry by County for the purpose of beginning all necessary construction and all other related activities on the affected parcels for the purpose of the Project are hereby waived by Owner, without waiving any claim or right to payment of damages;

AND WHEREAS, Owner agrees not to object that the Project is for a proper public use, and that Owner's lands are properly within the scope of the Project, as more fully shown by the Construction Plans dated 12/23/2022, as shown on Exhibit B;

NOW THEREFORE, be it agreed by and between the undersigned Peabody Farms, Inc., and the COUNTY OF TIPPECANOE, INDIANA, through its Board of Commissioners, that the undersigned does hereby grant a right of entry on and across its land affected by the Project within the proposed right-of-way, effective as of the execution of this agreement.

That this grant of right of entry shall not prejudice Owner's rights to receive full and just compensation for the interest to be acquired by County in Owner's Property, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of Owner's lands.

That this right of entry shall permit the COUNTY OF TIPPECANOE, through its employees, agents, and contractors, to construct the Project as shown in the construction plans dated 12/23/2022, as more fully shown on Exhibit B. It shall be the responsibility of County and its Contractors to provide freedom of travel to and from the homes and businesses of Owner and all adjacent property owners, including any farms owned or operated by Owner, at all times during the construction, and further to provide permanent access to Owner's land by construction of access drives from the new sections of right-of-way as shown on the

attached Exhibit C. The County and its Contractors shall also ensure that the mail can be delivered to the Owners, and adjacent property owners, at all times.

In full consideration for this Right of Entry, the County will tender to Owner earnest money in the amount of Eighty-Four Thousand Six Hundred Dollars (\$84,600.00) (the "Earnest Money"), which payment shall be made within thirty (30) days of execution of this agreement. The Owner agrees that the Earnest Money represents adequate and full compensation for the immediate entry upon and use of Owner's property upon tender of payment, subject to a final settlement or award for the total value of damage incurred by Owner as a result of the Project. The parties agree that the Earnest Money, after tender of payment by County, will be deducted from any final settlement amount, award or verdict, and shall further be excluded from any amount on which Owner is entitled to earn interest (if any) under Indiana statute.

The construction activities will be limited to the proposed right-of-way and temporary right-of-way as shown on the plans, including all maps and legal descriptions. This right of entry shall expire upon completion of the described construction, subject to compensation and damages, and the undersigned waives no right to make claim for any damages for any acts which would normally be the basis for an action for damages, but Owner does waive any objections that the Project as detailed in this Agreement is not for a valid public use of eminent domain in the State of Indiana. This Agreement, which shall be recorded by County covering the affected parcels, will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties. The undersigned have legal authority to sign this Agreement on behalf of their respective parties.

Any work performed or damage caused by Owner or its Contractors outside of the right of entry and right of way areas, as shown by Exhibits A, B, and C, is prohibited, and Owner prohibits County or its Contractor from accessing any areas outside the areas shown on Exhibits A, B, and C. County prohibits its Contractor(s) from accessing or damaging any areas outside the right of way and right of entry areas as part of its agreements, and Owner has the right to approve in writing any amendment or further access as an addendum to this Agreement. Additionally, any damage to or interruption in drainage tile must be repaired or replaced to ensure adequate drainage for all affected areas of Owner's land.

The County shall indemnify, defend, and hold harmless Owner of and from any and all claims, demands, losses, causes of action, expenses, damages, lawsuits, judgments, or liabilities of any kind, including reasonable attorneys' fees and costs, extending from claims brought by or on behalf of any person or entity for damages,

either to person or property (including death), resulting from the County's and/or its Contractors' presence on the Property or otherwise in connection with the Project, unless caused by the gross or willful negligence of the Owner. Independent of any right or cause of action Owner may have against a third party, including Contractor, under this Agreement, the County's obligation to indemnify and hold harmless shall be limited in substance by state and federal statutes and constitutional provisions designed to protect the exposure and liability of County as a political subdivision of the State of Indiana or otherwise (e.g., actions and conditions as to which County is immunized by the Indiana Tort Claims Act, dollar limits stated in such Act, exemption from punitive damages, the 11th Amendment, and the ability to defeat a claim by reason of contributory negligence or fault of a claimant), so that County's liability, if any, resulting from this Agreement, shall not in any case exceed what might have been County's liability to a claimant had County been sued directly by the claimant in Indiana and all appropriate defenses had been raised by County. However, unless waiving this limitation would invalidate an applicable policy of insurance or agreement with a third-party, the foregoing limitation shall not apply to the extent that (a) County's obligations hereunder are covered by insurance, or (b) County is entitled to indemnification from another person or party.

County will remove the existing pavement sections designated on the plans to be removed and restored. In order to facilitate the quality of replacement soil to be used for the remediation of the vacated roadway areas, Owner will be given the option to allow storage of the highest quality soils from excavation of other areas necessary for project completion, including the retention pond excavation, on Owner's property in a mutually agreeable location, taking into consideration: A) the proximity of the storage area to the other project areas; B) the resources and timeline available to Contractor to haul soil in a manner that minimizes additional time and expense; C) the necessary portion of the soil that may be required to complete other backfill areas for the project; and D) other reasonable and/or necessary factors that may limit the ability of Contractor to store all or most of the soil on the Owner's property. Contractor and County will, to the extent possible, use the highest quality soils available on Owner's property, as excavated from other

areas, to use as remediation and replacement tillable soil for the vacated roadway areas. Owner agrees that Contractor is not bound to store all soil on Owner's property, and that Contractor may haul off lower quality soils, whether due to need for use on other portions of the Project, including other properties not under Owner's control, or for logistical or expense considerations. All parties will act in good faith to complete the project in a timely fashion, while minimizing waste or hauling away of the top quality soils, so that the vacated roadway areas are remediated to a level substantially similar in quality as the adjacent tillable farm ground on Owner's property.

The relocation of utility poles is not in the control of County, and Owner understands that Tipmont REMC is the owner of the utility poles and of any right of way or easements related to the utility poles, and any relocation of the utility poles, including preemptive review, is between Tipmont REMC and Owner. The attached Exhibit D is a copy of the Tipmont Work Plan, showing plans and locations for active and inactive poles or facilities, along with the County's commitment to pay all reimbursable expenses for the relocation not considered betterment or salvage to Tipmont.

IN WITNESS THEREOF the undersigned has hereto set his hand and seal this _____ day of _____, 2023.

Tippecanoe County, Indiana

Peabody Farms, Inc.

Tracy A. Brown, President

Signature

Thomas P. Murtaugh, Vice-President

Title

David S. Byers, Member