

ROAD USE AGREEMENT
(Champaign County Highway System)

This ROAD USE AGREEMENT (this "Agreement") is made and entered into this 30th day of June, 2021 by and between the County of Champaign, Illinois, a body politic acting by and through its County Executive (the "County" or "County Engineer" as a representative of the Board), and Prairie Solar 1, LLC a Delaware limited liability company ("Company"). Company and the County are sometimes referred to herein individually as a "Party" and collectively as the "Parties." The term "Company Representative(s)" shall include the Company's contractors, sub-contractors, employees, material suppliers, vendors, transport providers, representatives, and designees.

RECITALS

WHEREAS, Company intends to construct an approximately 150-megawatt photovoltaic solar energy facility with associated on-site substation, inverters, fencing, road, and other ancillary facilities (the "Project") in and across portions of Champaign County, Illinois, and

WHEREAS, in connection with the construction of the Project, Company and the County desire to address certain issues relating to the roads owned, operated and maintained by the County (collectively, the "County Highways") over which it will be necessary for Company and Company's Representative(s), among other things, (i) transport equipment and materials over certain County Highways which are normally within legal limits, with the exception of the main power transformer (MPT) of the substation that will exceed the design limits of the County Highways; (ii) transport certain locally sourced materials, such as concrete and gravel on such County Highways; (iii) widen certain County Highways and make certain modifications and improvements (both temporary and permanent) to such County Highways (including to certain culverts, bridges, road shoulders and other related fixtures) to permit such equipment and materials to pass; and (iv) place material and equipment for the Project adjacent to, or under certain County Highways, and

WHEREAS, under 605 ILCS 5/5 et seq. the County has broad power regarding the opening, construction, maintenance, relocation, access to, or repair of highways in the County Highway system, and

WHEREAS, 605 ILCS 5/9-113 grants to the County, authority to impose reasonable rules, regulations and specifications for the use of County Highways by public and private utilities, and

WHEREAS, 605 ILCS 5/9 113.01 imposes a liability on public or private utilities for any damage to County Highways, and

WHEREAS, 605 ILCS 5/9-122 imposes a liability on damage done to a bridge or culvert, and

WHEREAS, it is in the best interest of the public health, safety and welfare that Company and the County reach an agreement to address the majority of issues that will arise in a project of this size, and

WHEREAS, Company has provided to the County Engineer an alignment plan for the Project that shows the haul route, road crossings, and construction access roads, a copy of which is attached as the Principal Road Use Schedule (Exhibit A), and

WHEREAS, Company and the County wish to set forth their understanding and agreement as to the road issues relating to the construction and operation of the Project, and

WHEREAS, this Agreement shall apply to those County Highways outlined on the Principal Road Use Schedule (Exhibit A) and, subject to Section 3.D. herein, used by Company, or Company's Representative(s) in direct support of the construction and operation of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the parties, intending to be legally bound, agree as follows:

Section 1. Company agrees to undertake the following activities in accordance with the terms of this Agreement:

- A. Pay a sum of Five Thousand Dollars (\$5,000.00) to the County Highway Department for costs directly associated with the management and implementation of this Agreement. Said payment shall be made directly to the County Highway Department within 21 days of the signing of this document. Such payment shall be made, at Company's discretion, by check or wire transfer.
- B. Provide contact information for the Company Construction Manager, the Company Field Engineer, and the Company Permit Manager. The Company's On-Site Superintendent for the Civil Site Construction Contractor will be stationed no farther than two (2) hours away from the County. In addition, the following Company representatives may be contacted:

Primary Construction Manager: _____
Email: _____ Mobile: _____

Secondary Construction Manager: _____
Email: _____ Mobile: _____

Primary Field Engineer: _____
Email: _____ Mobile: _____

Secondary Field Engineer: _____
Email: _____ Mobile: _____

Secondary Field Engineer: _____
Email: _____ Mobile: _____

Primary Permit Manager: _____
Email: _____ Mobile: _____

Secondary Permit Manager: _____
Email: _____ Mobile: _____

- C. Provide as much advance notice as is reasonable to the County Engineer in advance of all "Super Load" moves and equipment crossings for separate review and permitting. At minimum, a load is considered a "Super Load" if ONE of the following is true:
- o WIDTH is greater than 14'-6"
 - o LENGTH is greater than 145'-0"
 - o HEIGHT is greater than 15'-0"
 - o WEIGHT is greater than 120,000 lbs. gross

Additional information regarding what may be considered a "Super Load" is available from the Illinois Department of Transportation Permit Office.

- D. Transport the material and equipment and other oversize loads so as to minimize adverse impact on the local traffic.
- E. Provide as much advance notice as is commercially reasonable to obtain approval of the County Highway Department when it is necessary for a road to be closed due to a road crossing or for any other reason. Notwithstanding the generality of the aforementioned, Company or Company's Representative(s) will provide 48-hour notice to the extent reasonably practicable.
- F. Sign all highway work zones and closures in accordance with the Manual on Uniform Traffic Control Devices and the Illinois Department of Transportation Supplement to the Manual on Uniform Traffic Control Devices in accordance with Chapter 430 of the Illinois Compiled Statutes and current Illinois Department of Transportation Traffic Control Standards.
- G. Sign or mark on-site all truck routes, roads and highways approved on the Principal Road Use Schedule (Exhibit A) for use by Company or Company's Representative(s) for the movement of material and equipment and other oversize loads or equipment.
- H. Keep all County Highways used by Company or Company's Representative(s) clear, by removing all mud, dirt, dust, spilled or tracked material, garbage, obstructions, or other hazards created or caused by Company's construction activities, upon notice and within a reasonable time period.
- I. Prohibit the use of County Highway right of way as storage or staging areas and as parking areas for vehicles and equipment of all contractors, sub-contractors, employees, material suppliers, vendors, transport providers, representatives, and designees.
- J. Make the necessary improvements for the widening of any corner radius necessary to facilitate the turning movements of the transport trucks used by Company or Company's Representative(s) and once these widened radii are no longer needed to return the corners substantially to their original lines and grades unless the County Engineer requests that the widened radii remain as improved.

- K. Pay for the costs of all repairs to all County Highways that are damaged by Company or Company's Representative(s) during the construction of the Project and restore such roads to the condition they were in at the time of the pre-construction inventory.
- L. Take such measures as are reasonably required during an extended work suspension to provide for safe vehicular travel on County highways damaged as a direct result of Company or Company's Representative(s) use as directed by the County. The extended work suspension may be caused by but not limited to seasonal weather conditions, "acts of God", or labor disagreements.
- M. Acknowledge that the estimates for road repairs or restorations are good faith estimates provided by the County or an approved consultant, but the final actual costs may vary.
- N. Provide a Company Guaranty in accordance with Section 6 for the purposes of road repair or restoration.
- O. Anywhere this Agreement obligates Company to make a payment, except as called for in Section 1.A., said payment shall be made directly to the County Highway Department within 21 days of receipt of an invoice, containing such detail as Company may reasonably request, from County Highway Department. Such payments shall be made, at Company's discretion, by check or wire transfer of immediately available funds. In the event the invoice is disputed, the parties will resolve the issue as described in paragraph 6.D.4-7.

Section 2. The County, in accordance with the terms of this Agreement, agrees to:

- A. Consent to the use of the County Highway's rights-of-way for utility encroachments for the Project by separate permit. Consent granted herein shall be effective only to the extent of the property interest of the County. Such consent shall not be binding on any owner of a fee over or under which the highway is located and shall not relieve Company or Company's Representative(s) from obtaining by purchase, or otherwise the necessary approval of any owner of the fee over or under which the highway is located if such approval is legally required.
- B. Review for approval all equipment crossings across the County Highway system by giving consideration of road damage and traffic safety in a reasonable manner based on accepted engineering practices.
- C. Issue overweight and oversize permits for County Highways in a timely manner for the roads scheduled on the Principal Road Use Schedule (Exhibit A) upon the filing of such applications on behalf of Company or Company's Representative(s) and concurrent with any applicable Illinois Department of Transportation OS/OW Permit(s).

County understands and acknowledges that Company's Project requires the scheduling and delivery of a large number of material and equipment component trips necessary for the construction of the Project. County will use all reasonable efforts to issue permits during the spring posting

period, between February 1st and May 1st. County will not withhold any necessary permits during the spring posting period except when and for such time as specific conditions warrant.

Issue individual "Super Load" permits and provide recommended routing information for those loads based on timely information provided by Company or Company's Representative(s). At minimum, a load is considered a "Super Load" if ONE of the following is true:

- o WIDTH is greater than 14'-6"
- o LENGTH is greater than 145'-0"
- o HEIGHT is greater than 15'-0"
- o WEIGHT is greater than 120,000 lbs. gross

Additional information regarding what may be considered a "Super Load" is available from the Illinois Department of Transportation Permit Office.

- D. Coordinate with Company and Company's Representative(s) so as to minimize the impact of their use of the County Highway System.
- E. Perform all routine maintenance on the County Highways used as access roads for the construction of the Project in accordance with Section 5 of this Agreement.
- F. Review for approval all access points to the County Highway system by giving consideration to sight distances, drainage and proximity to other entrances, in a reasonable manner and in accordance with accepted engineering practices.
- G. Approve designs in good faith of all road repairs or restorations in accordance with IDOT Bureau of Local Road and Streets Manual.
- H. Authorize the County Engineer to agree on behalf of the County to revisions to the Principal Road Use Schedule (Exhibit A) and to determine appropriate improvements.

Section 3. Road Inventory

A Pre-Construction Inventory

Company, prior to the commencement of construction, shall perform an inventory and/or survey to record the condition of the pavement surface of the County Highways listed in the Principal Road Use Schedule (Exhibit A) prior to use by Company or Company's Representative(s). Company shall provide notice to County of the start dates and completion dates of the road survey work. During this survey the entire length of the roads as listed in the Principal Road Use Schedule (Exhibit A) shall be videotaped, which is date and geo-stamped, and if necessary, photographs may be taken. In addition, the County will provide Company or Company's Representative(s) copies of any plans, cross-sections and specifications relevant to the existing road structure, if requested. The survey company(s) shall provide a network level analysis of the condition of the roads. The assessments may be conducted using the pavement condition index (PCI) methodology, adopted by ASTM Testing Standard D 6433 Standard Practice for Roads and Parking Lots Pavement Condition Index Surveys. The PCI provides a numerical indication of the overall pavement condition for each road and will be used to evaluate the effects of the Project construction traffic.

- 1.1 The road inventory shall include: the video described above; survey of road profile and cross sections (locations of cross sections to be determined by the Company); ride quality; rutting; and road surface profiling. Company shall provide to the County a copy of the final report describing the road inventory within ten (10) days of receiving the report. For any drainage structures on the

proposed routes that the County reasonably determines may not carry the loads proposed by the Company or Company's Representative(s), the Company shall, at its own expense, hire a Professional Engineer, licensed in the State of Illinois, and approved by the County Engineer to inspect and structurally assess all bridges or structures on a Designated Road or Roadway Ditch crossings and provide documentation to the satisfaction of the County Engineer of acceptable fortification for use of said bridges or structures. The County will furnish Company or Company's Representative(s) with all available plans for the bridge(s) being evaluated. All reasonable cost incurred by the County for the review of the analysis furnished by the Company shall be paid by the Company.

- 1.2 A pre-construction road evaluation shall accompany the road inventory described above, which shall include a structural assessment of the ability of the roads listed in the Principal Road Use Schedule (Exhibit A) to carry the loads generated by the construction activities of the Company and Company's Representative(s). The road evaluation shall include geotechnical testing consisting of; a Ground Penetrating Radar Survey (GPR) collecting data at intervals of not less than one (1) foot in both roadway directions, Falling Weight Deflectometer (FWD) testing at one tenth (1/10) mile intervals using the standard seven sensor Strategic highway Research Program (SHRP) spacing, and done at 6,000 pound force for gravel roads and 9,000 pound force for paved roads; and soil boring or GeoProbe testing at intervals of approximately one half (1/2) mile, to a depth of four (4) feet, with measurements of the asphalt pavement thickness to the nearest one quarter (1/4) inch and the aggregate base thickness to the nearest one half (1/2) inch.
- 1.3 The engineering evaluation of the road segments shall be done using an estimate of the Equivalent Single Axle Loads (ESALs) forecast for the construction activities of the Company and Company's Representative(s), following the pavement design procedures AASHTO Guide for Design of Pavement Structures (1993).
- 1.4 Should the Pre-construction Road Evaluation determine that pre-construction improvements, maintenance during construction, and/or restoration after construction is required to ensure the road damage caused by the Company or Company's Representatives during construction of the Project is repaired, the Company shall provide the recommendations for those improvements, maintenance, and or repairs to the County for review.

Copies of all pre-construction documentation shall be provided to each of the Parties.

B. Post-Construction Inventory

Upon completion of construction of the Project, Company shall perform a post-construction inventory and/or survey, the methods of which shall be identical to those of the pre-construction survey. The two sets of data will be compared and if there is any wheel lane rutting, cracking or other damage in excess of the original survey, the parties shall negotiate to determine the extent of the repairs or improvements needed to return the roads to a pre-construction condition, and any inability to resolve any disputes shall be determined by the dispute resolution procedure in Section 6.D. The design of these repairs or improvements shall conform to standards provided in the IDOT Bureau of Local Roads and Streets Manual. The cost of these repairs or improvements shall be paid for by Company.

C. Optional Interim Inventory

If there is a significant span of time between the commencement and the completion of Company's construction project and during such time other parties make extraordinary use of some of the same roads that are subject to this Agreement which use also includes "Super Load" traffic, Company may conduct one or more interim inventories and/or surveys, using methods and formulating appropriate videotaping and/or photographs and other data comparable to that of the pre-construction inventory and the post-construction inventory to aid the Parties in ascertaining and differentiating the damage caused to those roads by the Company and its contractors from that caused by the other parties' use and traffic.

D. Routing and Access Approval

As soon as practical and as necessary throughout the construction of the Project, Company or Company's Representative(s) and the County shall meet and by mutual agreement revise the Principal Road Use Schedule (Exhibit A) in so far as it affects the County Highways and make it more definitive.

E. Revisions

As the Principal Road Use Schedule (Exhibit A) is revised and roads are added or removed by mutual agreement of Company and County Highway Engineer or his designee, pre-construction and post-construction improvement details shall be prepared and added to the Exhibit A using the same methodology as was used to establish the improvement descriptions included in Exhibit A

F. Incidental/Accidental Use

(1) The Parties recognize that the Project traffic may, either through mistake or with the consent of the County, use roads other than those listed on the Principal Road Use Schedule (Exhibit A). Repairs for damage caused by Company or Company's Representative(s) during such mistaken or permitted use shall be paid for or repaired as provided in Section 6.C. of this Agreement.

(2) The Parties intend that all construction traffic related to the Project shall exclusively use the routes designated in Exhibit A and shall not use any other County Highways or local roads other than those so designated. Construction traffic shall mean any traffic in support of the Project, including travel by workers to and from any job site in vehicles weighing five (5) tons or more. Subject to subsection (1) above, in the event any unauthorized construction vehicle of Company or Company Representative(s) uses a non-designated County Highway or local road, then the County in reasonable discretion of the County Engineer, may give written notice to Company of the time and place of such use, the specific identity of the vehicle, and the owner and/or operator making use of such road, and the County Engineer may impose a fine of \$500.00 per occurrence on Company to be paid within thirty (30) days of the date of such written notice; provided, however, that on the first occurrence of any unauthorized use of a road as set forth in this subsection (2), the County shall issue a warning to the operator of the offending vehicle, with a copy provided to Company.

Section 4. Construction Cooperation

A. With Others:

Prior to the commencement of construction, Company and Company Representative(s) shall hold a meeting and shall invite all public or semi-public entities as designated by the County Highway Department that may be affected by the Project including, but not limited to, schools, Post Office, law enforcement, emergency responders, and fire protection districts. At said meeting, Company will discuss its plans for the construction of the Project and compile a list of contact persons that will need to be notified of any temporary road closures that may have an effect on the daily routine or routing of those agencies. Should all the parties contacted not be represented, Company shall attempt to make contact with these entities in an effort to obtain the contact information. A copy of this list shall be furnished to the County Highway Department.

B. With the County:

During construction, the County, Company and Company's Representative(s) may meet weekly to disclose and discuss Project activities, including anticipated material and equipment deliveries, equipment crossings, and traffic movement which may be reflected as changes to the construction

plans and/or the Principal Road Use Schedule (Exhibit A).

Section 5. Repair and Maintenance of the County Highways

A. Upon mutual agreement between the parties, in order to minimize the adverse effect of the construction traffic on the County Highways, certain repairs may be required on certain roads as described on the Principal Road Use Schedule (Exhibit A), attached hereto, as amended from time to time, the cost of which shall be paid by Company.

B. The daily routine maintenance of the County Highways affected by the Project including snow removal, striping, dust control, and routine signage and regularly scheduled maintenance or repair shall be the responsibility of the County Highway Department. If repairs or maintenance, other than daily routine maintenance, are deemed necessary by mutual agreement of the parties because of activity of Company or Company's Representative(s), the County will invoice Company for such cost and Company shall make payment to the County therefore. In the event the invoice is disputed, the parties will resolve the issue as described in paragraph 6.D.3-6.

Section 6. Corporate Guaranty. Company shall provide to County a financial security in the form of a fully executed Corporate Guaranty, which may be a letter of credit, bond, or other financial instrument reasonably acceptable to the County, from Company in the amount of ONE HUNDRED THOUSAND DOLLARS (\$ 100,000) which the County may draw against in the event and only to the extent that Company fails to pay for the upgrade, repair and/or restoration expenses of the County Highways in accordance with the terms of this Agreement.

A. The Corporate Guaranty shall remain in place from a date thirty (30) days prior to the mobilization of equipment, including the transportation of materials or equipment on the roads identified on Exhibit A that are subject to this Agreement until a date two years after the completion of the Project, or the effective date of a full settlement and release of road issues executed by the County and Company, whichever is earlier. For avoidance of doubt, the completion date shall be the date that the Release of Claims is issued by the County Engineer in accordance with Section 6.B.3.e. . The County agrees to deliver any certification required for the surrender of the Corporate Guaranty when Company is released from its obligations under this Agreement.

For so long as Company is required to maintain the Corporate Guaranty pursuant to the terms hereof, in the event that, pursuant to the terms of such Corporate Guaranty the County shall be entitled to draw down the outstanding amount of such Corporate Guaranty, necessary to pay for repairs to damage caused by the Company or Company Representative(s), as a result of Company's failure or default to upgrade, repair or restore the County Highways in accordance with the terms of this Agreement. The County shall not make any claim on said Corporate Guaranty until sixty (60) days after the mailing of a written notice to Company specifying a default hereunder by Company, during which sixty (60) days Company may cure such default.

B. The Corporate Guaranty shall set forth, among other things, the disbursement procedures for the Corporate Guaranty and shall include:

1. For the preconstruction improvements to County Highways listed on the Principal Road Use Schedule attached as Exhibit A, as such Exhibit may be amended by the Parties from time to time:

a. The Company shall notify the County of the work to be done and submit plans for approval prior to the construction of the improvements.

b. The work shall be performed by or contract shall be let by Company.

- c. The County reserves the right to inspect the improvements during construction and to allow the improvements to remain or to have the improvements removed and the area restored to its preconstruction condition, at no cost to the County.
2. For damage during construction to the roads listed on the Principal Road Use Summary (Exhibit A), as amended from time to time and those roads damaged by incidental or accidental use:
 - a. Upon notification by the County, Company or Company Representative(s) shall make all temporary road repairs necessitated by Company's activities at Company's cost.
 - b. The work necessary to temporarily repair and reopen the County Highway to traffic shall be initiated by Company or its duly obligated contractor within three (3) days of notification of the work to be done, and the time to perform shall be agreed upon the Parties.
 - c. Should Company or its duly obligated contractor fail to complete the temporary repair within the given time period, the temporary repair work shall be performed by the County. Payment for the actual cost of such work shall be made by Company.
 - d. Final repairs to County Highways shall be completed as described in Section 6.B.3.
3. For the post construction final repairs or restoration of County Highways listed on the Principal Road Use Schedule attached as Exhibit A, as such Exhibit may be amended by the Parties from time to time:
 - a. The County shall notify Company in writing of the damage identified based upon the pre-construction inspection and post-construction inspections (and interim inspections, if any) of the County Highways in order to return the County Highways to their pre-construction condition in accordance with Section 3.B.
 - b. The post-construction repairs and restoration shall be advanced in accordance with Subsections 6.B.1.b.
 - c. Payment for the repairs and restoration shall be the responsibility of the Company including all reasonable administration, survey, design review, and construction inspection costs incurred by the County in connection with the final repairs and restoration. All reasonable costs incurred as described above shall be paid in accordance with paragraph 1.O.
 - d. If it is mutually agreed by the Parties, the Company may make a direct monetary payment equal to the estimated final repair and restoration direct cost plus an estimate of the direct costs that would be incurred by County if the Company made the repairs as described in Paragraph 6.B.3.c above to the County.
 - e. Upon completion of or upon receipt of the necessary funds to complete the final repairs or restoration, as detailed above, the County shall provide Company with a Release of Claims in connection with Company's obligations pursuant to this Agreement. The County reserves the right to have such Release of Claims be provided on a system wide or individual unit basis.
 - f. Upon receipt of the necessary funds to complete the final repairs or restoration as described in Paragraph 6.B.3.d above, the final repair or restoration work shall be completed at the discretion

of the County.

C. Emergency Repairs.

Notwithstanding the foregoing, in the event Company or Company's Representative(s) are reasonably believed by the County to have caused damage to County Highways of a magnitude sufficiently great to create a hazard to the motoring public, which in the County's reasonable opinion warrants an immediate repair or road closing, the County may unilaterally make or authorize repair, with the reasonable, documented direct costs thereof paid by Company, and previous written notification to the Company of the scope of such reparation. The County shall photograph, videotape, and otherwise document the conditions and make all such documentation available to Company. Any such emergency repair shall be subject to post-repair negotiations by the Parties, involvement of the intermediary and, if necessary, adjudication. If such post-repair proceedings favor Company, the County will reimburse Company for amounts to fund the repair, if any.

D. Procedure and Dispute Resolution

1. The County shall notify Company of the location and nature of the repair or restoration required, provide an estimate of cost and a time frame for completion of the work.
2. If Company agrees, the County or County's contractor shall perform the repair in the time framework specified and recover its costs from Company.
3. If the Company believes it can make the repairs and restoration to the reasonable standards of the County, then the Company may proceed with the repairs and restoration, including payment to the county for reasonable administration, survey, engineering, and inspection costs as described in Paragraph 6.B.3.c.
4. Should a disagreement exist as to the:
 - o The extent of the damage done to a County Highway based upon the pre- and post-construction inspections of the County Highways;
 - o The method, procedure or design used for the preparation of an estimate of a final repair or restoration of a County Highway;
 - o Estimate of Cost-plus fees for a final repair or restoration of a County Highway;

The County and Company will in good faith attempt to resolve the dispute. If, following such good faith attempt, the Parties are still unable to resolve the dispute within a term of thirty (30) days from the initial notification of the dispute, the Parties shall select a qualified independent third party road engineer for review and to act as a neutral intermediary to mediate the dispute within five (5) days of the effective date of such appointment. If the Parties cannot agree on a qualified independent third party road engineer within a term of thirty (30) days from the requirement by one of the Parties, then each Party shall select a qualified independent road engineer, and those two shall select a third qualified independent third party engineer, and the three engineers shall provide to the Parties a proposed solution within a term of fifteen (15) days and shall be binding on the Parties. The prevailing party shall have the right to seek reimbursement for the costs associated with this independent review process

5. If the Parties agree and/or don't reject the intermediary's proposed solution, then the County shall proceed in accordance with the agreed upon solution, complete the final repairs or restoration of the County Highway and shall recover its costs from Company or the

Corporate Guaranty as described in Section 6.B.3. In case the solution was favorable for the Company, the County shall reimburse any amount withdrawn from the Corporate Guarantee plus an interest of 3.0% (three percent).

6. If the Parties cannot agree and any of the Parties rejects the intermediary's proposed solution, such Party shall be entitled to submit the dispute to the competent court in Illinois.

The County may take unilateral action to prevent harm or protect public safety or the further degradation of its infrastructure, the cost of which shall be paid by the County.

If the appropriateness of the County action is ultimately determined to be justified either by agreement between the Parties or adjudication by a court, Company shall promptly, in the form of direct monetary compensation, reimburse the County for its expenses relating to the final repair or restoration of the County Highway, if those expenses were paid directly by the County. In case that the Company disagrees and prevails in court, the County shall reimburse any amount withdrawn from the Corporate Guarantee plus an interest of 3.0% (three percent).

7. For the purposes of temporary or emergency repairs, the County charges shall be based on County maintained time and material cost records, which shall be made available to Company for review. County billing rates for labor shall be those established by the County and in regard to equipment and machinery, those rates approved by the Illinois Department of Transportation or the Federal Highway Administration.

Section 7. Mutual Indemnification/Hold Harmless and Liability Insurance Provisions

- A. Indemnification by Company. Company hereby releases and agrees to indemnify and hold harmless the County and their respective officers, employees, elected or appointed officials, and agents, and their respective heirs, executors, administrators, successors and assigns (hereinafter collectively "County Releasees") from any and all actions, cause of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the County Releasees arising out of or relating to the performance by Company or Company's Representative(s) of their obligations under this Agreement. More particularly, but without in any way limiting the foregoing, Company hereby releases the County Releasees and agrees to indemnify and hold harmless the County Releasees from any and all actions, cause of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any road subject to this Agreement by Company, its employees, agents, representatives, material suppliers, vendors, transport providers or contractors, or their respective employees, agents or representatives.
- B. Indemnification by the County. The County hereby releases and agrees to indemnify and hold harmless Company and their members, officers, directors, contractors, subcontractors, employees and agents, and their respective employees, heirs, executors, administrators, successors and assigns (hereinafter collectively "Company Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Company Releasees arising out of or relating to the performance by the County of its obligations under this Agreement. More particularly, but without in any way limiting the foregoing, the County hereby releases the Company Releasees and agrees to indemnify and hold harmless the Company Releasees from any and all actions, causes of action, suits, claims, expenses

(including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any road subject to this Agreement by the County, their respective employees, agents, representatives, suppliers or contractors, or their respective employees, agents or representatives.

- C. Limitations of Liability. In no event shall Company or any of their members, officers, directors or employees or the County or any of its Board, officers or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to any other party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, non-performance or delay in performance under this Agreement.
- D. Required Insurance. Company shall at all times throughout the term of this Agreement maintain in full force and effect, the following insurance: (Exhibit B, Company Certificate of Liability Insurance):
 - a. Workers Compensation Insurance covering all employees engaged in the work to the limits required by the applicable laws in the jurisdiction in which the Project is being executed;
 - b. Automobile Liability Insurance covering all motor vehicles, owned, operated and/or licensed or leased by Company and engaged in executing the Project. Limits of liability shall not be less than two million dollars (\$2,000,000) for the accidental death of one or more persons, or damage to or destruction of property as a result of one accident; and,
 - c. Commercial General Liability Insurance with minimum limits of Ten million dollars (\$10,000,000) per occurrence. Without restricting the generality of the foregoing, such coverage shall include, but not be limited to bodily injury and property damage, non-owned automobile, sudden and accidental pollution liability, employer's liability, products and completed operations and contractual liability. Company shall request its insurers to add the County, its Board, officers and employees as additional insureds to the Commercial General Liability policy specified in this section 7(D)(c).

General Provisions Applicable to the Foregoing Insurance Requirements:

- i. Company may utilize any combination of primary and/or excess insurance to satisfy the above requirements.
- ii. Evidence of such insurance shall be submitted to the County prior to the initiation of any work or transportation of any materials or equipment on the roads listed on the Principal Road Use Schedule (Exhibit A).

Section 8. Miscellaneous

- A. Remedies and Enforcement. Each of the parties hereto covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any Party (the "Defaulting Party"), which default is not caused by the party seeking to enforce said provisions (the "Non-Defaulting") and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right of specific performance. The remedy of specific performance and injunctive relief shall not be exclusive of any other remedy available at law or in equity.

Failure of either Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained or any of them upon the other Party imposed, shall not constitute or be construed as a waiver or relinquishment of either Party's right thereafter to enforce and such terms, covenants, agreements and conditions, but the same shall continue in full force and effect.

B. Severability. If any provision of this Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable.

C. Amendments. No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by the Party against whom enforcement is sought.

D. Notices. All notices shall be in writing and sent (including via facsimile transmission) to the parties hereto at their respective addresses or fax numbers (or to such other address or fax number as any such party shall designate in writing to the other parties from time to time).

Company: Prairie Solar 1, LLC
Brandon Reinhardt, Senior Development Manager
18575 Jamboree Road, Suite 850
Irvine, CA 92612
brandon.reinhardt@baywa-re.com
Phone : 949-398-3915 Fax : 949-398-3914

County: County Executive
Brookens Administrative Center
1776 W. Washington St.
Urbana, IL 61802
Phone: 217-384-3776 Fax: 217-384-3896
countyexecutive@co.champaign.il.us

With a copy to: Champaign County Engineer
1605 E. Main Street
Urbana, IL 61802
217-384-3800
highwaydept@co.champaign.il.us

- E. This agreement may not be assigned without the written consent of the other Party.
- F. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be as effective as delivery of a manually signed counterpart to this Agreement.
- G. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Illinois, irrespective of any conflict of law's provisions.
- H. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors, permitted assignees, legal representatives and their respective agents, contractors, subcontractors material suppliers, vendors, employees, respective transport providers and designees.
- I. Termination. Company shall have the right to terminate this Agreement at any time for convenience by providing fifteen (15) days prior written notice to the County of its intent to terminate this Agreement. In the event such termination occurs, the Corporate Guaranty shall remain in place as follows, rather than the date specified in Section 6.8. of this Agreement.

In the event such termination occurs prior to "the initiation of any work on the Project in the County", including the transportation of materials or equipment on the roads identified on Exhibit A that are subject to this Agreement, then notwithstanding anything herein to the contrary the Corporate Guaranty, and 95% of the sum paid to the County Highway Department for costs directly associated with the management and implementation of this Agreement shall be returned to Company and Company shall have no further liability to the County under this Agreement.

In the event such termination occurs prior to "commencement of commercial operations of the Project in the County", the Corporate Guaranty shall remain in place until a date two years after the date on which Company's construction activities have ceased.

This Agreement shall remain in place until a date two years after the completion of the Project in the County or the effective date of a full settlement and release of road issues executed by the County and Company, whichever is earlier. For avoidance of doubt, the completion date shall be the date that the Project is placed into commercial operation or service in the County.

- J. Due Authorization. This Agreement contains the entire understanding of the Parties as to the matters set forth herein, and this Agreement supersedes any prior agreements or understandings by and between Parties, whether written or oral. Company hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Prairie Solar 1, LLC a California limited liability company. The Champaign County Clerk hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County.

(Signatures appear on following page)

IN WITNESS WHEREOF, the Parties have caused the **AGREEMENT** to be executed in quadruplicate counterparts, each of which shall be considered as an original by their duly authorized officers.

Executed by the County of Champaign of the State of Illinois,
acting by and through its County Board and County Executive

By: 

Printed Name: Darlene A. Kleppel

Title County Executive

Executed by the County Engineer of Champaign County:

By: 

Printed Name: Jeff Blue


Title County Engineer

Executed by Prairie Solar 1, LLC

By: 

Printed Name: Jam Attari

Title Authorized Signatory

ATTEST: 

County Clerk





2021.05.28 - Champaign County Prairie Solar Road Use Agreement - Clean

Final Audit Report

2021-06-26

Created:	2021-06-25
By:	Jamaal Knight (jamaal.knight@baywa-re.com)
Status:	Signed
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"2021.05.28 - Champaign County Prairie Solar Road Use Agreement - Clean" History

-  Document created by Jamaal Knight (jamaal.knight@baywa-re.com)
2021-06-25 - 10:26:56 PM GMT- IP address: 68.5.149.210
-  Document emailed to jam attari (jam.attari@baywa-re.com) for signature
2021-06-25 - 10:27:23 PM GMT
-  Document e-signed by jam attari (jam.attari@baywa-re.com)
E-signature obtained using URL retrieved through the Adobe Sign API
Signature Date: 2021-06-26 - 6:25:06 PM GMT - Time Source: server- IP address: 72.199.224.127
-  Agreement completed.
2021-06-26 - 6:25:06 PM GMT