

## **ROAD USE AGREEMENT (Homer Village Highway System)**

This ROAD USE AGREEMENT (this "Agreement") is made and entered into this 7th day of July, 2022 by and among the Village of Homer, a body politic acting by and through its Board (the "Village"), and Prairie Solar 1, LLC, a Delaware limited liability company ("Company"). Company and the Village 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 135 megawatt photovoltaic solar energy facility with associated on-site substation, inverters, fencing, road and other ancillary facilities (the "Project") in Champaign County, Illinois, and

WHEREAS, in connection with the construction of the Project, Company and the Village desire to address certain issues relating to the roads owned, operated and maintained by the Village (collectively, the "Village Highways") over which it will be necessary for Company and Company's Representative(s) to, among other things, (i) transport heavy equipment and materials over certain Village Highways which may in certain cases be in excess of the design limits of the Village Highways; (ii) transport certain locally sourced materials, such as concrete and gravel on such Village Highways; (iii) widen certain Village Highways and make certain modifications and improvements (both temporary and permanent) to such Village 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 Village Highways, and

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

WHEREAS, 605 ILCS 5/9-113 grants to the Village, authority to impose reasonable and necessary rules, regulations and specifications for the use of Village 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 Village 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 Village 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 Village 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 Village wish to set forth their understanding and agreement as to the road issues relating to the construction of the Project, and

WHEREAS, this Agreement shall apply to those Village 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 promise 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 One Thousand Dollars (\$1,000) to the Village for costs directly associated with the management and implementation of this Agreement. Said payment shall be made directly to the Village within 21 days of the signing of this Agreement. 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 Village. 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: \_\_\_\_\_

Primary Permit Manager:

\_\_\_\_\_  
Email: \_\_\_\_\_ Mobile: \_\_\_\_\_

Secondary Permit Manager:

\_\_\_\_\_  
Email: \_\_\_\_\_ Mobile: \_\_\_\_\_

- C. Provide as much advance notice as is reasonable to the Village 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'-06"
  - 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 Village 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 hours notice to the extent reasonably practicable.
- F. Notify all relevant parties identified under Section 4 of any temporary road closures.
- G. 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.
- H. 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.
- I. Keep all Village 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 Village 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.
- K. 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 Village requests that the widened radii remain as improved.

- J. Pay for the costs of all repairs to all Village 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.
- K. Take such measures as are reasonably required during an extended work suspension to provide for safe vehicular travel on Village highways damaged as a direct result of Company or Company's Representative(s) use as directed by the Village. The extended work suspension may be caused by but not limited to seasonal weather conditions, "acts of God", or labor disagreements.
- L. Acknowledge that the estimates for road repairs or restorations are good faith estimates provided by the Village or an approved consultant, but the final actual costs may vary.
- M. Provide a Corporate Guaranty in accordance with Section 6 for the purposes of road repair or restoration.
- N. 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 Village within 21 days of receipt of an invoice, containing such detail as Company may reasonably request, from the Village. 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 Section 5.G.3-6.

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

- A. Consent to the use of the Village 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 Village. 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, condemnation 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 Village 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 Village 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).

The Village understands and acknowledges that Company's Project requires the scheduling and delivery of a large number of material and equipment components necessary for the construction of the Project. The Village will use all reasonable efforts to issue any necessary permits.

- D. 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'-06"

- 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.

- E. Coordinate with Company and Company's Representative(s) so as to minimize the impact of their use of the Village Highway System.
- F. Perform all routine maintenance on the Village Highways used as access roads for the construction of the Project in accordance with Section 5 of this Agreement.
- G. Review for approval all access points to the Village 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.
- H. Prepare estimates in good faith based on the design of all road repairs or restorations in accordance with IDOT Bureau of Local Road and Streets Manual.
- I. Authorize a representative to agree on behalf of the Village 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 Village 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 Village 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 and if necessary photographs may be taken. In addition, the Village 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.

The road inventory shall include: photographs which are date- and geo-stamped; pavement images with 1-mm crack resolution; ride quality; rutting; and road surface profiling. Company shall provide to the Village 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 Village reasonably determines may not carry the loads proposed by the Company or Company's Representative(s), the Village shall have the right to hire a consultant to make a study of the drainage structure to determine the load carrying capacity. Company or Company's Representative(s) shall furnish the consultant with drawings depicting the axle numbers, spacing and loading for the trucks moving the oversized loads. If it is determined that a structure will not carry the loads that are proposed, Company or Company's Representative(s) may propose a plan to strengthen the structure. The Village will then furnish Company or Company's Representative(s) with all available plans. Should Company or Company's Representative(s) present a plan to strengthen a structure, the Village will then have their consultant review these plans to determine if the improvements will carry the proposed loads. All reasonable costs incurred by the Village for these services shall be paid by Company.

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 will 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 5.G. 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 Village shall meet and by mutual agreement revise the Principal Road Use Schedule (Exhibit A) in so far as it affects the Village 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 the Village or its 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 Village, 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 5.D. 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 Village 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 Village Highway or local road, then the Village in its reasonable discretion 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 Village 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 Village 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 Village that may be affected by the Project including, but not limited to, schools 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 of 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 Village.

##### B. With the Village:

During construction, the Village, 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 Village Highways**

- A. Upon mutual agreement between the parties, in order to minimize the adverse effect of the construction traffic on the Village 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. Company will use good faith efforts to request scopes from local engineering firms in connection with any repair work

contemplated herein.

- B. The daily routine maintenance of the Village 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 Village. 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 Village will invoice Company for such cost and Company shall make payment to the Village therefore. In the event the invoice is disputed, the parties will resolve the issue as described in Section 5.G.3-6.
- C. For the preconstruction improvements to Village 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:
  - 1. The Company shall notify the Village of the work to be done and submit plans for approval prior to the construction of the improvements.
  - 2. The work shall be performed by or contract shall be let by Company.
  - 3. The Village 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 Village.
- D. 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:
  - 1. Upon notification by the Village, Company or Company Representative(s) shall make all temporary road repairs necessitated by Company's activities at Company's cost.
  - 2. The work necessary to temporarily repair and reopen the Village Highway to traffic shall be performed by Company or its duly obligated contractor within three (3) days of notification of the work to be done.
  - 3. 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 Village. Payment for such work shall be made by Company.
  - 4. Final repairs to Village Highways shall be completed as described in Section 5.E.
- E. For the post construction final repairs or restoration of Village 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:
  - 1. The Village shall notify Company in writing of the work to be done based upon the pre-construction inspection and post-construction inspections (and interim inspections, if any) of the Village Highways in order to return the Village Highways to their pre-construction condition.



2. The Village shall prepare and provide a reasonable estimate of cost of the work to be completed for the repair or restoration due to Company's construction project.
3. Payment for the repairs and restoration shall be made by Company in the form of direct monetary compensation equal to the final repair or restoration cost, plus any reasonable survey, design and construction inspection costs incurred by the Village. The survey, design and construction inspection cost shall either be based on the percentage of the estimated cost or those fees charged by a consultant providing the services to the Village. The cost percentages shall be those approved by the Illinois Department of Transportation for the Village.
4. Upon completion of or upon receipt of the necessary funds to complete the final repairs or restoration, as detailed above, the Village shall provide Company with a Release of Claims in connection with Company's obligations pursuant to this Agreement. The Village reserves the right to have such Release of Claims be provided on a system wide or individual unit basis.
5. Upon receipt of the necessary funds to complete the final repairs or restoration, the final repair or restoration work shall be completed at the discretion of the Village.

#### F. Emergency Repairs.

Notwithstanding the foregoing, in the event Company or Company's Representative(s) are reasonably believed by the Village to have caused damage to Village Highways of a magnitude sufficiently great to create a hazard to the motoring public, which in the Village's reasonable opinion warrants an immediate repair or road closing, the Village may unilaterally make or authorize repair, with the reasonable, documented costs thereof paid by Company. The Village 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 Village will reimburse Company for amounts to fund the repair, if any.

#### G. Procedure and Dispute Resolution

1. The Village 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 Village or Village's contractor shall perform the repair in the time framework specified and recover its costs from Company.
3. Should a disagreement exist as to the:
  - The extent of the damage done to a Village Highway based upon the pre- and post-construction inspections of the Village Highways;
  - The method, procedure or design used for the preparation of an estimate of a final repair or restoration of a Village Highway; or
  - Estimate of Cost plus fees for a final repair or restoration of a Village Highway;

The Village 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, 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, 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. The prevailing party shall have the right to seek reimbursement for the costs associated with this independent review process

4. If the Parties agree and/or don't reject the intermediary's proposed solution, then the Village shall proceed in accordance with the agreed upon solution, complete the final repairs or restoration of the Village Highway and shall recover its costs from Company or the Corporate Guaranty as described in Section 6.C.
5. If the Parties cannot agree and the Village rejects the intermediary's proposed solution, the Village 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 Village. If the appropriateness of the Village action is ultimately determined to be justified either by agreement or adjudication, Company shall promptly, in the form of direct monetary compensation, reimburse the Village for its expenses relating to the final repair or restoration of the Village Highway, if those expenses were paid directly by the Village.
6. For the purposes of temporary or emergency repairs, the Village charges shall be based on Village maintained time and material cost records, which shall be made available to Company for review. Village billing rates for labor shall be those established by the Village and in regards to equipment and machinery, those rates approved by the Illinois Department of Transportation or the Federal Highway Administration.

## **Section 6. Corporate Guaranty**

6. No later than thirty (30) days prior to the commencement of construction of the Project, Company shall provide to Village a financial security in the form of a fully executed guaranty from its parent company, BayWa r.e. Development, LLC, or an affiliate of similar creditworthiness, in the amount of Fifty Thousand Dollars (\$50,000) (the "Corporate Guaranty") which the Village 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 Village Highways in accordance with the terms of this Agreement. The Company may deliver a replacement Corporate Guaranty from an affiliate of similar creditworthiness if at any time BayWa r.e. Development, LLC is no longer an affiliate of Company.
7. The Corporate Guaranty shall remain in place from a date thirty (30) days prior to the commencement of construction of the Project, including the transportation of materials or equipment on the roads identified on Exhibit A, until the date that is two (2) years after the completion of the Project, or the effective date of a full settlement and release of road issues executed by the Village and Company, whichever is earlier. For avoidance of doubt, the completion date shall be the date that the Project is placed into commercial operation. The Village agrees to

deliver any certification required for the surrender of the Corporate Guaranty when Company is released from its obligations under this Agreement.

8. 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 Village shall be entitled to draw down the full outstanding amount of such Corporate Guaranty as a result of Company's failure or default to upgrade, repair or restore the Village Highways in accordance with the terms of this Agreement. The Village 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.

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

- A. Indemnification by Company. Company hereby release and agree to indemnify and hold harmless the Village and its officers, employees, elected or appointed officials, and agents, and their respective heirs, executors, administrators, successors and assigns (hereinafter collectively "Village Releasees") from any and all actions, cause of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Village 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 Village Releasees and agree to indemnify and hold harmless the Village 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 Village. The Village hereby releases and agree to indemnify and hold harmless Company and its affiliates, 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 Village of its obligations under this Agreement. More particularly, but without in any way limiting the foregoing, the Village 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 Village, its 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 Village 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:

1. If Company has employees, Workers Compensation and Employers Liability insurance covering all employees engaged in the work to the limits required by the applicable laws in the State of Illinois;
2. Automobile Liability insurance covering all motor vehicles, including owned, hired and non-owned autos operated and/or licensed or leased by Company and engaged in constructing or overseeing construction of the Project. Limits of liability shall not be less than a combined single limit of 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
3. Commercial General Liability Insurance with minimum limits of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate covering the activities of the Company contemplated by this Agreement, without restricting the generality of the foregoing, such coverage shall include, but not be limited to bodily injury and property damage, products and completed operations and contractual liability. Limits of liability can be achieved by a combination of General Liability and Umbrella/Excess Liability policies.
4. 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. If requested, evidence of such insurance shall be submitted to the Village prior to the initiation of any work or transportation of any materials or equipment on the roads listed on Principal Road Use Schedule (Exhibit A).
  - iii. The Village and its elected and appointed officials, agents, and employees shall be named as additional insureds with respect to the Commercial General Liability.

## **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  
Attn: Brandon Reinhardt, Director, Development  
18575 Jamboree Road, Suite 850  
Irvine, CA 92612  
[brandon.reinhardt@baywa-re.com](mailto:brandon.reinhardt@baywa-re.com)  
Phone : 949-398-3915      Cell: 916-532-9565

With a copy to : BayWa r.e. Solar Projects LLC  
Attn: Legal  
18575 Jamboree Road, Suite 850  
Irvine, CA 92612  
[ussp.legal@baywa-re.com](mailto:ussp.legal@baywa-re.com)

Village: Homer Village  
Attn: Sharon Jeffers  
500 E Second St  
Homer, IL 61849  
[villageofhomer@gmail.com](mailto:villageofhomer@gmail.com)  
Phone: (217) 896-2521

- E. Assignment. This agreement may not be assigned without the written consent of the other Party; provided, however, that the Company may without the consent of the Village collaterally assign this Agreement in connection with any financing or refinancing of the Project.
- 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 and their respective successors and permitted assignees.
- I. Termination. Company shall have the right to terminate this Agreement for convenience at any time prior to the commencement of construction of the Project by providing fifteen (15) days prior written notice to the Village of its intent to terminate this Agreement. In the event such termination occurs, then notwithstanding anything herein to the contrary, the Corporate Guaranty shall be returned to Company and Company shall have no further liability to the Village under this Agreement.

This Agreement shall remain in place 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 Village and Company, whichever is earlier. For avoidance of doubt, the completion date shall be the date that the Project is placed into commercial operation.

- 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 Delaware limited liability company. The Village hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the Village.

(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 Village of Homer, acting by and through its Board

By: *Jeremy Richards*

Printed Name: Jeremy Richards

Title Mayor Village of Homer

Executed by Prairie Solar 1, LLC

By: *Michael Stanton*  
Michael Stanton (Jul 7, 2022 08:33 EDT)

Printed Name: Michael Stanton

Title Sr Vice President

**EXHIBIT A:** Principal Road Use Schedule

(attached)



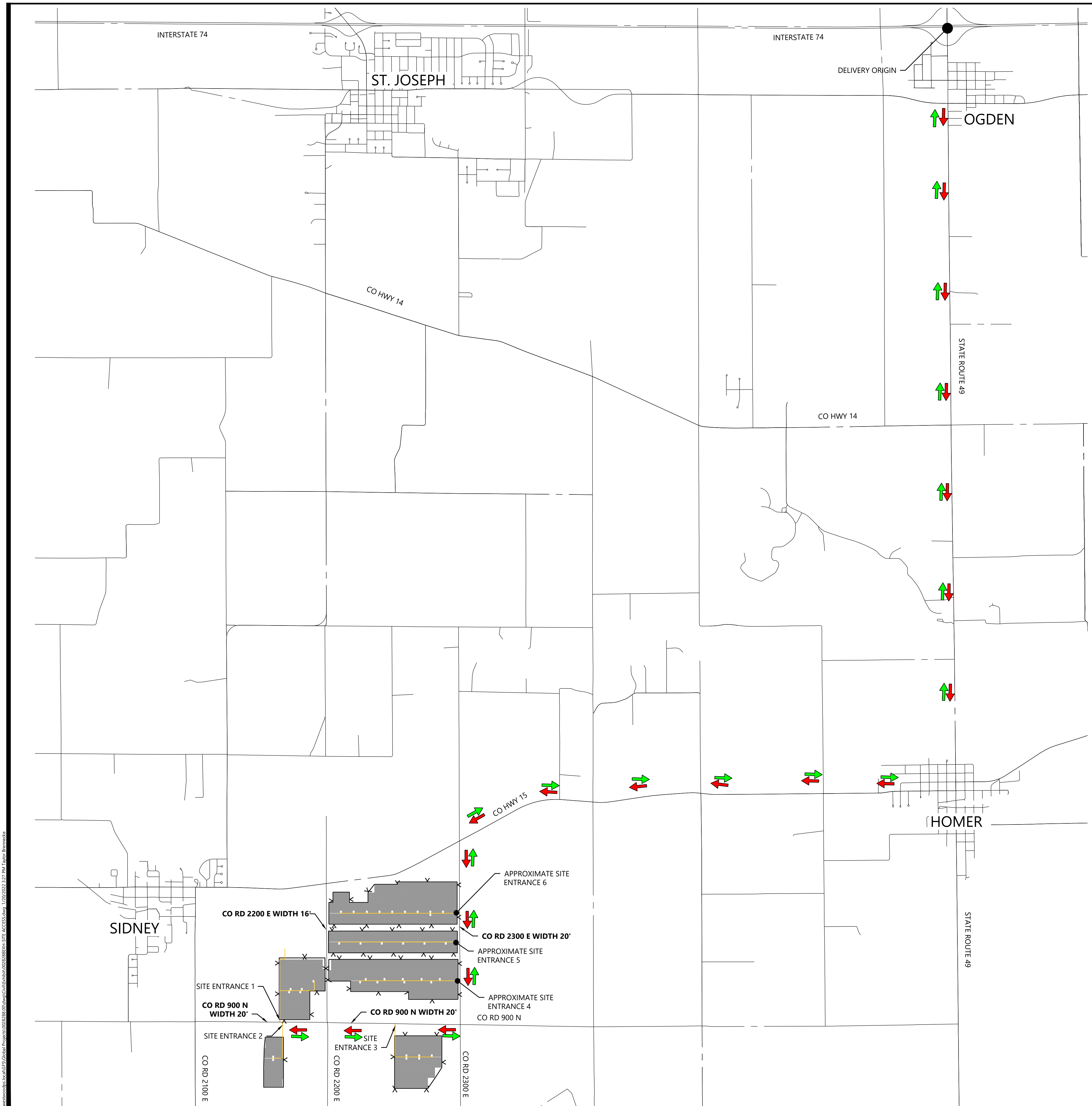
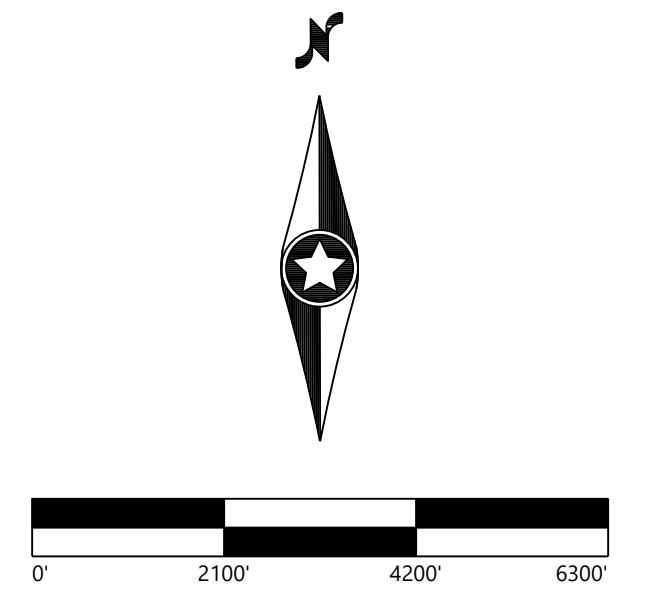
PREPARED FOR:



17901 Von Karman Avenue, Suite 1050  
Irvine, CA 92614

REVISIONS:

#	DATE	COMMENT



### LEGEND:

- PROPOSED CONSTRUCTION TRAFFIC DIRECTION (INGRESS)
- PROPOSED CONSTRUCTION TRAFFIC DIRECTION (EGRESS)
- EXISTING ROAD CENTERLINE
- PROPOSED SOLAR ARRAY
- PROPOSED ACCESS ROAD
- PROPOSED SECURITY FENCE

## Sun Prairie Solar Farm

Champaign CO, IL

### Construction Traffic Site Access Exhibit

**NOT FOR CONSTRUCTION**

DATE: 01/20/2022

SHEET: 1

\\wps01\p1\cadd\888-S-18\Drawings\888-S-18-ELUC-05-04-23\Attachment G Page 17 of 18.dwg

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Final Audit Report

2022-07-07

Created:	2022-07-06
By:	Martin Nascimento (martin.nascimento@baywa-re.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA1b0jakjo_cPF2O12yitZUV3Ng4LMi_Zx

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-  Document emailed to Michael Stanton (mike.stanton@baywa-re.com) for signature  
2022-07-06 - 6:27:01 PM GMT
-  Email viewed by Michael Stanton (mike.stanton@baywa-re.com)  
2022-07-06 - 7:00:46 PM GMT- IP address: 64.99.234.67
-  Document e-signed by Michael Stanton (mike.stanton@baywa-re.com)  
Signature Date: 2022-07-07 - 12:33:02 PM GMT - Time Source: server
-  Agreement completed.  
2022-07-07 - 12:33:02 PM GMT