

ORDINANCE NO. 34

AN ORDINANCE REGULATING COMMERCIAL SOLAR FARMS AND SOLAR STORAGE FACILITIES

WHEREAS, the County Commissioners of Wabash County have determined it necessary to pass an ordinance regulating solar farms and solar storage facilities pursuant to their lawful authority to regulate and restrict the location and use of structures pursuant to 55 ILCS 5/5-1063;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSIONERS OF WABASH COUNTY, ILLINOIS, THAT THE FOLLOWING ORDINANCE TO REGULATE COMMERCIAL SOLAR FARMS (“CSF”) BE AND HEREBY IS ADOPTED:

1. Application. This ordinance shall apply only to solar farms and solar storage facilities that are erected for utility purposes and shall not apply to any solar power generated for on-premises use. No person may operate a Commercial Solar Farm project within the boundaries of the County unless a permit has been approved, a road use agreement substantially in the form attached hereto has been entered into, and financial assurances for reclamation have been posted, pursuant to this Ordinance. Nothing in this Ordinance is intended to supersede any requirement of federal or state law, except that when permitted this Ordinance may impose stricter requirements, in whole or in part, than may be imposed by any other federal, state, or county authority.

2. Limitation on Acreage devoted to Commercial Solar Farms. The County acknowledges the importance of farmers, the agricultural trade, and our county’s contribution to necessary agricultural products. The County acknowledges that the development of a commercial solar farm within the County would have an impact on our local farmers and the production of agricultural products. As such, in no event may more than 6,000 acres of Wabash County real estate be developed as part of Commercial Solar Farm(s).

In addition, in anticipation of future expansions to the limits of the City of Mt. Carmel, no commercial solar farm project or storage equipment shall be situated within one (1) mile of the City’s boundaries as they exist on July 1, 2022.

3. Design Standards.

a. Foundations. The project’s engineer or another qualified engineer shall certify that the foundation and design of the solar panel is within accepted professional standards, given local soil and climate conditions. All solar farms shall be in compliance with any applicable local, state and federal regulatory standards, Illinois Public Act 099-0906 and the National Electric Code as amended. The installation of new solar energy generation facilities shall be installed by a qualified person as defined by Illinois Public Act (known as the “Future Energy Jobs Act”).

- b. Power and communication lines. Power and communications lines running between CSF panel array blocks to electric substations or interconnections with buildings shall be buried underground, except in areas where technical or physical constraints make it more practicable to install above ground. Exemptions or variances may be granted in instances where shallow bedrock, watercourses, or other elements of natural landscape interfere with the ability to bury lines. JULIE shall be contacted before digging/excavating begins.
- c. Minimum lot size. No commercial solar farm or solar storage facility shall be erected on any lot less than twenty-five (25) acres in size unless such lot is adjacent to another lot upon which the same commercial solar farm sits.
- d. Height. Systems, equipment, and structures shall not exceed 30 feet in height at their highest extended rotation when ground-mounted. Excluded from this height requirement, however, are electric transmission lines and utility poles.
- e. Setbacks. Ground-mounted solar energy systems as part of a solar farm and solar storage facility shall have a setback for all equipment/buildings excluding fences a minimum of 100 feet on the front (entrance to solar energy farm) and 50 feet from all other property lines, with the exception of residential property lines, in which the solar energy system and storage facility shall be setback 500 feet for existing residences, with the setback distances to be measured from the edge of the solar equipment of the solar farm to the residential structure of existing residential properties. Additionally, ground-mounted solar energy systems and storage facilities as part of a solar farm shall have a setback for all equipment excluding fences a minimum of 200 feet from the Right of Way centerline of State Highways and County Highways, and a setback a minimum of 100 feet from the Right of Way centerline of all other roads. The Wabash County Commissioners may grant a variance to such setback requirements if the proposed or existing buffer is sufficient to screen the project from view from adjoining property or public rights-of-way, and if the owners of the adjoining properties agree to waive these setback requirements. For clarification, these setbacks do not apply to adjacent parcels included within the project site.
- f. Screening and fencing. The solar energy system and storage facilities shall be fully enclosed and secured by a fence with a minimum height of six feet. Keys shall be provided at locked entrances for access by appropriate emergency personnel. The lots on which the ground-mounted solar energy systems and storage facilities are located shall be buffered/screened from residences by plantings, vegetation, earth berms, natural topographical features, and other approved features. The applicant shall propose a landscaping plan, where necessary, to minimize the visibility of the project from adjacent residential structures. The landscape plan shall take into account the type(s) of vegetation to be planted, along with its approximate location. Along with earth berms, vegetation, and other natural topographical features, other forms of screening/buffers may include but are not limited to, existing wooded areas.

- g. **Lighting.** If lighting is provided at the site, lighting shall be shielded and downcast such that the light does not spill onto adjacent residential parcels located outside of the CSF site.
- h. **Noise.** Noise levels from each solar farm shall be in compliance with applicable Illinois Pollution Control Board (IPCB) regulations.
- i. **Performance standards.** All solar power plants must conform to the performance standards as set forth by any local, state, federal regulatory standards, Illinois Public Act 099-0906 or the National Electric Code as amended.
- j. **Signage.** An appropriate warning sign shall be provided at the entrance to the facility and along the perimeter of the solar farm project. The sign at the entrance to the facility shall include the facility's 911 address and two 24-hour emergency contact numbers in letters that are a minimum of 4 inches.
- k. **Outdoor storage.** Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the solar farm shall be allowed. Outdoor, on-premises storage of any broken or non-functional materials or equipment is prohibited. The Wabash County Commissioners shall have the discretion in determining whether outdoor storage is in compliance with this provision. In any event, all outdoor storage areas shall be paved with a bituminous surface and either fenced or screened to prevent viewing from adjoining properties and uses. For clarification purposes, during construction periods, it is understood that there may be materials, vehicles, and equipment on the site(s) that do not support the operation or maintenance of the solar farm. It will be further understood that any materials, vehicles, or equipment on the site during construction that do not directly support the operation and maintenance of the solar farm will be removed at the completion of the construction to be in compliance with this section.
- l. **Storage Facilities.** Storage containers or buildings located upon the solar farm premises shall at all times appear neat and orderly. Maintenance of storage sites shall occur regularly and adequately control weeds, keep all facilities properly painted and free of rust or unsightly conditions. Storage facilities that are within view of any residential properties or roadways shall be buffered/screened from those residences and roadways by plantings, vegetation, earth berms, natural topographical features, and other approved features.
- m. **Aviation protection.** For solar energy systems and storage facilities located within five hundred (500) feet of an airport or within approach zones of an airport, the applicant shall complete and provide the results of the Solar Glaze Hazard Analysis Tool (SGHAT) for the airport traffic control tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federal Obligated Airports, or most recent version adopted by FAA.

- n. Fire protection. A fire protection plan for the construction and the operation of the facility and emergency access to the site.
 - o. Endangered species and wetlands. Solar farm developers shall be required to initiate a natural resource review consultation with the Illinois Department of Natural Resources (IDNR) through the Department's online EcoCat Program. Areas reviewed through this process will be endangered species and wetlands. The cost of the EcoCat consultation shall be borne by the developer.
4. Application requirements. Due to the unique nature and special requirements of solar power plants and their potential impacts to adjoining properties and government services, solar power plants shall be required to submit and obtain approval on the following items or any special conditions required by the Wabash County Commissioners. The applicant shall be required to submit two copies of all documents proving ownership or interest in the property. Additionally, any delinquent real estate tax amount due for any property to be developed must be paid in full prior to the approval of any application which covers such property.
- a. The executed Agricultural Impact Mitigation Agreement
 - b. A preliminary site plan with existing conditions showing the following:
 - i. Existing property lines and property lines extending 100 feet from the exterior boundaries of the solar project, including the names of adjacent property owners and current use of those properties.
 - ii. Existing adjacent public and private roads, showing widths of the roads and any associated easements.
 - iii. Location and size of any active or abandoned wells, as well as sewage treatment plants within the solar farm or on adjacent parcels.
 - iv. Existing buildings and any impervious surfaces within the solar farm.
 - v. A contour map showing topography at two-foot intervals. A contour map of surrounding properties may also be required.
 - vi. Existing vegetation (list type and percent of coverage: i.e. cropland/plowed fields, grassland, wooded areas etc.)
 - vii. Waterways, watercourses, lakes, public water and wetlands.
 - viii. Any delineated wetland boundaries.
 - ix. A copy of the current FEMA FIRM map that shows the subject property. And, the 100-year flood elevation and any regulated flood protection elevation, if available.
 - x. Floodway, flood fringe and/or general floodplain district boundary, if applicable and not provided on the copy of the current FEMA FIRM map.
 - xi. Mapped soils according to the Wabash County Soil Survey.
 - xii. Surface water drainage patterns.
 - xiii. The location of any known subsurface drainage tiles.
 - xiv. The location of any active or abandoned mines or mine shafts.

- c. Plan of proposed conditions:
 - i. Location and spacing of solar panels and solar storage facilities.
 - ii. Location of access roads and access points.
 - iii. Planned location of underground or overhead electric lines connecting the solar farm to a building, substation or other electric load.
 - iv. New electrical equipment other than at the existing building or substation that is to be the connection point for the solar farm.
 - v. Sketch elevation of the premises accurately depicting proposed solar energy conversion system and its relationship to structure on adjacent land.
 - vi. Weed/grass control. Applicant must present an acceptable weed control plan for property controlled by the Applicant inside and outside fenced area for the entire property. The operating company during the operation of the solar farm must maintain the fence and adhere to the weed/grass control plan. If the operating company does not, there can be a fine of up to \$750.00 per violation per week if the fence is not secure or the weed/grass control plan is not followed.
- d. All solar power plant applications shall be accompanied by a preliminary map and plan showing the roads and rights-of-ways that will be utilized for both the construction and operation of the solar power plant. The applicant shall submit an executed agreement between the solar power plant owner/operator and all road district authorities with infrastructure affected by the solar power plant to the county (See Section 3. herein below). This agreement shall include at a minimum:
 - i. A final map identifying the routes that will be used.
 - ii. A plan for maintaining and/or repairing the affected roads.
 - iii. Other inclusions as specified by the Wabash County Commissioners or affected road authority.
 - iv. A description of anticipated transport vehicles (classes, size, weight, etc.) and anticipated transit activity.
 - v. All other subjects covered in the attached Roads Agreement.
- e. A description of the method of connecting the array to a building or substation.
- f. At the time of applying for approval, a written demonstration shall be provided that the applicant is in the queue to acquire an interconnect agreement. A copy of an interconnect agreement with the appropriate electric utility, or a written explanation outlining why an interconnection agreement is not necessary should be provided to the county.
- g. A decommissioning plan shall be required to ensure that facilities are properly removed after their useful life. Decommissioning of solar panels and solar storage facilities must occur in the event that they are not in use for twelve (12) consecutive months. The operating company shall have eighteen (18) months to complete the decommissioning plan or the county will take the necessary

decommissioning steps. The plan shall include provisions for the removal of all structures (including equipment, fencing, and roads) and foundations, restoration of soil and vegetation, and a plan ensuring financial resources will be available to fully decommission the site. Disposal of structure and/or foundation shall meet the provisions of any applicable Wabash County ordinances and/or any regulations of the Illinois Environmental Protection Agency or the United States Environmental Protection Agency. The decommissioning security amount will be developed by a third-party Illinois-licensed professional engineer which has been mutually agreed upon by the applicant and the Wabash County Commissioners and shall be required by the county in order to assure the proper decommissioning of the site. The third-party Illinois-licensed professional engineer may account for the scrap and salvage value of the project in developing the proposed decommissioning security amount. In no instance shall the financial security be less than \$1,000.00 per acre. This security financing should be in the form of cash placed into an escrow account, a guaranty, an irrevocable Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default. The decommissioning plan and financial security must be presented to and accepted by the Wabash County Commissioners prior to the start of construction for the facility. The applicant/owner will re-evaluate the decommissioning cost and financial assurance at the end of years ten, twenty, and thirty, as applicable. The reevaluation will be performed by a third-party licensed professional engineer. The reevaluation of the decommissioning cost and financial assurance will be mutually agreed upon by the applicant and the Wabash County Commissioners. All costs associated with the third-party Illinois-licensed professional engineer will be paid by the owner-operator of the solar farm.

The county shall have access to the financial assurance for the expressed purpose of completing decommissioning if decommissioning is not completed by the applicant within eighteen (18) months of the end of project life or facility abandonment. The county is granted the right of entry onto the site, pursuant to reasonable notice, to effect or complete decommissioning.

The county is granted the right to seek injunctive relief to effectuate or complete decommissioning, as well as the county's right to seek reimbursement from applicant or applicant successor for decommissioning costs in excess of the amount deposited in escrow and to file a lien against any real estate owned by applicant or applicant's successor, or in which they have an interest, for the amount of the excess, and to take all steps allowed by law to enforce said lien.

This decommissioning plan should be updated to the county every five (5) years. In addition, any decommissioning plans signed by the party responsible for decommissioning and the landowner (if different) shall be submitted with the application.

In the event that the terms of this Ordinance conflict with the Agricultural Impact Mitigation Agreement, the terms set forth in this Ordinance shall apply. For the avoidance of doubt, this provision shall not apply to any projects or properties that are otherwise grandfathered and/or exempted under Illinois law.

The county reserves the right to require additional information or components to the plan as the county deems necessary to ensure that an adequate proposal is in place to decommission the facility in its entirety and that adequate funds are available.

- h. **Liability insurance and Indemnification.** The owner-operator of the solar farm and storage facilities shall maintain a current general liability policy covering bodily injury and property damage and name Wabash County as an additional insured with limits of at least two million dollars (\$2,000,000.00) per occurrence and five million dollars (\$5,000,000.00) in the aggregate with a deductible of no more than five thousand dollars (\$5,000). The applicant/owner must provide proof of insurance to the Wabash County Commissioners prior to construction and then on an annual basis. Applicant must also provide proof of insurance upon any material changes to the terms and conditions of the policy.

Applicant, Owner or Operators shall defend, indemnify and hold harmless the Local Road District, County and their officials, employees and agents (collectively and individually, the "Indemnified Parties") from and against any and all claim, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees, arising out of the application process and public hearing and Applicant, Owner or Operators selection, construction, operation and removal of the Solar Farm and affiliated equipment including, without limitation, liability for property damage or personal injury (including death), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the County's other indemnification rights available under the law. This indemnification shall not apply to claims arising in whole or in part out of the negligence or intentional acts of such Indemnified Parties (such liabilities together known as "liability")

5. **Use of Public Roads (See attachment: Roads Agreement)**

- i. An Applicant, Owner or Operator proposing to use any county, municipality, Road District or village road(s), for the purpose of transporting CSF(s) or Substation parts and/or equipment for construction, operation, or maintenance of the CSF(s) or Substations(s) or Storage Facilities, shall:

- 1. Include in the application the identity of all such public roads to be used; and

2. Obtain applicable weight and size permits from relevant government agencies prior to construction.
- ii. To the extent an Applicant, Owner or Operator must obtain a weight or size permit from the county, municipality, Road District or village, the Applicant, Owner or Operator shall:
 1. Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage; and
 2. Enter into a Roadway Use and Repair Agreement approved by the County Engineer and States Attorney's office. Said Agreement shall at a minimum comport with the requirements of the proposed Roads Agreement Form attached to this Ordinance as an addendum.
 3. Secure Financial Assurance, in a reasonable amount agreed to by the relevant parties, for the purpose of repairing any damage to public roads caused by constructing, operating or maintaining the CSF.
6. Fees and costs. No solar farm application shall be accepted until the associated filing fee is paid and accompanied by a notarized statement of the appropriate corporate officials or official legal representative of the applicant that the applicant will pay to the county additional fees to reimburse the county for monies expended in excess of the filing fee in preparing for, processing, reviewing, and evaluating the application to its final resolution. The applicant shall also agree in said notarized statement to stop all proceedings if an invoice for reimbursement to the county is not paid to the county treasurer within ten days after the invoice has been presented to the appropriate corporate officer or official legal representative of the applicant.

Filing Fee: For farms of 25 acres to 100 acres: \$25,000.00
 For farms of 100 acres or more: \$50,000.00

An annual inspection fee of \$25,000.00 shall be due to the County on or before the Permit issuance date anniversary each year. Additionally, an administrative fee of \$10,000.00 shall be due on the tenth anniversary of the Permit issuance and on each ten-year anniversary thereafter.

7. Administration and Enforcement. To accomplish the purpose of this ordinance, County Commissioners, Highway Engineer, the Supervisor of Assessments, and/or any officials designated by the County Commissioners to assist in carrying out the inspection shall have the right to enter upon any land upon which a solar farm or structure related to the operation or maintenance of such solar farm or storage facilities, is situated. The owner of the project upon which the solar farm or storage facility sits must be notified at least one (1) business day prior to any

proposed inspections. Such notification must state the proposed date and time of the inspection. Any person, firm or cooperative who violates, disobeys, omits, neglects, refuses to comply with, or resists enforcement of any of the provisions of this section may face fines of not more than \$750.00 per offense per week and/or rescission of permit. Any challenge to any fine or rescission of permit may be challenged first to the Wabash County Commissioners before initiation of any suit through the appropriate court system. Also, if entry is denied, the County may seek an administrative search warrant to enter and inspect the land and structures.

8. The applicant shall submit its application to the Wabash County Commissioners. The Wabash County Commissioners shall review and determine whether the application is complete within thirty (30) days of applicant's filing. If the application is not deemed complete, the Wabash County Commissioners shall instruct the applicant why the application is insufficient and allow the applicant the opportunity to re-submit a complete application. Within 30 days of the application being deemed complete, the Wabash County Commissioners shall review the application regarding approval of the application. The Wabash County Commissioners will have thirty (30) days to act on such application. Applicant shall have thirty (30) days to appeal any decision by the Wabash County Commissioners for reconsideration by the Wabash County Commissioners. The granting or denial of a permit application will be done by ordinance or resolution that is a legislative action. The decision is not a zoning decision and is not subject to 55 ILCS 5/5-12012.1.
 - a. Public participation regarding the decision on an application will abide by the following format unless other procedures are established by a majority vote of the Board of Commissioners: A public hearing will allow the applicant 5 minutes to present, plus 3 minutes per person for both public comments in favor of the applicant or against the applicant. No testimonial evidence will be accepted at the hearing and cross examination will not be permitted. The notice for the public hearing shall be published in a newspaper of general circulation within the county and notices shall also be mailed to every adjacent landowner, adjacent municipalities, road districts, the Soil and Water Conservation District, and adjacent drainage districts not more than 30 days nor fewer than 15 days prior to the hearing, the costs of which shall be paid by the applicant.
 - b. Nothing in the Ordinance is meant to augment or diminish existing opportunities for public participation at the County Commissioners meeting wherein the permit is to be voted upon.

Any approval of a solar project will be valid throughout the useful life of the project, including through decommissioning.

9. Annual Update Requirements. All contact information including name, phone number, and address of the current property owner, lessor, lessee, the interconnecting utility company, and buyer of the power (if applicable and if this information can be

disclosed publicly), shall be submitted annually within 30 days of the anniversary date of the permit until decommissioning has been completed at which point the permit will be null and void.

10. All lease documents obtained by the Applicant and related to an application shall be recorded with the Wabash County Recorder's Office prior to application approval.

11. This Ordinance shall be in full force and effect from and after its passage.

Passed by the Wabash County Commissioners on this 1st day of August, 2022.



COUNTY BOARD CHAIRMAN

ATTEST:




WABASH COUNTY CLERK

(PROJECT NAME) – Road District # _____
ROADS AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into *as Month day, 20* _____ by and between Road District # _____ (the "Road District") located in Wabash County, Illinois (the "County"), the Road District # _____ Road Commissioner (the "Road District Road Commissioner") and *PROJECT NAME - CORPORATION/PROJECT OWNER* (hereinafter referred to as "*PROJECT NAME*"). The Road District, the Road Commissioner and *(PROJECT NAME)* may each be referred to herein as a "Party" and together, as the "Parties."

RECITALS

WHEREAS, *(PROJECT NAME)* is in the process of developing a solar energy generating facility (the "Project") in Wabash County, Illinois (the "County") and, in connection therewith, has submitted a Conditional Wabash County Solar Energy Structure application for the Project to the County and

WHEREAS, *(PROJECT NAME)* proposes to construct a solar energy generating facility within the Road District; and

WHEREAS, in connection with the construction of the Project, the Parties desire to address certain issues related to certain roads owned, operated and maintained by the Road District and the Road District Road Commissioner (the "Road District Roads") over which it will be necessary for *(PROJECT NAME)* and its respective agents, contractors, subcontractors, material suppliers, vendors, employees, and designees (collectively *(PROJECT NAME)*'s Parties") to, among other things, (i) transport heavy equipment and materials over the Road District Roads, which may in certain cases be in excess of the design limits of the Road District Roads; (ii) transport certain locally sourced materials, such as concrete and gravel, on such Road District Roads and (iii) widen the Road District Roads and make certain modifications and improvements (both temporary and permanent) to the Road District Roads (including to certain culverts, road shoulders and other related fixtures) to permit such equipment and materials to pass; and

WHEREAS, *(PROJECT NAME)*:

(i) has provided to the Road District Road Commissioner a preliminary site layout plan for the Project complying with the State of Illinois Professional Engineering Act and signed by an engineer licensed in the State of Illinois, a copy of which is attached hereto as Exhibit "A" (the "Site Layout Plan");

(ii) shall, prior to the issuance of any building permits by the County, and with the agreement of the Road District Road Commissioner physically mark the locations of the proposed Project site access road entrances and the underground collection system cable crossings; and of

(iii) shall, on or before *MONTH DAY, 20__*, provide to the Road District Road Commissioner a Transportation Impact Analysis prepared by an independent engineer mutually acceptable to (*PROJECT NAME*) and the Wabash County Engineer (the "County Engineer") which:

- (a) identifies by name and surface type each Road District Road and portion thereof that (*PROJECT NAME*) and (*PROJECT NAME*)'s Parties intend to use during the construction of the Project (the "Affected Roads"), as well as the number of loads, per axle weight of each load and type of equipment that will be used to transport each load and the inter-Project equipment movements;
- (b) includes a schedule of the across road culverts and bridges affected by the Project and the recommendations as to actions, if any, required with respect to such bridges and culverts and estimates as to the cost to replace such bridges and culverts; and
- (c) sets forth the anticipated road repair costs to be made in advance of the Project and following construction of the solar farms.

(the "Transportation Impact Analysis"). If (*PROJECT NAME*) fails to deliver the Transportation Impact Analysis to the Road District Road Commissioner on or before *MONTH DAY, 20__* the Road District Road Commissioner may request that Wabash County revoke the building permits issued to (*PROJECT NAME*) for the Project. Before construction of the Project may proceed, the Road District Road Commissioner must approve the Transportation Impact Analysis, including the estimated road repair costs, which approval shall not be unreasonably withheld or delayed. In connection with review and approval of the Transportation Impact Analysis, the Road District Road Commissioner may retain an engineering firm and (*PROJECT NAME*) shall reimburse the Road District Road Commissioner for all reasonable engineering fees incurred in connection with the review and approval of the Transportation Impact Analysis. Payment shall be made within thirty (30) days of receipt of such engineering bills by (*PROJECT NAME*); and;

WHEREAS, the Road District, the Road District Road Commissioner and (*PROJECT NAME*) wish to set forth their understanding and agreement as to the road issues relating to the construction of the Project in this Agreement which the parties intend to satisfy the requirements of Section VI-J. of the Ordinance Regulating Commercial Solar Farms.

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. Road District Approvals. The Road District and the Road District Road Commissioner hereby agree to permit:

- (a) Project site access road entrances to the Road District Roads and
- (b) Underground collection system *cable* crossings under the Road District Roads and shall, prior to the start of construction of the Project, coordinate with (*PROJECT NAME*) as to the locations of the Project site access road entrances and the underground collection system cable crossings.

Section Z. (*PROJECT NAME*) Undertakings. (*PROJECT NAME*) hereby agrees, and shall cause (*PROJECT NAME*)'s Parties to agree, to undertake the following in connection with the development of the Project:

- (a) (*PROJECT NAME*) represents and warrants that the Project plans have been prepared by a qualified professional engineer and, as a result of the construction of the Project (including the construction of access roads), there will be no increased runoff or change in drainage patterns as a result of (*PROJECT NAME*)'s use of, repairs to and removal of materials from the Road District Roads.
- (b) Permanent markers/stakes meeting the requirements of State and Federal regulations and good utility practice shall be installed at the edge of the road right-of-ways to identify where the collection system cables cross the roads.
- (c) Iridescent marker tape shall be buried in the trench twelve inches (12") above the collection system cables where they cross the road right-of-ways.
- (d) Prior to the start of construction on the Project, (*PROJECT NAME*) shall become a member of Joint Utility Locating Information for Excavation ("JULIE") and provide JULIE with the necessary information to update their records and memorialize the locations where the underground cables cross the road right-of-ways. (*PROJECT NAME*) shall preserve and protect all properties of public utility companies, such as lines, conduits, gas or water pipes, sewers and tile lines which run over, through or under any part of the Road District Roads used by (*PROJECT NAME*). It shall be (*PROJECT NAME*)'s responsibility to contact the various public utility companies and locate their properties before any construction shall start and (*PROJECT NAME*) shall assume full responsibility for reimbursing owners for any damage or injury to such properties which may be caused by (*PROJECT NAME*)'s operations.
- (e) Prior to the start of construction on the Project, (*PROJECT NAME*) shall identify all heavy lift crawler crane road crossings at locations to be coordinated with, and approved by, the Road District Road Commissioner, if applicable.
- (f) Horizontal/directional boring shall be used where the collection system cables cross under the roads such that the road surface shall not be cut, and such cables shall be installed in ABS plastic tubing (thick wall) used in public right-of-way locations in accordance with good utility practice.

- (g) The size and type of any culverts installed or replaced as a result of construction of the Project or repair to the Road District Roads shall be approved by the Road District Road Commissioner at or prior to the time such a culvert is installed or replaced. Any such culverts shall be no less than fifteen inches (15") in diameter and shall be new, Type 2 Aluminized, corrugated metal culvert pipes.
- (h) In the event that Road District Road corners are widened for truck navigation in connection with the development of the Project, such road corner modifications shall be designed by an engineer and shall satisfy County Road standards. The widened road corners shall remain in place inside the existing Road District Road rights-of-way after construction of the Project unless the Road District Road Commissioner specifically requests that such widening be removed. If the widened corners are removed, (PROJECT NAME) shall repair all damage and ensure proper *drainage* (PROJECT NAME) shall make *all commercially reasonable efforts to obtain permanent* easements from private land owners so that widened road corners can remain fully in place and, if so obtained, shall convey such permanent easements to the Road District.
- (i) While the Project is under construction, transport schedules shall be provided regularly (and in any event, no less than weekly) by (PROJECT NAME) to the Road District Road Commissioner to indicate when heavy traffic will be in the area of the Project site.
- (j) (PROJECT NAME) shall provide, upon request, the Road District Road Commissioner with a copy of each overweight and oversize permit issued by the Illinois Department of Transportation ("IDOT") as well as any permits issued by the County to (PROJECT NAME) or (PROJECT NAME)'s Parties.
- (k) (PROJECT NAME) shall provide, upon request, copies to the Road Commissioner of any delivery ticket bound for or delivered to the Project site so that the Road District Road Commissioner may monitor the actual weights of construction vehicles which do not require permits for overweight loads.
- (l) Project traffic shall be scheduled in a way to reasonably minimize the adverse impact on local agricultural truck transport. In the event of traffic conflicts, priority shall be given to emergency response vehicles, rural mail delivery, transportation of children to and from school, and the transportation of agricultural commodities and implements of husbandry. (PROJECT NAME) agrees that it shall coordinate with the Wabash County Engineer and the Road District Road Commissioner scheduling of Project construction traffic in weekly scheduled meetings, which meetings shall include all affected parties (included school bus transporters) and shall be held at the offices of (PROJECT NAME). The Road District may, but shall not be obligated to, have representatives participate in such meetings.
- (m) If the Road District Roads degrade (by way of example and not limitation, "degrade" means to show signs of bleeding, rolling, breaking or pumping) while construction of the Project is ongoing due to construction activities or the volume of construction traffic

related to the Project, (*PROJECT NAME*), at the reasonable request of the Road District Road Commissioner, shall cause necessary remedies to be implemented to ensure safe passage of the motoring public within a reasonable time and, in any event, within twenty-four (24) hours; unless immediate hazards exist, in which case, the Road District Road Commissioner shall take immediate action to make the Road District Roads safe for the motoring public. If (*PROJECT NAME*) fails to act, the Road District Road Commissioner may take remedial action and may close the road until the road is made safe.

- (n) If, during the course of construction of the Project, the Road District Road Commissioner notifies (*PROJECT NAME*) of significant potholes or other conditions caused by the construction traffic or construction activities which make travel on the Road District Roads hazardous, (*PROJECT NAME*) shall remediate the hazard prior to dusk on the day it receives notice of the hazardous condition from the Road District Road Commissioner (or place illuminated or night condition warning signs pending the remediation of the hazard within twenty-four (24) hours). If (*PROJECT NAME*) fails to act; the Road District Road Commissioner may take remedial action and may close the road until the road is made safe.
- (o) At all times during the construction of the Project and Repair Work performed on the Road District Roads, (*PROJECT NAME*) and (*PROJECT NAME*)'s Parties shall ensure that construction areas and routes are free and clear of mud, dirt, debris, garbage, obstructions or hazards. Upon the reasonable request of the Road District Road Commissioner, (*PROJECT NAME*) shall clear any mud, dirt, debris, garbage, obstructions or hazards from a Road District Road, culvert or ditch prior to dusk on the day such a request is made.
- (p) (*PROJECT NAME*) shall comply with the time limits established by the Road District Road Commissioner with respect to any requested closures of the Road District Roads. In any event, no such road closures shall exceed two (2) hours and the exact time of such closures shall be approved by the Road District Road Commissioner, such approval shall not be unreasonably withheld. (*PROJECT NAME*) shall advise the Wabash County Emergency Management Agency, local law enforcement agencies, affected rural mail providers, affected school districts and fire protection and ambulance service providers of closings prior to closing the Road District Roads, portion thereof or intersections.
- (q) If work during the construction phase of the Project or the post-construction road repair phase is suspended for an extended period, due to seasonal conditions or other cause, (*PROJECT NAME*), at (*PROJECT NAME*)'s expense, shall take such measures as laying additional gravel, installing barriers, posting signs and providing interim repairs or protections, as may be reasonably required to render the Road District Roads safe for vehicular traffic during the period such work is suspended.

- (r) Representatives of (*PROJECT NAME*) shall meet with the school bus operator(s) and the relevant school officials to ensure suitable arrangements are put into place for the safe and timely transport of children to and from school via the normal services for such transport. At least thirty (30) days prior to (*PROJECT NAME*)'s use of the Road District Roads, (*PROJECT NAME*) shall deliver written confirmation of such arrangements to the Road District Road Commissioner.
- (s) Heavy lift crawler cranes shall only cross the Road District Roads in low traffic periods. The Parties contemplate such crane crossings will take place during the night. (*PROJECT NAME*) shall ensure that property owners affected by such crane crossings have utility service for occupied residences. (*PROJECT NAME*) shall advise the Wabash County Emergency Management Agency, local law enforcement agencies, and fire protection and ambulance service providers of such crane crossings.
- (t) Except as otherwise specifically provided for in this Agreement, (*PROJECT NAME*) shall ensure that its contractors, subcontractors, material suppliers and their respective transport providers transporting oversize and over width loads use the Road District Roads during daylight hours.
- (u) In the event that (*PROJECT NAME*) or (*PROJECT NAME*)'s Parties move a traffic control device to accommodate its construction traffic, such sign shall be immediately replaced by (*PROJECT NAME*) in accordance with the National Manual on Uniform Traffic Control Devices (current edition) issued by the Federal Highway Administration and the Illinois Supplement to the National Manual on Uniform Traffic Control Devices issued by the Illinois Department of Transportation (current edition) at its own expense.
- (v) Road and intersection closures shall be marked and signed in accordance with the National Manual on Uniform Traffic Control Devices (current edition) issued by the Federal Highway Administration and the Illinois Supplement to the National Manual on Uniform Traffic Control Devices issued by the Illinois Department of Transportation (current edition) and any *Other applicable requirements set forth in the State statute or regulation or County ordinance.*
- (w) (*PROJECT NAME*), upon the request of the Road District Road Commissioner, shall obtain and post traffic signs, including signs advising "No Solar Farm Construction Traffic" at various locations as an aid to traffic management. All such signage or postings shall comply with the National Manual on Uniform Traffic Control Devices (current edition) issued by the Federal Highway Administration and the Illinois Supplement to the National Manual on Uniform Traffic Control Devices issued by the Illinois Department of Transportation (current edition).
- (x) In accordance with permits issued by State and County authorities and as otherwise required by the Illinois Vehicle Code (and regulations promulgated there under), oversize and/or overweight vehicles shall display slow moving vehicle emblems and

provide escort vehicles and related signage and lighting, to the end of protecting public safety and property.

(y) *(PROJECT NAME)* shall obtain permits from IDOT's Bureau of Local Roads and Structures prior to transporting overweight and/or oversize loads over any bridges and, promptly upon receipt thereof, shall provide copies of such permits to the Road District Road Commissioner.

(z) All construction traffic related to the Project shall use exclusively routes as designated in the Transportation Impact Analysis and shall not use any other Road District roads and routes. In the event this provision is violated by *(PROJECT NAME)* or *(PROJECT NAME)*'s Parties, the Road District Road Commissioner may impose a fine of Five Hundred Dollars (\$500.00) per occurrence on *(PROJECT NAME)*. The Parties recognize that Project traffic may, either through mistake or with the consent of the Road District Road Commissioner, use Road District roads other than those designated in the Transportation Impact Analysis. Repairs for damage caused by *(PROJECT NAME)* or any of *(PROJECT NAME)*'s Parties during:

(i) permitted use shall be made by *(PROJECT NAME)* in accordance with Section 4 of this Agreement and the burden of proving such incidental road damage was not caused by *(PROJECT NAME)* or *(PROJECT NAME)*'s Parties shall be on *(PROJECT NAME)*; and

(ii) mistaken use shall be made by *(PROJECT NAME)* in accordance with Section 4 of this Agreement provided the road damage is apparent at the time the mistaken use occurs.

(aa) The Road District Road Commissioner or his designee shall have unfettered access to the Road District Roads to inspect the roads, culverts and adjacent ditches.

(bb) *(PROJECT NAME)* shall reimburse the Road District and/or the Road District Road Commissioner for all reasonable inspection costs, including, but not limited to, reasonable engineer fees, incurred in connection with any and all road issues relating to the construction of *the* Project and repairs to the Road District Roads and all roadway appurtenances, including costs incurred during the Road Maintenance Period. Payment shall be made within forty-two (42) days of receipt of such engineering bills or other bills by *(PROJECT NAME)*.

(cc) *(PROJECT NAME)* shall hold harmless, indemnify, defend, pay costs of defense (Including reasonable attorneys' fees), and pay any and all claims or judgments which may hereafter accrue against the Road District and/or the Road District Road Commissioner, Road District Supervisor, Road District Board of Trustees and/or (notwithstanding that such individuals are not *specifically named herein*) their agents, servants, employees and attorneys, arising out of any of the use of the Road District Roads by *(PROJECT NAME)* and *(PROJECT NAME)*'s Parties, their respective successors and/or assigns and their respective transport providers in connection with the construction of the Project and repair and reconstruction of the Road District Roads and all roadway appurtenances.

(dd) With regard to work performed on the Road District Roads in connection with construction of the Project, *(PROJECT NAME)*'s Parties shall be pre-qualified by IDOT to perform the work such parties are hired to perform. Upon request, *(PROJECT NAME)* shall provide to the Road District or the Road District Road Commissioner documents establishing that a contractor or subcontractor has been pre-qualified by IDOT.

(ee) With regard to work performed on Road District roads in connection with construction of the Project, *(PROJECT NAME)*, its contractors and subcontractors shall pay wages in accordance with the Illinois Prevailing Wage Act, 820 IL CS 130/1 *et seq.*

(ff) *(PROJECT NAME)* shall provide to the Road District and the Road District Road Commissioner any "As-Built" drawings of improvements to the Road District Roads or road rights-of-way that *(PROJECT NAME)*, its engineers, contractors or subcontractors may possess.

(gg) *(PROJECT NAME)* shall provide written notice to the Road District Road Commissioner identifying the name, address and both regular and emergency contact information of *(PROJECT NAME)*'s on-site representative for communication purposes regarding this Agreement and the Project. *(PROJECT NAME)*'s on-site representative may be changed and any such change and change in contact information shall be communicated to the Road District Road Commissioner in writing.

(hh) *(PROJECT NAME)* shall pay to the Road District Road Commissioner a Permit Fee of (Dollar Amount) (\$#,###.##) for each solar panel constructed in connection with the Project within the Road District and said fee shall be deemed to provide permission for the overweight and oversize vehicles related to the Project to travel upon the Road District roads designated in the Transportation Impact Analysis. The Parties deem this fee to be in accordance with Section 15-301 of the Illinois Vehicle Code, 625ILCS 5/15-301. the fee shall be made payable to the Road District at least thirty(30) days prior to the start of construction of the Project and said fee shall be deposited in the Road District's Road District General Road Fund.

Section 3. Pre-Project Roadway Condition Survey. *(PROJECT NAME)* Agrees to undertake an independent Project roadway condition survey, which shall include videotaping the Road District Roads, structures and across road culverts, (an "Independent Road Survey") prior to starting construction of the Project. The Independent Road Survey shall record the condition of the Affected Roads specified in the Transportation Impact Analysis to be used or affected by the Project. Prior to the Independent Road Survey, *(PROJECT NAME)* and the County Engineer shall mutually agree on an independent engineer to conduct the Independent Road Survey. *(PROJECT NAME)* shall cause the results of the Independent Road Survey to be shared with the Road District Road Commissioner promptly upon its receipt thereof and, in any event, at least (30) days prior to the start of Construction of the Project.

Section 4. (PROJECT NAME) Obligation to Repair Road District Roads.

(a) *(PROJECT NAME)* hereby agrees that, upon notice from the Road District and/or the Road District Road Commissioner, it shall, at its expense, repair, or cause to be repaired,

any damage to Road District Roads caused by the construction of the Project whether such damage is caused by *(PROJECT NAME)* or *(PROJECT NAME)*'s Parties (the "Repair Work"). "Damage" shall be interpreted in the broadest sense and shall include, but not be limited to, damage to the road surface, subsurface, culverts, drainage tiles, signs and adjacent ditches. All repair and/or restoration of Road District Roads shall be constructed in a good and workmanlike manner and in accordance with the Bureau of Local Roads and Streets Manual, and "Standard Specifications for Road and Bridge Construction," current edition, issued by the Illinois Department of Transportation.

- (b) Upon substantial construction of the solar panels which comprise the Project, *(PROJECT NAME)* shall provide to the Road District Road Commissioner and the Road District its engineer's estimates of the engineering, labor and material costs to repair or improve (in accordance with Section 4) the Road District Roads affected by the construction of the Project, and shall include the costs of the liability insurance premiums as set forth in Section 6 of this Agreement. These engineer's estimates, once approved by the Road District Road Commissioner, shall be used as the basis for determining the amount of the Letter of Credit/Surety Bond with a waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default; during the post-construction road Repair Work shall begin as soon as practicable upon the Road District Road Commissioner's approval of *(PROJECT NAME)*' s Engineer's estimates of the cost of the post-construction road Repair Work.
- (c) Dirt Roads. In the event that *(PROJECT NAME)* desires use of any Road District Road which is an unsurfaced, unimproved dirt road, *(PROJECT NAME)* shall, at its sole expense and subject to the review and approval of the Road District Road Commissioner, improve such road by performing stabilization and subsurface drainage and dirt work, laying a base course of six inches (6") of compacted CA-2 and laying a surface course comprised of six inches (6") of compacted CA-6 Type A from a limestone or dolomite quarry, and install or improve culverts as directed by the Road District Road Commissioner, and grade and seed any disturbed ditches in compliance with all Federal, State and County requirements. In addition, at the conclusion of construction of the Project, *(PROJECT NAME)* shall, at its expense repair or cause to be repaired any such road, including the culverts, ditches and the gravel surface.
- (d) Gravel Roads. In the event that *(PROJECT NAME)* uses Road District Road which is a gravel road, *(PROJECT NAME)* shall, at its sole expense and subject to the review and approval of the Road District Road Commissioner, restore such road by coring the existing road and shoulders to a depth of twelve inches (12"), occurrences of subbase failure below the twelve-inch (12") core shall have remedial work, that is, stabilization and subsurface drainage work, performed as directed by the Road District Road Commissioner, laying a base course of eight inches (8") of compacted CA-2 and laying a surface course comprised of four inches (4") of compacted CA-6 Type A, and shall also install or improve across road culverts and entrances as directed by the Road

District Road Commissioner, and grade and seed any disturbed ditches in compliance with all Federal, State and County requirements.

- (e) Other Roads. The Parties anticipate and agree that the Repair Work for the Road District Roads used for the construction of the project will consist of all labor, materials and equipment to repair:
- i. With respect to any occurrence of road bed damage resulting from sub-base failures, such repair work shall include, but not be limited to, stabilization and subsurface drainage work, coring to a depth of fifteen inches (15"), laying a base course of eight inches (8") of compacted CA-2 and laying a surface course comprised of four inches (4") of compacted CA-6 Type A, and three inches (3") of hot mix asphalt pavement for the full width of the road, all such work to be performed as directed by the Road District Road Commissioner. The Parties anticipate and agree (*SPECIFIC WORK IDENTIFIED BY TRAFFIC IMPACT STUDY OR WORK AGREED TO BETWEEN THE PARTIES*), and dirt work noted in this sub-paragraph i:

Or
 - ii. With respect to road damage resulting from surface failures, such repair work shall include recycling the road surface to a depth suitable for and incorporation of a foamed asphalt treatment with subsequent resurfacing of the road with three inches (3") of hot mix asphalt for the full width of the road.

Regardless of whether repairs are made according to (i) or (ii) above, three foot (3') wide crushed aggregate shoulders with a minimum depth of three inches (3") shall be placed adjacent to the repaired roads. Disturbed ditches will also be graded and seeded in compliance with all Federal, State and County requirements.

- (f) Tiles. The Parties acknowledge that there are farm drainage tiles located under roads to be used by (*PROJECT NAME*) for construction of the Project. In the event that these drainage tiles are damaged, (*PROJECT NAME*) shall replace said tiles, within the entire road right-of-way, with double-walled plastic pipes approved by IDOT, unless otherwise directed by the Road District Road Commissioner.
- (g) All road resurfacing shall be completed to the nearest intersection so as to provide a smooth, gradual integration with an existing road surface, even such resurfacing requires improvements by the Road District Roads not affected by the construction traffic.
- (h) Any repairs undertaken pursuant to the Section 4 shall be subject to reasonable approval by the Road District and the Road District Road Commissioner.
- (i) All post-construction Repair Work shall be completed within six (6) months of the date the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses

and language requiring payment upon due presentation of a proper notice of default is adjusted, in accordance with the terms of this Agreement, to provide security for the post-construction Repair Work. If completion of the post-construction Repair Work cannot be completed within the period designated for road construction Repair Work by IDOT, then (i) the six (6) month repair period shall be tolled pending the resumption of the Repair Work in accordance with the IDOT rules and regulations and (ii) (*PROJECT NAME*) shall, at its expense, lay additional gravel, install barriers, post signs and take all actions necessary to make Road District Roads damaged by (*PROJECT NAME*)'s construction activities safe for vehicular traffic until such time that construction of the Project and the post-construction Repair Work is completed. All such actions undertaken by (*PROJECT NAME*) shall be subject to the supervision and approval of the Road District Road Commissioner.

(j) (*PROJECT NAME*) shall provide written notice to the Road District Road Commissioner when (*PROJECT NAME*) has completed the Repair Work (the "Completion Notice"). Attached to the Completion Notice shall be proof of payment to contractors, subcontractors and material suppliers and lien waivers executed by all contractors, subcontractors and material suppliers who have performed the Repair Work. The Completion Notice and lien waivers shall be delivered to the Road District and Road District Road Commissioner, with a copy to their attorney.

(k) Upon receipt of the Completion Notice and lien waivers by the Road District and the Road District Road Commissioner, the Road District and the Road District Road Commissioner shall have thirty (30) days to inspect the Repair Work and provide written notice to (*PROJECT NAME*) of rejection of the Repair Work in whole or in part (the "Rejection Notice"):

(i.) If no Rejection Notice is tendered by either the Road District or the Road District Road Commissioner, then the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default shall be adjusted to provide security for the Road Maintenance Period as provided for in Section 7 of this Agreement.

(ii.) If a Rejection Notice is tendered by either the Road District or the Road District Road Commissioner, then:

a. (*PROJECT NAME*) shall make repairs as identified in the Rejection Notice. Upon completion of such additional repair work, (*PROJECT NAME*) shall serve the Road District and the Road District Road Commissioner with a supplemental Completion Notice and the notice procedures set forth herein shall apply;

or

b. Within ten (10) days of receipt of the Rejection Notice, (*PROJECT NAME*) shall provide written demand to the Road District and the Road District Road Commissioner requesting that the Road District, the Road District Road Commissioner and (*PROJECT NAME*) select an independent engineering firm to inspect the Repair Work and determine if additional repairs, as demanded by the Road District or the Road District Road Commissioner in a Rejection Notice, are required. The Parties shall select an independent engineering firm within twenty-one (21) days of (*PROJECT NAME*)'s written demand. The independent engineering firm shall complete its inspection within thirty (30) days and issue its report. The determination of said independent engineering firm shall be binding upon the capital Parties hereto. The cost of the engineering firm for such inspection and report shall be divided evenly among the Parties hereto.

(l) The "Date of Final Acceptance" of all road repairs shall be the later of the following:

- i. The date of the delivery of the Completion Notice to the Road District Road Commissioner if no Rejection Notice is given by the Road District or the Road District Road Commissioner to (*PROJECT NAME*); or
- ii. If a Rejection Notice is given by the Road District or the Road District Road Commissioner to (*PROJECT NAME*), then either:
 - a. the date the identified repairs are completed to the reasonable satisfaction of the Road District Road Commissioner (but no later than thirty (30) days after a Supplemental Completion Notice is submitted); or
 - b. the date of the written report by the independent engineering firm showing no further repairs are necessary or reasonably required.

(m) If any Road District Road used by (*PROJECT NAME*) shall require any repairs in the opinion of the Road District Road Commissioner as a result of damage caused by (*PROJECT NAME*) or (*PROJECT NAME*)'s Parties, or Repair Work is defective and additional repairs are required during the three (3) year period following construction of the Project (the "Road Maintenance Period"), (*PROJECT NAME*) shall, upon notification by the Road District Road Commissioner may draw upon the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default as provided for in Section 7 of this Agreement (the "Road Maintenance Period Letter of Credit") to pay

the entire cost or expense of the repair, including, but not limited to, reasonable engineer, attorney and consultant's fees and costs. Should the cost or expense exceed the amount set forth in the Road Maintenance Period Letter of Credit, (PROJECT NAME) shall remain liable for any additional cost or expense incurred.

Section 5. Road District Undertakings. In consideration of the obligations of (PROJECT NAME) under this Agreement, the Road District and Road District Road Commissioner agree to:

(a) Upon presentation of the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default as provided for in Section 7, to permit (PROJECT NAME) and (PROJECT NAME)'s Parties to use the Road District Roads designated in the Transportation Impact Analysis for construction of the Project, including overweight and oversize vehicles, in a manner consistent with customary practices.

(b) The Road District Road Commissioner shall permit time-sensitive, essential turbine and/or transformer component parts to be transported on Road District Roads, notwithstanding other applicable Road District ordinances.

(c) The Road District Road Commissioner will coordinate and cooperate with (PROJECT NAME) and (PROJECT NAME)'s Parties to minimize the impact of their use of the roads on normal local traffic.

Section 6. Insurance. (PROJECT NAME) shall furnish the Road District and Road District Road Commissioner with evidence of liability insurance in the amount of at least Five Million Dollars (\$5,000,000.00) per occurrence, covering the construction activities of (PROJECT NAME) and road Repair Work contemplated by this Agreement. The insurance shall be written by a company rated by Standard & Poor's rating group as B+ or better. The Certificate of Insurance shall be provided to the Road District and Road District Road Commissioner before the commencement of any work by (PROJECT NAME) or (PROJECT NAME)'s Parties. The insurance policy shall provide for a thirty (30) day "prior notice of termination" provision in favor of the Road District and Road District Road Commissioner. Should (PROJECT NAME) allow such liability insurance to terminate prior to the completion of the construction activities and road Repair Work contemplated by this Agreement, the Road District and the Road District Road Commissioner shall have recourse against the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default; provided for in Section 7 for funds sufficient to cause the liability insurance to be reinstated until the completion of the road Repair Work. The Road District, members of the Road District Board of Trustees, Road District Road District and the Road District Road Commissioner shall be named as additional insured on the policy.

Section 7 Letter of Credit/Surety Bond with conditions.

(a) Not less than thirty (30) days prior to the start of construction of the Project, (*PROJECT NAME*) shall provide the Road District with an irrevocable Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default (the "Letter of Credit") issued by a sound financial institution or sound insurance provider located in the United States of America and authorized to do business in the State of Illinois in a form reasonably accepted to the Road District and the Road District Road Commissioner, and with a draw request substantially in the form of Exhibit "B" attached hereto. The Parties acknowledge that the exact terms of the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default may be subject to terms requested by the financial institution or insurance provider issuing the Letter of Credit.

(b) The Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default shall provide security to the Road District and the Road District Road Commissioner for the following phases of the Project:

- (i) the construction of the Project,
- (ii) the post-construction road Repair Work, and
- (iii) the Road Maintenance Period.

At six (6) month intervals from the date the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default is initially provided by (*PROJECT NAME*) to the Road District, and until completion of post-construction road Repair Work, (*PROJECT NAME*), subject to approval by the Road District Road Commissioner, will reassess the estimated cost of post-construction road Repair Work, and the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default shall be adjusted to reflect the periodically revised estimate.

(c) During the construction of the Project, the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default shall be the cost of the estimated post-construction Repair Work as determined in the Transportation Impact Analysis and approval by the Road District Road Commissioner.

(d) During time post-construction road Repair Work phase, the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default shall not be less than one hundred twenty-five percent (125%) of the cost of the Repair Work as agreed upon by the Parties in accordance with Section 4.

(e) During the Road Maintenance Period, the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default shall not be less than twenty-five percent (25%) of the actual cost of the post-construction road Repair Work as agreed upon by the Parties when the post-construction road Repair Work is accepted by the Road District Road Commissioner and the Road District.

(f) A reduction in the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default shall not amount to acceptance by the Road District and/or the Road District Road Commissioner of improvements or repairs to Road District Roads by (*PROJECT NAME*).

(g) The Road District and/or the Road District Road Commissioner shall not draw on the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default until ten (10) days after the delivery of written notice to (*PROJECT NAME*), specifying a default hereunder by (*PROJECT NAME*), during which ten (10) days (*PROJECT NAME*) may cure such default; and, in the event (*PROJECT NAME*) so cures, or is actively pursuing a cure which would be acceptable to the Road District Road Commissioner is his reasonable discretion, the Road District and/or the Road District Road Commissioner shall not draw on the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default on account of such default. The insuring or bonding over of any payment claim of a contractor, subcontractor or material supplier by (*PROJECT NAME*) with the Road District shall constitute an acceptable cure of a default based upon (*PROJECT NAME*)'s failure to pay a contractor, subcontractor or material supplier.

(h) The Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default may be used by the Road District and/or the Road District Road Commissioner, in their reasonable discretion, to cure any uncured defaults of any kind or nature with respect to the improvement and/or repair of Road District Roads by (*PROJECT NAME*), including, but not limited to:

(i) providing payment for any of (*PROJECT NAME*)'s obligations under this Agreement which remain unpaid for thirty (30) days after such obligations have been incurred and documented, which obligations shall include, without limitation, modification and repairs of the Road District Roads during construction of the Project and post-construction road Repair Work;

(ii) Keeping the liability insurance policy pursuant to Section 6 in force and effect:

(iii) in the event the Road District and/or the Road District Road Commissioner is served with a notice pursuant to the Illinois Mechanics' Lien Act from any of (*PROJECT NAME*)'s contractors, subcontractors, material suppliers, engineers or others (a Lien Claimant") that (*PROJECT NAME*) has not paid for work, payment may be made to such Lien Claimant (this right in the Road District and/or the Road District Road Commissioner shall not be constructed as granting to any Lien Claimant any right as a

third party beneficiary or otherwise to the proceeds of the Letter of Credit). The insuring or bonding over of any payment claim of a contractor, subcontractor or material supplier;

(iv) Reimbursement for emergency actions by the Road District and/or the Road District Road Commissioner to protect public health and safety as a result of the activities of *(PROJECT NAME)* or *(PROJECT NAME)*'s Parties; and

(v) Reimbursement for such other actions (erection of traffic control signs, payment for outside consultants and advisors, *etc.*) as provided for under this Agreement.

(i) Any time this Agreement calls for a Letter of Credit, the Road District Board of Trustees and Road District Road Commissioner may, in their sole discretion, upon request of *(PROJECT NAME)*, accept substitute collateral other than a Letter of Credit

(j) Upon the expiration of the Road Maintenance Period, *(PROJECT NAME)* shall have no further obligation to maintain the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default and the Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default; shall be canceled and returned to *(PROJECT NAME)*.

Section 8. Future Work by *(PROJECT NAME)*: This Agreement is limited to the construction of the Project as described in the recitals to this Agreement and as depicted in Exhibit "A" hereto. In the event that *(PROJECT NAME)* desires use of Road District Roads following the expiration of the Road Maintenance Period for future maintenance work on the Project, for demolition of the Project or for the development of another project, another roads agreement with the Road District and the Road District Road Commissioner shall be required.

Section 9. Approval of Conditional Use Permits by the County. The obligations of the parties hereto are subject to and conditioned upon approval of the Conditional Use Permits for the Project by the County. In the event that the County fails to approve all of the Conditional Use Permits applied for by *(PROJECT NAME)*, this Agreement may, at the election of *(PROJECT NAME)*, be considered null, void and without legal effect, provided a written notice of such election is provided to the Road District and the Road District Road Commissioner within the later to occur of (a) one hundred twenty (120) days of the decision by the County or, if any party has elected to appeal the decision by the County (b) within sixty (60) of the date of the final decision in such appeal.

Section 10. Miscellaneous.

(a) **Recitals.** The Recitals set forth above are hereby incorporated herein and made a part of this Agreement.

(b) **Remedies and Enforcement.** Each of the parties hereto, their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any party, or their successors or assigns, which

default is not cured for a period of ten (10) days after written notice to the defaulting party of such default, the party seeking to enforce said provisions shall have the right to seek the remedy 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. Notwithstanding the foregoing, the Road District Road Commissioner may, without notice, take immediate action to make the Road District Roads safe for the motoring public and any costs reasonably incurred by the Road District Road Commissioner in such a circumstance shall be reimbursed by (PROJECT NAME).

- (c) Due Authorization. (PROJECT NAME) hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of (PROJECT NAME). The Road District and Road District Road Commissioner hereby represent and warrant that this Agreement has been duly authorized, executed and delivered on behalf of the Road District and the Road District Road Commissioner.
- (d) 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.
- (e) Entire Agreement. 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 the Parties.
- (f) 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.
- (g) Notices. All notices shall be in writing. Any notice shall be deemed to be sufficiently given (i) on the date, if delivered in person; (ii) five (5) days after being sent by United States registered or certified mail, postage prepaid, return receipt requested; or (iii) on the next business day if sent by overnight delivery service (e.g. Federal Express) to the notified Party at its address set forth below. Notice may be sent via facsimile to a facsimile number provided, however, notice sent by facsimile shall be followed by notice delivered by personal service or via registered or certified mail, return receipt requested, postage prepaid or by overnight delivery. Notices shall be addressed as follows:

If to (PROJECT NAME):
(PROJECT NAME)
c/o Company Contact Address
City, State Zip
ATTN: General Counsel

Telephone: (###)-###-####

And:

Company Name

Attn: Company Contact

Address

City, State Zip

Telephone: (###)-###-####

with a copy to:

Company Name

Attn: Company Contact

Address

City, State Zip

Telephone: (###)-###-####

Facsimile: (###)-###-####

If to the Road District:

(Road District Name) Road District Supervisor

and

(Road District Name) Road District Road Commissioner

(Road District Name) Road District Maintenance Shed Address

City, State Zip

Telephone: (###)-###-####

Facsimile: (###)-###-####

with a copy to:

Legal Representative

Legal Firm Name.

Address

City, State Zip

Telephone: (###)-###-####

Facsimile: (###)-###-####

or to such other party or address as any party hereto may from time to time designate in a written notice to the other parties.

(h) 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 same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be as effective as delivery of a manually signed counterpart to this Agreement.

(i) Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, (the state in which this Agreement is deemed to have been executed and delivered), irrespective of any conflict of law's provisions.

(j) Forum Selection. The parties agree that any disputes arising out of, related to, or connected with this Agreement shall be litigated, if at all, solely in the Circuit Court for the Second Judicial Circuit, Wabash County, Illinois.

(k) Commencement of Project Construction. This Agreement shall be void if substantial construction of the Project is not commenced within three (3) years of the date of this Agreement.

(l) Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their respective *successors, assignees and* legal representatives.

(i) Assignment Requiring Consent. This Agreement may not be assigned without the written consent of the other parties and such consent shall not be unreasonably withheld or delayed.

Permitted Assignment. Notwithstanding subparagraph (i) above, (*PROJECT NAME*) shall be entitled to assign this Agreement, in whole or in part, without the prior written consent of the Road District or the Road District Road Commissioner to any affiliate of (*PROJECT NAME*) or to any person or entity providing financing to (*PROJECT NAME*) or any such affiliate or any collateral agent or security trustee acting on behalf of any such person or entity. Any such collateral assignment for financing purposes will not relieve (*PROJECT NAME*) of its obligations under this Agreement. In the event of a Permitted Assignment, (*PROJECT NAME*) shall, seven (7) days prior to such assignment, provide written notice to the Road District and the Road District Road Commissioner of the name, address, entity type and state of incorporation of the assignee, as well as the name and address of the assignee's registered agent in the State of Illinois.

(m) No Waiver or Relinquishment of Right to Enforce Agreement. Failure of any 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 any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

(n) Reimbursement of Costs. (*PROJECT NAME*) shall reimburse the Road District for the expenses of any special meetings that may be held related to the adoption of amendment of this Agreement, including but not limited to the cost of publishing notice of such meetings in local newspapers and payment to the Road District Supervisor and the Road District Clerk for attendance at such meetings. Such reimbursement payments shall be made within thirty (30) days of receipt of an invoice for such expenses, and shall be deposited in the general fund for the Road District.

(o) Attorney's Fees and Costs. (*PROJECT NAME*) agrees to reimburse the Road District and/or the Road District Road Commissioner for all reasonable attorneys' fees and costs associated with the negotiation and drafting of this Agreement, the ongoing review of compliance with this Agreement, the review of all notices, Letters of Credit and all documents in connection with this Agreement or any extension, amendment or modification thereof, and all other reasonable legal work required by the Road District and/or Road District Road Commissioner in connection therewith. In the event that the County fails to approve all or any of the Conditional Use Permits for the Project, (*PROJECT NAME*) shall remain liable for the reimbursement of said attorneys' fees and costs incurred by the Road District and/or the Road District Road Commissioner to enforce this Agreement and the Road District and/or Road District Road Commissioner prevail in such litigation, the Road District and/or the Road District Road Commissioner shall be entitled to receive from (*PROJECT NAME*) reasonable attorneys' fees and costs incurred, in addition to any other relief to which the Road District and/or the Road District Road Commissioner may be entitled.

(p) Preparation of Agreement. This Agreement shall be deemed to have been prepared by (*PROJECT NAME*) and shall be construed against (*PROJECT NAME*) as the drafter, preparer and producer of the language herein.

(q) Memorandum. A Memorandum of this Agreement, substantially in the form of Exhibit "C" hereto, shall be recorded with the Wabash County Recorder of Deeds by (*PROJECT NAME*) within thirty (30) days after the execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

(*Road District Name*) Road District

(*Road District Name*) Road District Road Commissioner

By: _____
Name
Title

By: _____
Name

ATTEST:

ATTEST:

By: _____
Name, Road District Clerk

By: _____
Name, District Clerk

(*PROJECT NAME*)

By: _____
Print Name _____
Title:

EXHIBIT A
SITE LAYOUT PLAN

EXHIBIT B

LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO
ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE
PRESENTATION OF A PROPER NOTICE OF DEFAULT FORM

DATE: _____, 20__

BENEFICIARIES: <<INSERT NAME>> ROAD DISTRICT AND
 <<INSERT NAME>> ROAD DISTRICT ROAD
COMMISSIONER

ADDRESS: <<TO BE PROVIDED>>
 Attn: _____
 Telephone Number: _____
 Facsimile Number: _____

APPLICANT: (PROJECT NAME)

ADDRESS: <<TO BE PROVIDED>>
 Attention: _____
 Facsimile Number: _____

WE, _____, ("LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT ISSUER"), ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT NUMBER _____ ("LETTER OF CREDIT") IN FAVOR OF <<INSERT NAME>> ROAD DISTRICT AND THE <<INSERT NAME>> ROAD DISTRICT ROAD COMMISSIONER (EACH A "BENEFICIARY") FOR THE ACCOUNT OF (PROJECT NAME) LLC ("APPLICANT"), FOR AN AMOUNT OF USD \$ _____ (_____ UNITED STATES DOLLARS). WE UNDERSTAND THIS LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT; IS ISSUED RELATIVE TO THE OBLIGATIONS OF THE APPLICANT UNDER THE ROAD DISTRICT ROADS AGREEMENT DATED (**Date of Agreement HERE**), 2021 (THE "ROADS AGREEMENT") AVAILABLE BY PAYMENT WHEN ACCOMPANIED BY A DRAW REQUEST SUBSTANTIALLY IN THE FORM OF ATTACHMENT 1 HERETO, DATED AND PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ONE OR BOTH BENEFICIARIES (SIGNED AS SUCH). EACH DRAW REQUEST AND ALL COMMUNICATIONS WITH RESPECT TO THIS LETTER OF CREDIT/SURETY BOND

WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT; SHALL BE IN WRITING AND BE DELIVERED IN PERSON OR BY CERTIFIED MAIL OR BY OVERNIGHT DELIVERY SERVICE (E.G. FEDERAL EXPRESS).

THIS LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT; EXPIRES ON _____ 20____ ("EXPIRATION DATE") AT

SPECIAL CONDITIONS:

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED, AND THE AMOUNT OF THIS LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT; WILL BE REDUCED BY THE AMOUNT OF EACH DRAWING HONORED BY US.

ALL ISSUING BANK CHARGES ARE FOR THE ACCOUNT OF THE APPLICANT.

THIS LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT; MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BENEFICIARY AND THE ISSUER; PROVIDED, HOWEVER, THE AMOUNT AVAILABLE FOR DRAWING UNDER THIS LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT; MAY BE REDUCED OR INCREASED AUTOMATICALLY, WITHOUT AMENDMENT, FROM TIME TO TIME UPON OUR RECEIPT OF REDUCTION OR INCREASE CERTIFICATE STATING THE AMOUNT OF REDUCTION OR INCREASE AND AVAILABLE AMOUNT AFTER SUCH REDUCTION OR INCREASE, EXECUTED AND PURPORTEDLY SIGNED BY BOTH APPLICANT AND BENEFICIARY.

IF A COMPLYING PRESENTATION IS MADE PRIOR TO 12:00 P.M. (C.ST.) ON A BUSINESS DAY THEN ISSUER SHALL, PRIOR TO CLOSE OF BUSINESS ON THE SECOND FOLLOWING BUSINESS DAY, MAKE PAYMENT IN IMMEDIATELY AVAILABLE FUNDS BY WIRE TRANSFER TO SUCH ACCOUNT AS MAY BE DESIGNATED BY A BENEFICIARY IN THE APPLICABLE DRAW REQUEST. IF A COMPLYING PRESENTATION IS MADE AT OR AFTER 12:00 P.M. (C.S.T.) ON A BUSINESS DAY, THEN ISSUER SHALL, PRIOR TO CLOSE OF BUSINESS ON THE THIRD FOLLOWING BUSINESS DAY, MAKE PAYMENT IN IMMEDIATELY AVAILABLE FUNDS BY WIRE TRANSFER TO SUCH ACCOUNT AS MAY BE

DESIGNATED BY A BENEFICIARY IN THE APPLICABLE DRAW REQUEST. BUSINESS DAY AS STATED IN THIS LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT; MEANS ANY DAY OTHER THAN A SATURDAY, SUNDAY, OR BANK HOLIDAY IN THE STATE OF ILLINOIS.

IN THE EVENT THAT A DRAW REQUEST FAILS TO COMPLY WITH THE TERMS OF THIS LETTER OF CREDIT, WE SHALL, NOT LATER THAN THE NEXT BUSINESS DAY, NOTIFY THE BENEFICIARIES IN WRITING, SPECIFYING WITH PARTICULARITY THE REASONS THEREFOR. SUCH NOTICE SHALL BE DELIVERED IN PERSON OR SENT BY OVERNIGHT DELIVERY OR SENT BY FACSIMILE TRANSMISSION TO THE BENEFICIARIES AND TO (***INSERT NAME, ADDRESS, AND FAX NUMBER OF ROAD DISTRICT'S ATTORNEY HERE***) (FACSIMILE). UPON BEING NOTIFIED THAT A DRAW REQUEST WAS NOT EFFECTED IN COMPLIANCE WITH THIS LETTER OF CREDIT, A BENEFICIARY MAY ATTEMPT TO CORRECT SUCH NONCOMPLYING DRAW REQUEST IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

WE HEREBY AGREE WITH YOU THAT DOCUMENTS PRESENTED UNDER AND IN CONFORMITY WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT; WILL BE DULY HONORED ON PRESENTATION IF PRESENTED ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT; IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 2007 REVISION, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600 (THE "UCP600") AND AS TO MATTERS NOT ADDRESSED BY UCP600 SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE TO THE LAWS OF THE STATE OF ILLINOIS. WE IRREVOCABLY AGREE WITH YOU THAT ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT; SHALL BE BROUGHT IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT, WABASH COUNTY, ILLINOIS.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT/SURETY BOND WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT; TO <BANK NAME AND

ADDRESS> ATTN: _____ TEL. _____ OR
_____, TEL. INCLUDING THE LETTER OF CREDIT/SURETY BOND
WITH WAIVER OF THE SURETY'S ABILITY TO ASSERT DEFENSES AND
LANGUAGE REQUIRING PAYMENT UPON DUE PRESENTATION OF A PROPER
NOTICE OF DEFAULT; NUMBER MENTIONED ABOVE.

THE LETTER OF CREDIT/SURETY BOND WITH
WAIVER OF THE SURETY'S ABILITY TO ASSERT
DEFENSES AND LANGUAGE REQUIRING PAYMENT UPON
DUE PRESENTATION OF A PROPER NOTICE OF DEFAULT;
ISSUER

AUTHORIZED SIGNATURE

DRAW REQUEST

<BANK NAME>
Attn: <NAME>, <TITLE>
<ADDRESS>
<CITY>, IL <ZIP>

Copy to:

on behalf of (PROJECT NAME)
Address
City, State Zip Code

Ladies and Gentlemen:

The undersigned _____ (the "Beneficiary"), being either the Supervisor of <<INSERT NAME>> Road District (the "Road District") or the <<INSERT NAME>> Road District Road Commissioner (the "Road District Road Commissioner"), hereby requests a draw in the amount of \$ _____ (this "Draw") against the Irrevocable Letter of Credit/Surety Bond with waiver of the surety's ability to assert defenses and language requiring payment upon due presentation of a proper notice of default; dated <MONTH DATE>, 2021 (the "Letter of Credit"), issued by <BANK NAME> in favor of the Road District and the Road District Road Commissioner. Any capitalized term used but not defined herein shall have the meaning given to such term in the Letter of Credit.

In connection with this Draw, the Beneficiary hereby certifies, represents, and warrants that:

- A) This Draw is authorized by the Roads Agreement between the Road District and the Road District Road Commissioner and (*PROJECT NAME*) dated Month day, 20__ (the "Roads Agreement").
- B) This Draw is being made in accordance with and as permitted by Section 7(h) of the Roads Agreement.
- C) The Beneficiary has determined that there has been a default under the Roads Agreement and that by reason thereof the Beneficiary is entitled to the amount demanded.
- D) The Beneficiary has given written notice of such default to (*PROJECT NAME*) in accordance with the terms of the Roads Agreement and (*PROJECT NAME*) has failed to cure the default within ten (10) days after the mailing of the written notice and is not actively pursuing a cure which would be acceptable to the Road District and/or the Road District Road Commissioner.
- E) This Draw request, when aggregated with all prior draws under the Letter of Credit, does not exceed the Stated Amount.

F) You are directed to make payment of this Draw to

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this day of _____ 2021.

<<INSERT NAME>> Road District, as Beneficiary By: _____
Name: _____
Title: _____

[IN THE ALTERNATIVE

<<INSERT NAME>> Road District Road Commissioner
By: _____
Name: _____

EXHIBIT C
MEMORANDUM OF AGREEMENT

MEMORANDUM OF
AGREEMENT

NOTICE IS **HEREBY GIVEN** that an Agreement was entered into by and between *(Road District Name)* Road District, the *(Road District Name)* Road District Road Commissioner *(PROJECT NAME)* concerning use of Road District roads located within *(Road District Name)* Road District and affecting real estate in the following sections of *(Road District Name)* Road District:

Sections: TO BE INSERTED

The Agreement imposed obligations upon *(PROJECT NAME)* related to its use of *(Road District Name)* Road District roads for the construction of the *(PROJECT NAME)* Solar Energy Project.
(PROJECT NAME)

Date: _____, 2021

By: <<INSERT NAME & TITLE>>

**THIS DOCUMENT
PREPARED BY:**

AND RETURN TO: