ORDINANCE NO. 2026 -_____

AN ORDINANCE AMENDING THE POSEY COUNTY UNIFORM DEVELOPMENT ORDINANCE REGARDING DATA CENTERS

WHEREAS, the Board of Commissioners of Posey County, Indiana, as the executive and legislative body of Posey County, has the power to adopt and amend ordinances relating to the administration of Posey County government; and

WHEREAS, the Board of Commissioners of Posey County now seeks to amend the Posey County Uniform Development Ordinance as hereafter provided.

NOW THEREFORE, BE IT ORDAINED by the Board of Commissioners of Posey County, Indiana, as follows:

NOTE: DELETING TEXT WILL BE INDICATED BY A STRIKE THROUGH OF THE TEXT TO BE DELETED UPON AMENDMENT

TEXT TO BE ADDED BY AMENDMENT WILL BE INDICATED IN BOLD.

AMENDMENT NO. 1:

Chapter 2 – Zoning District and Overlay Districts

Amend Chapter 2(B)(12)(c) – Zoning Districts, Light Industrial District (I-1), Use and Developmental Standard as follows:

c. Special Exception Uses – Light Industrial District (I-1)

INDUSTRIAL USES

• livestock auction stock pen

• ***Data Center Minor**

AMENDMENT NO. 2:

Chapter 2 – Zoning District and Overlay Districts

Amend Chapter 2(B)(13)(c) – Zoning Districts, Heavy Industrial District (I-2), Use and Developmental Standard as follows:

c. Special Exception Uses – Heavy Industrial District (I-2)

INDUSTRIAL USES

- hazardous waste storage/recycling
- Junkyard/salvage
- Mining
- Waste transfer facility
- ***Data Center Major**
- ***Data Center Minor**

AMENDMENT NO. 3:

Chapter 4 – Standards for Specific Uses

Amend Chapter 4(A) Establishment of Development Standards for Specific Uses as follows:

Standards for Specific Uses

- Accessory Dwelling Unit
- Agribusiness
- Animal Feeding Operation
- Day Care Facility
- Campground or Recreational Vehicle Park
- Home-Based Business (with employees)
- Home Occupation
- Junkyard/Salvage Yard
- Manufactured Home Park
- Renewable Energy Generation Systems
- Satellite Parking
- Sexually Oriented Business
- Short-term Rental
- Tiny Home Development
- Wireless Communication Facility
- **Data Centers (Data Center Minor, Data Center Major)**

AMENDMENT NO. 4:

Chapter 4 – Standards for Specific Uses, Zoning District and Overlay Districts

Amend Chapter 4(C) – Uses as follows:

17. Data Centers

a. Data Center Purpose. Data Centers are large-scale industrial facilities that utilize large amounts of electrical power, water and land. The purpose of these standards is to allow Posey County to regulate the placement, construction and expansion of data centers and their impact on public infrastructure, the environment, natural resources, and neighboring properties in order to preserve and protect public health and safety, as well as allowing for the orderly development of land, and to protect property values throughout the county.

b. Data Center General Standards.

i. Applicability. This section governs the establishment, construction, expansion, and operation of a Data Center Major or Data Center Minor in Posey County. Data Centers are not permitted by right in any zoning district. A Data Center may be approved only as a Special Exception Use in I-1 or I-2 districts, subject to the eligibility requirements, structural standards, and procedures set forth hereafter in addition to all other applicable provisions of the UDO.

ii. No Preemption. Nothing in this section is intended to preempt other applicable state and federal laws and regulations, except to the extent this section provides higher or more stringent standards.

iii. Acreage. Acreage is measured from a perimeter fence surrounding the total Data Center including any substation(s), electrical yards, mechanical yards, generators, generator pads and all other exposed equipment, located within the property boundaries.

iv. Integrated Systems. Any facility or building intended to be operated as an integrated system of a Data Center shall be regulated according to the aggregate total square footage and/or acreage. Any subsequent phase of an approved project shall meet the criteria required of the total square footage and/or acreage of all phases.

v. Cumulative Impact. The cumulative impact of existing and/or proposed data center(s) in Posey County and surrounding counties shall be a factor in the evaluation of the infrastructure capacity and compatibility of an application for a Data Center

c. Development Standards for Data Center.

Data Center Structural and Performance Standards

Building Code Compliance	**• All installed equipment shall conform to applicable industry standards, and the application shall include certificates of design compliance of the proposed equipment from nationally recognized third parties in the business of certifying compliance** **• All electrical components of the project shall conform to applicable local, state, and national codes, and relevant national and international standards**
Emissions	**Backup generation and related emissions-producing equipment shall comply with all applicable federal and state air-quality laws, permits, and approvals, including requirements administered by the Indiana Department of Environmental Management and the U.S. Environmental Protection Agency. Compliance with federal and state air-quality laws shall be ongoing and include continuing compliance during operation to include changes in law made subsequent to the time of application. As part of Special Exception review, the applicant shall identify the type, number, location, fuel source, testing schedule, expected hours of operation, and anticipated noise and off-site impacts of such equipment. The Area Plan Commission may impose reasonable land-use conditions addressing location, screening, noise, testing hours, and other off-site impacts, provided such conditions do not conflict with applicable state or federal permits or approvals.** **If natural gas turbines are used as backup generation, they shall be equipped with SCR systems and shall meet all applicable state and**

	federal air quality standards, including Indiana Department of Environmental Management permit requirements. The applicant shall acknowledge that SCR reduces NOx emissions but may increase particulate matter (PM2.5) emissions and shall demonstrate compliance with applicable PM2.5 standards.
Energy Storage.	**On-site energy storage systems ~~shall be long-duration systems providing a minimum of ten (10) hours of storage. Lithium-ion battery systems that do not meet the ten-hour minimum are disfavored and~~ shall require the applicant to demonstrate fire suppression and safety plans meeting NFPA 855 standards.**
Generator Use	**The utilization of Generators as a primary Power source is prohibited. The use of Generator(s) shall be restricted to use during a utility outage or emergency and for testing, maintenance, commissioning, repair, or other activity necessary to maintain operations or comply with applicable legal, regulatory, permitting, utility, or manufacturer requirements. A generator installed at the site shall be enclosed ~~by~~with an acoustic enclosure, barriers or wall(s), whichever is reasonable for proper operations by the manufacturer to reduce noise transmission. Any generator installed at the site must be certified at the most stringent emission tier of the Environmental Protection Agency (EPA). Battery backup systems are permitted to provide instantaneous power during the switchover to generators. Any generator located outside of a building shall not be tested more than once per week, with testing only occurring between the hours of 8 AM to 5 PM. The Administrator may approve an alternative generator type or testing times upon receipt of documentation that neighboring properties would not be adversely impacted.**

***Height**	**• No Data Center building or structure may exceed thirty (30) feet in height, unless the following criteria are met: (a) the Data Center owns and operates its own firefighting equipment which has been approved by the fire department with fire protection jurisdiction of the Data Center to mitigate a fire incident at a height of 75 feet in a I-1 district or 100 feet in a I-2 district; or 2) the fire department with fire protection jurisdiction of the Data Center possesses fire equipment to mitigate fire incidents a fire incident at a height of 75 feet in a I-1 district or 100 feet in a I-2 district. If the above criteria are met, then no Data Center building or structure may exceed seventy-five (75) feet in an I-1 district or one hundred (100) feet in an I-2 district.** **• No Data Center may exceed the height restriction in the underlying zoning district**
Landscape and Buffer	**• Any landscaping, buffers and/or fencing required by the UDO may be installed within any area of the required Setbacks and Separation. Landscaping and/or buffers are not required in any area adjacent to land zoned I-1 or I-2.**
Lighting	**• Outdoor lighting shall be directed inward and downward, shielded to prevent off-site light spillage or sky glow, and shall comply with any outdoor lighting requirements of the UDO. All warning lights in the project shall conform to best industry practices to reduce impacts on migrating birds and other wildlife. All lighting shall be shielded so that no glare extends beyond the boundaries of the project. All installed lighting shall be certified Dark Sky Lighting and shall otherwise meet the requirements of the UDO. No red pulsating incandescent lights or white strobe lights shall be installed. All lighting shall be in compliance with applicable Federal Aviation Administration regulations.**

Noise	**A Data Center shall comply with the applicable noise standards of the UDO for an I-1 or I-2 district.**
Power.	**An Applicant shall provide documentation from the applicable public utility ("Utility") specifying: (i) the maximum power demand requested by the Data Center of the Utility, stated in megawatts; (ii) the voltage and routing by which the Utility proposes to deliver that power; (iii) a copy of the original Energy Service Agreement, and any amendment(s), filed with the Indiana Utility Regulatory Commission ("IURC") by the Utility; (iv) the status of any other application or plan filed by the Utility with the IURC to meet the Applicant's requested power demand and (v) the location, design, and ownership of any required substation.** **The Applicant shall update the APC of the status of the Utility's filings with the IURC for the Applicant's project, including notice of any public hearings or availability for public input to the IURC.** **The Applicant shall provide the APC with any IURC required filings made by the Utility seeking approval to provide additional power load exceeding the Utility's original filings with the IURC.** **If the Applicant requests additional power load from the Utility in excess of the amount stated in a prior approved Special Exception Use, the Applicant shall make application to the APC to amend any prior approved Special Exception Use. Upon conducting a public hearing, the APC approval or denial of the request to amend shall be based upon the factors utilized in granting the prior Special Exception Use and whether the request to amend materially changes the Applicant's approved site plan, mechanical equipment, cooling systems, backup generation, substation footprint, noise profile, traffic, water use, wastewater discharge, or other land-use impact.**

	Any applicant-owned, customer-owned, or privately owned substation or similar electrical infrastructure constructed primarily to serve the Data Center shall be shown on the site plan and shall be subject to applicable zoning, setback, screening, stormwater, and improvement-location-permit requirements. Nothing in this section shall be construed to regulate the rates, service obligations, interconnection standards, routing decisions, ownership, or transmission planning of a public utility, rural electric membership corporation, electric cooperative, or other state or federally regulated electric provider.
***Signage**	**• Any signage shall comply with the requirements of the UDO.**
***Setbacks and Separation**	**• Setbacks are measured from the property line to a building(s) edge of the project area.** **• No part of the project shall be constructed in any dedicated public easement or dedicated public right-of-way without prior written authorization from the County Commissioners** **• Setbacks for Data Center Major and Data Center Minor shall be at least:** **o 1,000 feet from a residential dwelling located on adjacent land zoned A-1, A-2 R-1, R-2, R-3,** **o 500 feet from any adjacent land zoned A-1, A-2, C-S, R-1, R-2, R-3, C-B, R-O, C-1, C-2, C-3:** **o Setbacks from adjacent I-1 or I-2 zoned land and public rights-of-way shall be the standard setbacks of the underlying industrial district; any required buffer along a public right-of-way shall be satisfied by landscaped screening per the UDO's screening standards.; and,**

	○ **The APC may approve the placement of an ancillary building of the Data Center within a setback area. An ancillary building is defined as a building or structure that does not house infrastructure for building, running, delivering, or transmitting technological applications and services. Examples of an ancillary building would include, but not be limited to, a guardshack, office building, or storage building for maintenance equipment.**
Transportation	**A Data Center shall comply with the applicable transportation standards of the UDO for an I-1 or I-2 district.**
Water Wells	**Any usage of Water Well(s) for the project shall require 1) the Applicant provide hydrology testing performed by the time of filing an Application and submission of such testing to the County at the time of Application; 2) payment of further hydrology testing performed by the County by a third party of the County's choosing subsequent to the filing of an Application; 3) payment by the Applicant for testing of water wells serving land adjacent to the project prior to the beginning of construction if requested by a landowner; 4) payment by the Applicant for testing of water wells serving land adjacent to the project upon the completion of construction; and, 5) payment for any mitigation costs incurred by a landowner adjacent to the project for damage to a water well system; contamination of a landowner's water; or loss of water usage to a landowner as evidenced by testing results performed post-construction.**

*** Variances may only be granted from these developmental standards. All other standards are mandatory.**

d. Procedures for Establishing a Data Center (Data Center Major, Data Center Minor).

i. <u>Special Exception Required</u>. If a special exception is required per *Chapter 2: Zoning Districts and Overlay Districts*, the Area Plan Commission is appointed as the hearing officer under Chapter 5(E)(1) – Alternate Procedures to determine if approval of a Special Exception use is to be granted to a Data Center project before applying for special development plan approval. In determining whether to approve a Special Exception use for a Data Center shall follow the Rules and Procedures of the APC.

The Area Plan Commission shall not grant a Special Exception use unless it finds that: (i) the proposed facility meets all structural and performance standards in (c) above; and (ii) the proposed facility is consistent with the spirit and intent of the Posey County Uniform Development Ordinance and the County's Comprehensive Plan.

The Area Plan Commission may impose conditions as it deems necessary to protect neighboring landowners and the public, including but not limited to noise monitoring requirements, landscaping installation schedules, operational hour restrictions for construction, and bonding or financial assurance for compliance.

Any material change to an approved Special Exception use, including expansion of floor area, increase in power demand, addition of backup generators, or alteration of setbacks, shall require a new or amended Special Exception approval.

ii. <u>Variance Requested</u>.

(a) Variances may only be requested for relief from the standards denoted with an "*" identified in the tables under Subsection c: Development Standards for Data Center.

(b) An applicant seeking a variance from any height, setbacks and separation, or signage requirement must first be heard by the BZA to be granted approval before applying for special development plan approval.

iii. Special Development Plan Approval.

(a) Applicability.

(1) Data Center Major and Data Center Minor, require preliminary and final special development plan approval by the APC.

(2) To protect public health, safety, and county property, upon the filing of a Preliminary Special Development Plan, the APC or

its designee shall require an independent consultant to perform expert technical review of the project. The appointed consultant shall be involved throughout the entire project lifecycle, including the Preliminary and Final Development Plan stages, construction and inspection phase. The cost incurred for the appointed consultant shall be paid by the Applicant upon submission of periodic or final invoice.

(3) Upon the filing of a completed application for preliminary special development plan, the Applicant shall schedule an "open house" for the purpose of making a public presentation of the Data Center project, which shall include the following:

(a) The Applicant shall provide public notice of the open house on a form acceptable to the APC, which said notice shall be published in a local newspaper at least ten (10) days prior to the open house.

(b) The open house shall be held in a facility open to the public with a capacity for a minimum of 100 attendees.

(c) The Applicant shall make a presentation of the parameters of the Data Center project and then be available for public questions and comment.

(d) The open house shall be conducted at least ten (10) days prior to the APC's first public hearing on the Preliminary Special Development Plan.

(e) The Applicant may seek the assistance of the Area Plan office in preparing and providing public notice and securing a meeting location

(b) Preliminary Special Development Plan. A completed application for preliminary special development plan approval shall be filed with the APC on the required application forms. If the Applicant is not the owner of the real property on which the project is sited, all property owners of the real property where the project is to be located must be Co-Applicants. The application shall include the following items:

(1) Project Summary. An initial project summary including a description of the project stating the total acreage included in the project and the GIS coordinates of the general outline of the project area, equipment, and other buildings that are a

direct functional part of the project. If any part of the project is to include battery storage, the kinds of batteries to be used, the manufacturer, and the type of installation shall also be included.

(2) Applicant and Co-Applicant(s). A description of the Applicant, Owner and Operator and any other responsible party and if applicable each of their intermediate and ultimate parent companies, subsidiaries, holding company or other responsible party, a listing of experience in similar projects and gross capitalization. List names, addresses, email addresses, websites and phone numbers of the Applicants, Owners and Operators and all Co-Applicants.

(3) Maps. A map(s) of the project site and surrounding quarter-mile radius that shows the topography (at 2-foot contours), political and natural features of the project site. The map shall include the individual land parcels by state tax parcel number and clearly identify whether the property is participating in the project or not. The map shall also identify the zoning designations, all streets and roadways by classification, municipal and township boundaries, residential structures, public lands, public and private schools (including colleges and universities) existing utilities and transmission lines, public safety facilities, governmental boundaries, public recreational land, and any commercial or public structure such as stores, churches, airports, or landing strips. If more than one map is submitted, all maps shall be drawn at the same scale. All maps must be at a scale and format allowing it to be viewed and read without the need for enlargement. All maps shall be submitted in hard copy and electronic format as specified by the Administrator.

(4) Site Plan. The Applicant shall submit a site plan at an appropriate scale showing the proposed location of the project facilities; proposed access roads; substations; maintenance structures; storage yards; electrical cabling; ancillary equipment; and any other structures that are a direct functional part of the project. In addition, the site plan shall show: primary structures within one quarter mile of any project; property lines, setback lines; public roads; County regulated drains, open ditches or tiles including private tiles if

located in a public right of way; location of all above-ground utility lines; location of all existing underground utility lines associated with the site; recognized historic or heritage sites as noted by the Indiana Department of Natural Resources; floodplains; and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines, and the location of any other condition or facility regulated by any other agency having jurisdiction of activity on the site. This site plan must also be distributed to emergency management agencies (EMS and EMA), fire departments serving any part of the project site, the County Sheriff, and the chief executive body of any municipal government whose boundary is within two (2) miles of the project site.

(5) Electric Utility Service Plan. The Applicant shall include an Electric Utility Service and Power Plan providing written verification from the electric utility provider for the project identifying the following: a) the capacity of the electric utility at the time of application to provide for the requested electrical load of the project without further infrastructure; b) proposed plans of the electric utility to build infrastructure to increase capacity for the requested electrical load of the project; c) proposed plans of the electric utility for funding of to-be-built infrastructure for increased capacity to serve the project; d) proposed plan for Applicant to pay the cost of to-be-built infrastructure for increased capacity to serve the project; and, e) proposed interconnection point, required substations or transmission upgrades for the project and location of transmission lines (existing or to be built) for the project.

(6) Electric Use and Power Plan. The Applicant shall include an Electric Use and Power Plan providing the following: a) the phasing plan for onsite electrical service load requirements; b) identification of energy efficiency measures to be implemented; c) projected power usage effectiveness (PUE); d) plans for on-site, non-emergency power generation; e) plans or proposals for co-generation or other energy cooperative agreement; f) plans or proposals for renewable energy integration; g) back-up battery plans to be

implemented; h) plans or proposal for the use of non-electric power for the project, including but not limited to the use of generators, fuels, oils, purpose for such use and schedule of operation for non-electric power equipment.

(7) Water Infrastructure Plan. The Applicant shall include a Water Use Plan providing the following: a) the source of the water supply to be utilized for the project, including the name, address, contact person for any water utility proposed or planned to supply water; b) written verification from any water utility of its capacity at the time of application to provide for the requested water supply for the project without further infrastructure; c) proposed plans of the water utility to build infrastructure to increase capacity for the requested water supply of the project; d) proposed plans of the water utility for funding of to-be-built infrastructure for increased capacity to serve the project; e) proposed plan for Applicant to pay the cost of to-be-built infrastructure for increased capacity to serve the project; and, f) proposed interconnection point, lift stations, water line upgrades for the project and location of water lines (existing or to be built) for the project.

(8) Water Usage Plan. The Applicant shall include a Water Usage Plan providing the following: a) water source (potable or reclaimed); b) the use of reclaimed or recycled water in lieu of potable water for cooling operations, and if such use is not planned, an explanation of for such non-use; c) projected peak and average daily and annual water use for the project; d) allocation of water usage for domestic use and cooling operations; e) descriptive plans for cooling methods for the Data Center facilities and equipment; f) descriptive plans for wastewater discharge methods and status at time of application of any permitting requirements for wastewater discharge; g) copies of applicable local, state and federal permits required for water usage; h) evidence of registration with the Indiana Department of Natural Resources as a significant water withdrawal facility, if applicable, or a written statement explaining why such registration is not required; and, i) mitigation plan for damage to or loss of water use suffered by a landowner adjacent to the project.

(9) **Water Well Usage Plan. The Applicant shall include a Water Well Usage Plan providing the following: a) proposals or plans to utilize water wells on the project property or property outside of the project; b) hydrology testing performed by the Applicant within the area where estimated water level drop exceeds the normal seasonal variation, as determined by a qualified hydrogeologist based on site-specific modeling within a minimum radius of one (1) mile of the project site and a maximum radius to be determined by the APC upon consultation with hydrology engineers employed by the APC and/or County; c) mitigation plan for damage to, contamination of or loss of water usage to a water well located on a property within the scope of the site specific modeling ~~adjacent to the project~~.**

(10) **Construction. The Applicant shall include a Construction Plan providing the following: a) proposed schedule for construction from groundbreaking to completion, including hours of operation; and b) designated site(s) for delivery of materials and equipment during construction.**

(11) **Transportation Study. The Applicant shall include a Transportation Study which complies with the transportation standards of the UDO applicable to an I-2 district.**

(12) **Lighting Plan. The Applicant shall include a Lighting Plan for the period of construction and post-construction providing the following: a) proposed plan for lighting curfews, shielding and/or dimming strategies; b) type and location of all external lighting, including levels of lighting; c) full cut-off features and fixtures; and, d) color temperatures of lighting.**

(13) **Emergency Response Plan. The Applicant shall include an Emergency Response Plan providing the following: a) fire protection coordination with Coordinating Entities; b) battery storage safety protocols; c) hazardous materials handling procedures; d) or as requested by a Coordinating Entity.**

(14) **Air Emissions Plan. The Applicant shall include an Air Emissions Plan providing the following: a) identification of all combustion equipment to be present on the premises during construction and operation of the project; b) copies of applicable local, state and federal air permits, along with any**

reports of air testing performed at the boundaries of the project property; and c) description of air emissions control technology to be utilized during construction and operation of the project.

(15) Landscape Plan. The Applicant shall include a Landscape Plan providing for installation of screening to mitigate the Project's impact on the viewshed(s) from any adjacent residence, public building, public recreational or state/local designated scenic areas or roads, and public, private/parochial school ("Viewshed Screening"). The Viewshed Screening shall comply with the requirements under the Landscape and Buffer Standards of the UDO for an I-1 and I-2 district. The Landscape Plan shall provide for the maintenance, including controlling invasive species, of the Viewshed Screening and Setback Buffers during the life of the Project. The Viewshed Screening may be located in the Setback Buffer within no less than twenty (20) feet on either side of any required fencing. Any Viewshed Screening located in the Setback Buffer of a public right-of-way or in a public or utility easement shall conform to safety standards set by the applicable regulatory body.

(16) Preliminary Coordination with Applicable Entities. The Applicant shall submit a summary report identifying the entities the Applicant has communicated and coordinated with respect to the project. The report shall list the entity name, the primary contact person at the entity and contact information, the dates of coordination and list of documents submitted to each agency. The report shall also transmit any comments, suggestions, concerns, approvals, or disapprovals with respect to the project issued by the entity and/or communicated to the Applicant. See Table: Entities for Coordination for required comments and feedback in addition to any other entities identified by the Administrator.

(17) Noise ~~and Vibration~~ Evaluation Report. The Applicant shall submit a Noise ~~and Vibration~~ Evaluation Report which complies with the Noise standards of the UDO applicable to an I-1 or I-2 district.

(18) Telecommunications and Wireless Signals Report. The Applicant shall submit a Telecommunications and Wireless Signals Report identifying any expected interference with over the air communications and information gathering and provide a verified statement that it will mitigate any such interference. The Applicant will coordinate its report with NOAA and any other agencies dependent on wireless communications that may be affected.

(19) Natural Resource Impact Report. The Applicant shall submit a Natural Resources Impact Report for the proposed project site. The Natural Resources Impact Report shall include a detailed description of the potential natural resource impacts as a result of the construction, operation, and maintenance of the Data Center that includes identification and analysis of (a) topography, geology, vegetation, soil types, water resources including wetlands, avian, terrestrial, and marine wildlife habitats as applicable; (b) compliance with applicable air and water quality standards; and (c) compliance with any site specific recommendations made by IDNR or IDEM. The report shall include a study area map with identification of any areas of importance such as bat habitat, flood zones, wetlands, and watercourses evaluated in the report. The report shall also include any potential mitigation measures such as open space, erosion control, and habitat replacement to reduce the identified impacts on the project area.

(20) Cost Reimbursement. An agreement and written undertaking with adequate surety, bond, or other accepted form of adequate financial assurance must be submitted to pay or reimburse the County, the APC, any impacted school corporation, and any other impacted municipal corporation for all expenses incurred by the County, the APC, any impacted school corporation or municipal corporation in evaluating the documents required to be submitted for preliminary and final development plan approval. The costs to be reimbursed shall include expenses and professional fees actually incurred including but not limited to all electrical, structural, mechanical, hydrology, acoustical and transportation engineers, financial consultants, attorneys, and other professionals. Within thirty (30) days of submission of an

invoice, the Applicant shall pay or reimburse all such expenses. This obligation for payment or reimbursement of professional fees shall continue so long as the Data Center is in existence through the completion of decommissioning and its removal.

(21) Additional Information. The Applicant shall provide any further information as requested in writing by the Area Plan Commission or Posey County Commissioners.

(c) Final Special Development Plan Approval. A petition for Final Special Development Plan approval shall be submitted to the APC and shall include:

(1) Revised Site Plan. A revised site plan indicating any changes to the site plan submitted for the Preliminary Development Plan Approval.

(2) Transportation Plan. A Transportation Plan recommended by the Data Center Transportation Committee and approved by the County Commissioners including a form of financial assurance acceptable to the County Commissioners for the repair or replacement of all damaged roads, bridges, signage, or other transportation structures during construction, maintenance, and operation.

(3) Water Safety Plan. A Water Safety Plan shall be submitted that addresses all properties immediately adjacent to the project and if water wells are utilized on the project, then within the area where water level drawdown is estimated to exceed normal seasonal variation based on site-specific hydrogeological modeling~~a radius of five (5) miles of the project property~~.

(4) Drainage and Erosion Control Plan. Drainage and Erosion Control Plan approved by the Indiana Department of Environmental Management (IDEM) and Posey County Soil and Water Conservation District Technician and reviewed by a designee of the Posey County Area Plan Commission, including a form of financial assurance acceptable to the County for the repair or replacement of all damaged drains, ditches, and tiles (if in the public right-of-way). The Transportation Plan and the Drainage and Erosion Control Plan shall state that any newly constructed access roads shall not impede the flow of water

and will comply with the applicable drainage ordinance. Additional conditions may be required regarding the repair of community or private drainage structures on a case-by-case basis as part of an approval.

(5) Safety and Security Plan. A Safety and Security Plan which must include adequate provisions for site security and safety, including without limitation the specific protocol, times, designation of a Site Safety Coordinator and contact information in the event of an emergency occurring on the project property. If the plan includes using County services, it should include signatures of the proper authorities indicating they are aware of their role and capable of performing it. Coordination with local emergency responders and area hospitals must be included.

(6) Final Coordination with Applicable Entities. The Applicant shall submit a summary report identifying the entities the Applicant has communicated and coordinated with respect to the project. The report shall list the entity name, the primary contact person at the entity and contact information, the dates of coordination and list of documents submitted to each agency. The report shall also transmit any comments, suggestions, concerns, approvals, or disapprovals with respect to the project issued by the entity and/or communicated to the Applicant. The Applicant shall verify that the reports submitted for preliminary review remain true and correct and there has been no change in the project design that would require the Applicant to resubmit the project for coordination with applicable entities. See Table: Entities for Coordination for required comments and feedback in addition to any other entities identified by the Administrator.

(7) Decommissioning Plan. A Decommissioning Plan to ensure that the removal and disposal of the physical materials of the project are properly decommissioned. The Decommissioning Plan must be updated and approved by the APC every five (5) years after the approval of the initial Decommissioning Plan and after any material improvements are added to the project, in the same manner as the initial Decommissioning Plan. The Decommissioning Plan shall include financial assurance that the physical materials as provided herein are properly

decommissioned upon the end of the project life or abandonment consistent with this Ordinance. The financial assurance must be provided at the completion of construction and prior to the issuance of any Certificate of Occupancy . If construction of the project is to occur in phases, the financial assurance should reflect the amounts necessary to satisfy the phase of construction for which a Certificate of Occupancy has been issued. Further financial assurance shall be provided as a Certificate of Occupancy has been issued for each subsequent phase of construction.

The obligations with respect to decommissioning shall include removal and proper disposal of all physical material pertaining to hazardous materials, battery-powered equipment, fuel-related systems, underground storage tanks, cooling infrastructure and all other regulated materials that require compliant handling, disposal and documentation. The Decommissioning Plan shall include a contractor cost estimate from a licensed engineer with experience in data center decommissioning removal of similar facilities. The Decommissioning Plan must include proper disposal of all hazardous material and Operator must provide to the APC the certification of disposal issued by the entity providing the disposal service and/or the receiving disposal facility. All disposal must comply with local, state, and federal law, rules, and regulations in effect at the time of decommissioning.

(8) Construction Bond. A Construction Bond that runs from the date of commencement of construction through the issuance of the Certificate of Occupancy. The Applicant shall demonstrate that it has the financial resources to construct the project by providing evidence of: (1) adequate funding of one hundred percent (100%) of the estimated cost of construction of the project; (2) performance and payment bonds or other sureties from the Applicant and/or major equipment suppliers and contractors; (3) the existence of written warranties from contractors and/or manufacturers which have demonstrated financial ability to repair and/or replace defective work, materials, and equipment; and (4) adequate casualty, builders risk, business interruption, and liability insurance for the replacement of the project facilities and the individual

components thereof. The Applicant may provide cost estimates, bids, contracts, warranties, feasibility studies, engineering studies and reports, insurance certificates, loans, and other financing commitments to provide the requested information. If construction of the project is to occur in phases, the Construction Bond should reflect the amounts necessary to satisfy the above requirements for each phase until its completion, and thereafter the Construction Bond should reflect the amounts necessary to satisfy these requirements for each additional phase of construction.

(9) For any project seeking tax abatement or other economic considerations for the project from Posey County government, the Applicant shall submit an Economic Development Agreement approved by the County Commissioners. The Economic Development Agreement must be developed in consultation with the Local Economic Development Organization ("LEDO") and the County Council. In addition to any information required by the County Commissioners and County Council, the Economic Development Agreement should include, as applicable, estimated property taxes and any tax abatement, any economic development payments, estimated lease payments and overall cost and tax revenue impact on the County as well as the estimated current economic impact of the project area in its current use. If requested by the County Commissioners or County Council, the Economic Development Agreement may also include a Property Value Guarantee Agreement in the form found in Subsection g: Property Value Guarantee Form for Data Centers.

(10) Additional Assurances. The Applicant shall provide a notarized statement acknowledging and affirming the following with respect to the project:

- **All duties and obligations of each of the Applicant, Owner, and Operator shall be joint and several, and shall be binding upon all each of their heirs, successors in interest, and assigns. At least thirty (30) days prior to any transfer of any ownership interest in the project, written notice shall be given to the Executive of the municipality where the project is located and the**

APC. All bonds, sureties, letters of credit or other financial assurances provided under this Ordinance shall remain in full force and effect upon any transfer, assignment, or conveyance of an ownership interest until the successor in interest delivers an accepted replacement obligation. The transfer, assignment, or conveyance of an ownership interest in the project without the advance approval of replacement bonds, sureties, letters of credit or other financial assurances shall constitute a default and shall not relieve the responsible party of liability. However, the transfer of the interest of the Owner(s) shall be allowed without advance approval so long as the bond, surety, letter of credit or other financial assurance posted by the Applicant or Operator covers the successors in interest of the Owner(s).

- **Compliance with all standards set forth in this Ordinance is a continuous obligation of the Applicant, Owner, and Operator, and their successors and assigns. Violations are categorized by severity and shall be enforced through civil penalties, stop-work orders, or permit revocation. Any Applicant, Owner, or Operator, successor, assignee or a contractor or agent thereof who engages in any activity prohibited by or under the control of this Ordinance without first obtaining any required approval or permit including but not limited to an Improvement Location Permit or a Certificate of Occupancy shall be subject to fines and all legal remedies under both *Chapter 5, Section G: Complaints, Violations, and Remedies and Table 3 – Violation Classification Levels and Civil Penalties*. The authority to assess fines rests only with the APC. The APC shall also have all recourse to address violations as provided by law.**

- **In addition to enforcement under *Chapter 5, Section G: Complaints, Violations, and Remedies*, an Owner, or Applicant, or Operator which violates any provision of this Ordinance (including violations by their agents, contractors, or subcontractors) shall be subject to the following Violation Classification and Penalties:**

  <u>Violation Classification and Penalties:</u>

  a. Per-Day Violations: Pursuant to IC 36-1-3-8, each day an uncorrected violation remains constitutes a separate and distinct offense. Civil penalties shall accrue daily as established in Table 3.

  b. Revocation of Permits: If a Level 2 violation persists for more than fourteen (14) consecutive days, or if a "Common Nuisance" is declared under IC 36-7-4-1012, the Area Plan Commission (APC) may initiate a public hearing to formally revoke the issued Improvement Location Permit and Certificate of Occupancy.

  c. Level 3 (Critical) Cease and Desist: The Administrator is authorized to issue an immediate Cease and Desist Order for any non-compliant system posing a risk to public health or safety. This includes mandatory shutdown of cooling arrays, generators, or the entire facility until the risk is remediated.

  d. The Administrator has the discretion to issue a Cease and Desist Order if a Level 1 or Level 2 violation has not been remedied within thirty (30) days of receipt of notice of such violation.

Class	Violation Type	Examples	Civil Penalty/Action
Level 1	Administrative	Failure to submit required reports	$500 per day
Level 2	Operational	Exceeding noise levels	$2,500 (1st day) $7,500 (each day thereafter

Level 3	**Critical/Safety**	**NFPA 855 non-compliance; fire suppression failure**	**Immediate Cease & Desist plus $7,500 per day**

Table 3. Violation Classification Levels and Civil Penalties

(11) Additional Information. The Applicant shall provide any further information as requested in writing by the Area Plan Commission or Posey County Commissioners.

(12) Time Limitation. An application for Final Development Plan approval must be submitted no later than two years after the Preliminary Development Plan approval. If not submitted within two (2) years, the Applicant must re-submit its Preliminary Development Plan for approval before submitting its Final Development Plan. The Applicant may, but is not required, combine its Preliminary and Final Development Plan approval into one submission in that case. No project may exceed the total acreage approved in the Final Development Plan by more than two percent (2%) without further approval by the APC.

(13) Project Expansion. Upon the completion of construction, the Applicant may not thereafter expand a constructed building or structure, nor beyond the boundaries of the approved project without further approval by the APC upon the completion of a public hearing on a request to expand.

(14) Sales Tax Exemption Agreement. Prior to seeking to utilize an issued specific transaction award certificate, an Applicant, Owner and/or Operator shall, pursuant to IC 6-2.5-15-15.5, enter into an agreement with Posey County, or the applicable municipality, establishing the mandatory 1% Revenue Share payment based on the unpaid state gross retail and use taxes of the electricity billed to the data center.

(d). Entities for Coordination

Coordination for Preliminary Special Development Plan

Authority	Purpose	Type of Documentation
Federal Aviation Administration (FAA)		**Compliance letters for each date center project**

	Coordinate to reduce any flight or airport interference	
U.S. Department of Defense (DOD) **Siting and National Oceanic and Atmospheric Administration (NOAA)**	**Coordinate siting to mitigate radar interference or any other interference. No data center shall be installed in the "No Build, Mitigation, or Consultation zones as determined by NOAA."**	**Any recommendations or comments received submitted to APC**
Environmental Protection Agency (EPA)	**Compliance with air and water quality standards under NEPA**	**Any recommendations or comments submitted to APC**
USFWS Indiana Field Office **Migratory Bird Treaty Act (MBTA)** **Eagle Protection Act** **Endangered Species Act**	**Compliance with any applicable data center guidelines**	**Any recommendations or comments submitted to APC and part of Natural Resources Report**
Army Corps of Engineers	**Floodplain or wetlands involvement**	**Designations and comments and permit if required**
Indiana Department of Natural Resources (IDNR)	**Historic Preservation, Flood Plains**	**Comments**
Indiana Department of Environmental Management (IDEM)	**Endangered Species**	**Comments**
Private airport authorities permitted by FAA and IAA	**Coordinate siting process**	**Any recommendations or comments submitted to APC**

Telecommunications Infrastructure Owners and Operators	**All telecommunications owners and operators with infrastructure within 2 miles of a data center project boundary shall be notified and consulted**	**Any comments or recommendations received from owners and operators shall be submitted to the APC**

Coordination for Final Special Development Plan

Authority	Purpose	Type of Documentation
Indiana Department of Environmental Management (IDEM)	**Drainage and Erosion Control Plan Approval**	**Drainage and Erosion Control Plan**
Highway Supervisor	**Road Plan Approval (construction, maintenance, access cuts)**	**Transportation Plan**
Local Emergency Response	**Life Line access, safety protocols**	**Safety and Security Plan**

e. ILPs and Commencement of Construction of Data Center.

i. General. After Final Development Plan approval is obtained, but before any construction commences or ILPs may be issued, all applicable state and federal permits, approvals and licenses must be obtained (with copies provided to the Administrator) and all state and federal statutes and regulations must be complied with and the following requirements satisfied:

(a) Insurance Requirements. The Owner or Operator of the project shall maintain liability policies covering (1) bodily injury and property damage and (2) environmental contamination arising from construction, operation, maintenance, and decommissioning of the project. Limits on the bodily injury and property damage policy shall be at least $2 million per occurrence and $5 million in the aggregate

with a deductible of no more than $20,000 and on the environmental contamination policy shall be of at least $1 million per occurrence and $2 million in the aggregate with a deductible of no more than $50,000. All such policies shall name the County and the municipality in which the project is located as an additional insured and a binder shall be provided annually to the County.

(b) Signage and Contact. The Applicant shall establish a 24-hour toll-free phone number for the registering of complaints and concerns. This number shall be posted at every project service road used for entry to and exit from the project area before Improvement Location Permits are issued and before any construction or earth moving can commence. If legitimate complaints are not remedied within forty-eight (48) hours the county may address these complaints with any expenses incurred to be reimbursed by the Applicant.

(c) Pre-construction Meeting. The Applicant must attend a Pre-Construction Meeting between the Administrator, APC President, Building Commissioner, and any other public officer or official whose input is deemed appropriate to verify that all requirements in this section have been met. This meeting shall take place as the final step before construction and all other requirements should already have been met. Once reviewed, if all requirements have been met, the Applicant may then obtain Improvement Location Permits. If any requirements have not been met then further pre-construction meetings will be held until it can be verified that the identified issues have been resolved.

(d) Fees. All applicable ILP fees must be paid for before any applicable ILPs will be issued. No improvement location permit shall issue if the Applicant has overdue amounts owed to the County.

ii. Construction Standards. Prior to and during construction the Applicant, Owner and Operator shall be responsible for:

(a) Implementing reasonable dust control measures during construction.

(b) Complying with existing septic and well regulations as required by the County Health Department and the Indiana Department of Public Health.

(c) Repairing all damages to County owned or regulated or adjacent landowners' waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction or maintenance of the

project. Damages must be completely repaired to original or better condition, and so as not to impede the flow of water. All repairs must be completed in a timely manner, and the Owner, Operator, and/or Applicant shall be responsible for loss or damage proximately resulting from its impairment of such drainage structures. All repairs to County regulated drainage structures must be completed within twenty-four (24) hours.

(d) Using concrete armoring techniques at each and every location where County regulated drains and subsurface power transmission lines of any type cross. Unopened bags of premixed concrete shall be laid on top of the transmission lines to cover six (6) inches on both sides of the line and eight (8) feet to each side of the County regulated drain the line is crossing. Open drain and transmission line intersections where the line is below the invert of the open drain shall be armored using the same technique. Red warning tape (printed with "warning electrical line below" or similar language) shall be buried no closer than twelve (12) inches above the actual power line at all crossing locations. The County Surveyor or agent designated by the County Surveyor shall inspect every such crossing before backfilling. Concrete armoring techniques will not be required in cases where directional boring is used.

(e) Installing permanent, visible markers where directional boring is used. Markers shall be placed within the line of sight indicating directional changes and borings.

(f) Submitting a weekly plan of work detailing where construction and transportation activities will occur to the APC staff, County Highway Supervisor, County Sheriff, County Surveyor, Soil & Water Conservation District, the Superintendent(s) of the School District(s) in which construction is occurring and to the emergency services with jurisdiction over the areas in which construction is occurring. This shall include notification of any oversize or overweight loads entering or exiting the project each day as well as any work on roads, drainage, or access roads.

(g) Adhering to the approved Transportation Plan. In addition to any requirements for transportation standards in an I-1 or I-2 District, the County Highway Superintendent and/or appropriate municipal road personnel shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future

damage. The County Highway Superintendent and/or appropriate municipal road personnel may choose to require remediation of road damage during or upon completion of the project and is authorized to collect fees for oversized load permits. If repairs are not made in a timely manner, the County Highway Superintendent and/or appropriate municipal road personnel is authorized to make repairs and charge the Applicant a fee to cover the costs of repair. Such fees shall be established at the start date of construction and may be revised at three-month intervals. Further, a corporate surety bond shall be required by the County Highway Superintendent and/or appropriate municipal road personnel to ensure the County or affected municipality that future repairs are completed to the satisfaction of the County or affected municipality. The bond shall not be released at the conclusion of construction of the project, but it may be reduced to cover any damages or losses from the operation and maintenance of the project. If the Applicant or its contractors require material changes from the approved Transportation Plan or if post completion repairs, improvements, or expansions require oversize and overweight loads or involve new routes, an Amended Transportation Plan must be approved in the same manner as the initial plan. Any violation of the approved Transportation Plan may be subject to fines as provided in *Chapter 5, Section G: Complaints, Violations, and Remedies* and in addition, may also be subject to fines established by the governing body having jurisdiction over the roadway(s) affected.

(h) Adhering to the approved Development Plans. Any non-material proposed changes, modifications, or amendments to the Development Plans must be approved by the Administrator who shall thereafter make report of the non-material changes, modifications, or amendments to the APC. All material changes to the approved Development Plans must be approved by the APC. The Administrator shall have the authority and discretion, considering all relevant factors, to determine whether the proposed change is material.

(i) Hours of Construction. The hours of construction of buildings and structures and earthwork shall be limited to Monday through Friday from the hours between 7:00 am to 7:00 pm (or dusk, whichever comes first) and the hours between 8:00 am to 5:00 pm on Saturday. The hours of construction or installation of equipment occurring inside of an enclosed building or structure shall not be limited.

Construction shall be prohibited on federal holidays, Mother's Day and Father's Day.

The APC may modify the Hours of Construction upon request of the Applicant and review of the Construction Plan submitted in the Preliminary Special Development Plan.

(j) Roadway Maintenance. During construction, all roadways shall remain free of debris. Wash stations shall be located at every exit onto a public road to remove mud and debris from vehicles, equipment, and machinery.

~~**(k) Construction Sound and Lighting Testing. No later than thirty (30) days of the commencement of construction, Applicant shall conduct noise testing consistent *with Chapter 3(B)(10) – Site Development Standards* at the project site and continue such testing at least every ninety (90) days thereafter. All testing results shall be provided to the APC, or the applicable requestor, within five (5) days of obtaining the testing results. In the event testing reveals non-compliance with the Final Development Plan, project operations shall cease and corrective mitigation efforts shall be implemented until further testing demonstrates compliance.**~~

f. Post Construction, Continued Maintenance, and Modifications of Data Center

i. Decommissioning Security. At the completion of construction but before any commercial operations begins, the Applicant shall secure and provide to the APC a performance bond, surety bond, letter of credit, or other form of financial assurance that is acceptable to the APC (the Decommissioning Security") equal to one hundred percent (100%) of the estimated cost of decommissioning the project pursuant to the Decommissioning Plan. The amount of the Decommissioning Security shall be adjusted annually by January 31 by an amount equal to the increase in the CPI Index. "CPI Index" shall mean the Consumer Price Index for "All Urban Consumers, U.S. City Average, All items," issued by the Bureau of Labor Statistics of the United States Department of Labor, or, if discontinued or no longer published, such other governmental index that most closely matches the manner in which inflation had been previously tracked as selected by the APC. The Decommissioning Plan and Decommissioning Surety shall be re-evaluated every five (5) years commencing with the operation of the project by a licensed engineer approved by the APC

and qualified to provide an estimate of the cost of decommissioning of the project (the "Decommissioning Engineer"). A new Decommissioning Security in the revised amount, if any, shall be provided within sixty (60) days of the approval of the updated Decommissioning Plan.

ii. **Waste Removal. All solid waste whether generated from supplies, equipment, parts, packaging, or operation or maintenance of the facility, including old parts and equipment, shall be removed from the site in a timely manner. All hazardous waste generated by the operation and maintenance of the facility, including but not limited to lubricating materials, shall, be handled in a manner consistent with all local, state, and federal rules and regulations.**

iii. **Inspections. Upon request of the Building Commissioner of the affected governmental unit or the Executive of the affected governmental unit, Operator shall provide an annual inspection report for all facilities in the project to the Building Commissioner and Executive, at Operator's cost. In addition, the Building Commissioner, approved designees, along with licensed third-party engineers/professionals retained by the County for the specific purpose of conducting inspections of the project shall have the right, at any reasonable time and with sufficient prior notice, to accompany the Applicant, or his agent, on the project premises to inspect the project and its construction and maintenance and to identify any necessary repairs. The Applicant of the project may retain a licensed third party professional engineer familiar with the applicable systems to prepare and submit to the County Building Commissioner a written report which addresses the repairs or alterations requested, and which suggest alternate methods for addressing the concerns or provides evidence that said repairs or alterations are unnecessary, within thirty (30) days after receiving notice from the County Building Commissioner that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The County Building Commissioner will consider any such written report and determine whether the repairs or alterations should be made as originally requested or as suggested in the written report. In the event of a dispute between the Building Commissioner and the Applicant or a third-party professional engineer retained by them, as to the repairs or alterations which are required, the decision of the Building Commissioner shall be final. These inspections do not relieve any**

liability of the Owner or Operator for damages or injuries arising from or related to the project. The Administrator will inspect and determine compliance with zoning regulations and approved development plans, and the Administrator shall thereafter make appropriate report(s) to the APC for action, if any action is necessary.

iv. Complaints. If, after construction, the Applicant receives a written complaint related to interference caused by a Data Center with local broadcast residential television, telecommunication, communication or microwave transmissions, the Applicant shall promptly resolve the complaint.

v. As-built Plans. The Applicant shall deliver to the Administrator and to all providers of emergency services serving the project area a copy of the as-built site map. Upon request by the local fire department, the Applicant shall cooperate with the local fire department to develop or update the fire department's emergency response plan. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

vi. Record of Ground Disturbance and Road Usage. On completion of construction the Applicant shall submit to the County Surveyor a site map detailing all ground disturbed through construction activity, surface and subsurface as-built infrastructure and all routes over which trucks and equipment traveled. The scale and format of the submitted map shall conform to the County Surveyor's specifications.

vii. Liability for Drainage. For a period of five (5) years following the completion of construction the Applicant shall be liable for all costs of repair to county drain tiles, regulated drains and ditches and other county regulated surface and subsurface structures and private tiles located in the public right of way within fifty (50) feet of the routes and disturbed ground. This period shall be extended for any damages occurring as a result of operations, replacement, or maintenance of the project after the five year period.

viii. Abandonment. A Data Center or any part of the project is presumed at the end of its useful life and/or abandoned if the Data Center is not in operation for a period of twenty-four (24) consecutive months, provided that no abandonment shall be presumed while the Data Center is awaiting utility power, completing phased construction, or undergoing equipment replacement, and provided further that the APC shall give the Owner written notice and an opportunity to

demonstrate operational intent before making any abandonment determination. This presumption may be rebutted by submitting to the APC for approval and within ninety (90) days of submission obtaining approval thereof of a plan outlining the steps and schedules for returning the Data Center to service. Any Data Center which pursuant to the terms hereof is abandoned pursuant to the terms hereof shall be subject to removal pursuant to the Decommissioning Plan.

ix. Unsafe Structures. Any Data Center or structure thereof declared to be unsafe by the Building Commissioner or the APC by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair or rehabilitation within six (6) months or be deemed abandoned and at the end of its useful life and subject to Decommissioning. Nothing herein prevents the Building Commissioner or the APC issuing an immediate cease use order as to any structure that he or she determines is unsafe during the repair or rehabilitation period.

x. Post-construction Sound and Lighting Testing. Within thirty (30) days of commencing any phase of operations of the project, the Applicant, or its successor, shall conduct testing for Noise~~, Vibration~~ and Lighting. The Applicant shall further perform sound~~, vibration~~ and lighting testing for verification of compliance with the Final Development Plan upon the following: a) every three (3) months within the first year of operations; and b) once annually for a period of five (5) years from the date of commencement of operations of the project; c) upon the completion of any expansion or renovation of the project or replacement of exterior lighting or sound producing equipment on the project premises; or d) upon the written request of the APC, Posey County or Posey County Building Commissioner. All testing results shall be provided to the APC, or the applicable requestor, within five (5) days of completing the ~~obtaining the~~ testing report~~results~~. In the event testing reveals non-compliance with the Final Development Plan, project operations shall be subject to civil penalties under the Violation Classification and Penalties of this Ordinance.

xi. Post-construction Modifications. Any post-construction proposed non-material modifications, alterations, expansions, or changes of any type or size to the Final Development Plan must be approved by the APC.

All material post construction proposed changes must apply in the same way as a new project. The APC shall have the authority and discretion, considering all relevant factors to determine whether the proposed post-construction change is material.

g. Property Value Guarantee Form for Data Center.

i. The following form of a Property Value Guaranty is recommended for use in negotiations for and approval of any economic incentive granted by the County Commissioners and/or County Council.

PROPERTY VALUE GUARANTEE

Legal Name of Owner and Operator of the (Legal Name of Data Center Project) and their assigns and successors in interest (hereinafter jointly and severally referred to as "Guarantor") agree to guarantee (the "Guarantee") the value of all owner-occupied residential dwellings owned by owners of record (hereinafter referred to individually as "Owner" and collectively as "Owners") as of the date of the granting of secondary approval of the Development Plan for the [Legal Name] for properties which are located within one mile of a Data Center as shown on the approved Site Plan contained within the Development Plan in all directions and to guarantee the value of all residential dwellings owned by Owners whose ownership is of record in the office of the Posey County Recorder on the date of the granting of secondary approval of the Development Plan.

The location of each Owner of a residential dwelling within one mile of a Data Center shall be noted on the Development Plan. Within thirty (30) days of the granting of secondary approval of the Development Plan, the Guarantor shall provide each eligible Owner with written notice by certified mail to the Owner's address as set forth in the property tax records of Posey County describing the terms of the Guarantee. To qualify for the Guarantee each Owner must notify the Guarantor within ninety (90) days of the mailing of the notice of his or her intent to participate, and Guarantor shall thereafter obtain and submit to Owner an M.A.I. appraisal of Owner's property within sixty (60) days following the date of the Guarantor's receipt of Owner's notice. Owner may accept the value of the property based on the appraisal or may obtain his or her own M.A.I. appraisal. If the Owner's appraisal is less than or within 5% above the Guarantor's appraisal, the guaranteed value ("Guaranteed Value") shall be the average of the two appraisals. If the Owner's appraisal is more than 5% above the Guarantor's appraisal and the Owner is not willing to accept the Guarantor's appraisal, the two appraisers shall agree upon a third M.A.I. appraiser, to be paid for

100% by Guarantor, who shall appraise the property and whose appraised value shall become the Guaranteed Value for that property.

The period of the Guarantee shall be for a period of _____ years following the issuance of a Certificate of Occupancy for the operation of the [Legal Name] Data Center. The Guarantee shall extend only to Owners of record as of the date of the approval of the Secondary Development Plan for the Data Center and not to the assignees or subsequent owners or purchasers. In the event any property covered by this Guarantee is listed for sale by a licensed real estate broker for a period of not less than _____ and during such period, and Owner either does not receive an offer or receives an offer below the Guaranteed Value, Owner, subject to the restrictions below, shall notify Guarantor of the intent to exercise Owner's right under this Guarantee and within thirty (30) days of the receipt of this notice Guarantor shall do one of the following:

> **A. Authorize Owner to accept the pending bona fide offer and to pay the Owner at closing of the sale the difference between the purchase price set forth in the offer and the guaranteed value.**
>
> **B. Immediately take steps to purchase the dwelling from Owner at the guaranteed value with such purchase to be completed within sixty (60) days of receipt by Guarantor of notice by Owner of Owner's failure to receive a bona fide offer for the guaranteed value after having listed the property for a period of _____ with a licensed real estate broker.**

In any case in which there is a purchase offer pending for which Owner expects to make a claim under this Guarantee, Owner shall provide a copy of such offer to Guarantor. In the event Guarantor is required to purchase Owner's dwelling, Owner shall convey fee simple title to the property, free and clear of all liens and encumbrances by delivery of a Warranty Deed at closing. At closing Guarantor shall pay for preparation of the warranty deed, vendor's affidavit, and all title insurance fees, closing fees, and all survey expenses if it is necessary to subdivide the dwelling from other real estate of the Owner. Guarantor's obligations hereunder are hereby expressly made contingent upon Owner: performing routine maintenance and repairs on the dwelling; the dwelling or property being in the same condition on the date of sale as it was on the date first appraised hereunder; the delivery of the property free and clear of all liens and subject only to such easements and other encumbrances commonly accepted in residential real estate transactions; and Owner conveying fee simple title to the dwelling or

property to Guarantor by recordable Warranty Deed at closing. All notices to Owner and Guarantor shall be to the address of Owner and Guarantor as listed on the property tax records of Posey County.

AMENDMENT NO. 5:

Chapter 10 - Definitions

Amend Chapter 10(B) – Definitions by adding the following definitions:

DATA CENTER. A physical room, building, or facility that houses infrastructure for building, running, delivering, or transmitting technological applications and services, or for storing and managing the data associated with technological equipment, applications, systems or services. The term does not include a single room or floor of a building otherwise devoted to a separate primary use, an ordinary business office or school facility equipped with servers incidental to that office or school use, or a telecommunications switching station regulated primarily as a utility.

DATA CENTER MAJOR. A Data Center with square footage measuring greater than 100,000 square feet.

DATA CENTER MINOR. A Data Center with square footage measuring at 100,000 square feet or less.

DARK SKY LIGHTING. Outdoor lighting designed to minimize vertical illuminance generated from the site through glare and energy waste by directing light downward. Lighting following these principles include but are not limited to, shielded fixtures, warm toned light of 3000K or less.

GENERATOR. Any generator that is used as part of an energy backup system for the Data Center shall a) be powered by propane, natural gas, hydrogen fuel cell, bi-fuel (natural gas/diesel), or battery or b) be classified as, or similar to, a Tier IV diesel generator per the emissions standards of the Environmental Protection Agency (EPA).

LOAD. The total power consumed by servers, heating and cooling, lighting, ventilation, and other networking devices that operate within a Data Center.

SUBSTATION. An electric utility facility that converts higher voltages to lower voltages within, or separate from, a data center to deliver sufficient power at maximum efficiency. It may operate independently as a dedicated site once directly connected to a transmission line.

DATA CENTER SQUARE FOOTAGE – The square footage of a Data Center shall include the total square footage of each floor in the data center development, the square footage of

any supporting uses, and the square footage of any additional exterior equipment, such as substation, electrical yards, mechanical yards, generators, generator pads and all other exposed equipment, located with the property boundaries.

AMENDMENT NO. 6:

Chapter 5 – Zoning Administration and Procedures

Amend Chapter 5 – Zoning Administration and Procedures to add:

E. Alternate Procedure

1. The APC may appoint a hearing officer and may establish an alternate procedure under which the hearing officer may approve or deny variances from the design standards of the UDO, special uses, conditional uses, and special exceptions from the terms of the UDO. With respect to such matters, the hearing officer shall have the power of the BZA. The hearing officer may be a BZA member, an APC staff member, the APC or any other person. The APC may appoint more than one hearing officer. A hearing officer serves at the pleasure of the APC and may be removed by the APC at any time, without cause.

2. With respect to an alternate procedure, the APC may adopt rules:

a. limiting the kinds of variance, special use, contingent use, conditional use, or special exception petitions that may be filed under the alternate procedure;

b. permitting the hearing officer, in appropriate circumstances, to transfer a petition filed under the alternate procedure to the BZA;

c. requiring the creation of minutes and records of the proceedings before the hearing officer and the filing of the minutes and records as public records; and

d. regulating conflicts of interest and communications with the hearing officer, so as to require the same level of conduct required of the BZA in the conduct of its business.

3. The APC staff may file a written objection to a petition for a variance, exception, or use if:

a. it would be injurious to the public health, safety, morals, and general welfare of the community; or

b. the use or value of the area adjacent to the property included would be affected in a substantially adverse manner.

4. If a written objection is filed by the APC staff, the petition shall:

a. be considered withdrawn; or

b. be transferred to the BZA if requested by the petitioner.

5. The APC staff may indicate that it does not object to the approval of the petition if specified conditions are attached. If the applicant does not accept these conditions, the petition shall:

a. be considered withdrawn; or

b. be transferred to the BZA if requested by the petitioner.

6. The hearing officer may impose conditions and may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel, in the same manner that the BZA may impose conditions or require written commitments. If the applicant for the variance, exception, or use does not accept these conditions or make the commitment, the petition shall:

a. be considered withdrawn; or

b. be transferred to the BZA if requested by the petitioner.

7. The hearing officer may not modify or terminate any commitment made to the hearing officer or to the BZA.

8. A decision of a hearing officer under the alternate procedure may not be a basis for judicial review, but it may be appealed to the BZA. An interested person who wishes to appeal a decision of a hearing officer under the alternate procedure must file the appeal with the BZA within fourteen (14) days after the decision is made.

First passed by the Board of Commissioners of Posey County this ___ day of _____, 2026.

Final passage by the Board of Commissioners of Posey County this ____ day of _____, 2026.

BOARD OF COMMISSIONERS OF POSEY COUNTY, INDIANA

By: _____
Bill Collins

By: _____
Greg Newman

By: _____
Eric Koester

ATTEST:

_____
Maegen Greenwell, Posey County Auditor

APPROVED AS TO LEGAL FORM:

By: _____
Joseph H. Harrison, Jr.
Posey County Attorney

This instrument was prepared by Joseph H. Harrison, Jr.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.

_____
Joseph H. Harrison, Jr.
Atty. No. 11403-82