

IN THE MATTER OF APPROVING THE EXECUTION OF THE CONTRACT WITH BUEHLER ASPHALT PAVING, INC. BY THE BOARD OF COUNTY COMMISSIONERS FOR THE 2022 BRIDGE PAVING PROGRAM.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 5th day of May, 2022.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, on April 26, 2022, in Resolution #22-206, the Board of County Commissioners awarded the bid for the construction of 2022 Auglaize County Bridge Paving Program to Buehler Asphalt Paving, Inc. in the amount of \$82,425.00; and,

WHEREAS, a contract for said project between Buehler Asphalt Paving, Inc. and the Auglaize County Board of Commissioners has been presented to the Board for execution.

THEREFORE BE IT RESOLVED that the Board of County Commissioners does hereby approve the contract between Auglaize County Board of Commissioners and Buehler Asphalt Paving, Inc. as presented; and,

BE IT FURTHER RESOLVED that the Board authorizes the execution by said Board of the contract.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
5th day of
May, 2022

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

David Bambauer, yes
David Bambauer

John N. Bergman, yes
John N. Bergman

Douglas A. Spencer, yes
Douglas A. Spencer

cc: ✓ County Engineer
✓ Buehler Asphalt Paving, Inc.

CONTRACT for 2022 BRIDGE PAVING PROGRAM

This agreement, made this 5th day of May, 2022, by and between the **BOARD OF AUGLAIZE COUNTY COMMISSIONERS**, Auglaize County, Ohio, for and on behalf of said Commissioners, and Buehler Asphalt Paving, Inc., **CONTRACTOR**.

WITNESSETH:

SECTION 1: That the said Contractor, in consideration of the promise agreements hereinafter contained, agrees:

- (A) To furnish a performance bond in the amount of 100% of the Contract.
- (B) To furnish at the Cost and expense of the Contractor, all of the necessary materials, equipment and labor, to build and complete a good improvement to various County bridges and additional spot paving, as described in the plans and specifications herefore, on file with the Auglaize County Engineer, to which reference is hereby made, said plans, specifications and prevailing rate wages being made part of this contract and are incorporated herein by reference and attachment made a part hereof, and in accord with the proposal attached hereto and made part of this Contract in the manner and under the conditions specified in the Specifications and proposal.
- (C) To accept as payment in full, for said work, the sum of Eighty two thousand, four hundred twenty-five dollars (\$82,425.00) subject to such modifications or alterations as set forth in the aforesaid proposal.
- (D) Completion date for all work is October 31, 2022

IN WITNESS HEREOF the Board of Auglaize County Commissioners, Auglaize County, Ohio, have caused to be affixed hereto their signatures under the authority in them vested, and the Contractor has hereunto subscribed has hand at Wapakoneta, Ohio on the day and year first above mentioned.

**Board of Auglaize County Commissioners
Auglaize County, Ohio**

DATE: _____

Rhett Buehler

Rhett Buehler, V.P.

**Contractor
Buehler Asphalt Paving, Inc.**

Daniel Pearson

John N Bergman

[Signature]

County Commissioners Office
Auglaize County, Ohio
May 5, 2022

NO. #22-224

IN THE MATTER OF RATIFYING THE EMPLOYMENT OF JESSICA KAUFMAN AS THE ELIGIBILITY REFERRAL SPECIALIST II POSITION AT THE AUGLAIZE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES.

The Board of County Commissioners of Auglaize County, Ohio, met in regular session on the 5th of May, 2022.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, Julie Gossard, Director of the Auglaize County Department of Job & Family Services, informed the Board that the position of eligibility Referral Specialist II Position has been posted and interviews conducted. Jessica Kaufman has been selected to fill the position; and,

WHEREAS, Director Julie Gossard recommended that Ms. Kaufman to be hired to the position of Eligibility Referral Specialist II on May 10, 2022 at the pay rate per hour of \$17.72.

THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Auglaize County, Ohio, does hereby ratify the employment of Jessica Kaufman to the position so mentioned above in the Auglaize County Department of Job & Family Services; employment in accordance with the specifications as mentioned above.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
5th day of
May, 2022

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

 David Bambauer , yes
David Bambauer

 John N. Bergman , yes
John N. Bergman

 Douglas A. Spencer , yes
Douglas A. Spencer

cc: Auglaize County Department
of Job & Family Services
Auditor
Jessica Kaufman

IN THE MATTER OF AUTHORIZING KOESTER ELECTRIC INC. TO PERFORM ELECTRICAL WORK ON THE COURTHOUSE BUILDING.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 5th of May, 2022.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, it has been determined that the Courthouse building is in need of electrical work to provide conduit to the ice guards; and,

WHEREAS, a quotation for providing all labor and material for the following work was obtained from Koester Electric Inc. as following:

East Main Entrance:

1. Provide and install conduit from panel in mechanical room on the 3rd floor to the attic space in the front of the building.
2. Provide and install wire from panel to a junction box in the attic space.
3. Provide and install Pilot light switches next to the panel so that heat tapes can be turned on and off.
4. Provide and install GFCI breakers in the existing panel for the heat tape: 2-20A 120 V circuits.
5. Terminate both ends of the wire into the panel and at the heat tape: Wellman Bros to get the heat tape fees into the attic so we can tie into out junction box. If plug ends are supplied we will set and outlet for them to plug into. If direct wire ends are supplied we can direct wire. **COST \$2,800.00**; and,

Inmate Entrance:

1. Provide and install conduit from panel in mechanical room on the 3rd floor to the attic space in the front of the building.
2. Provide and install wire from panel to a junction box in the attic space.
3. Provide and install Pilot light switches next to the panel so that heat tapes can be turned on and off.
4. Provide and install GFCI breakers in the existing panel for the heat tape: 2-20A 120V circuits.
5. Terminate both ends of the wire into the panel and at the heat tape. Wellman Bros to get the heat tape feeds into the attic so we can tie into our junction box. If plug ends are supplied we will set an outlet from them to plug into. If direct wire ends are supplied we can direct wire. **COST \$2,300.00**.

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of Auglaize County does hereby approve the necessary electrical work at the Courthouse building and does accept the proposal of Koester Electric Inc. as quoted above; and,

BE IT FURTHER RESOLVED that the Board does authorize Koester Electric Inc. to proceed with the Courthouse electrical work at an estimated cost of \$5,100.00.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
5th day of
May, 2022

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

David Bambauer, yes
David Bambauer

John N. Bergman, yes
John N. Bergman

Douglas A. Spencer, Yes
Douglas A. Spencer

cc: Maintenance Supervisor
Koester Electric, Inc.

IN THE MATTER OF AUTHORIZING THE COUNTY AUDITOR TO DRAW WARRANTS FOR THEN AND NOW CERTIFICATE PAYMENTS.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 5th day of May, 2022.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, the practice of using “Then and Now Certificates” has been instituted by the County Auditor.

THEREFORE, BE IT RESOLVED that the Board of County Commissioners, Auglaize County, Ohio, the taxing authority for Auglaize County, having thirty (30) days to approve payment by resolution from receipt of “Then and Now Certificates”, does hereby approve the following:

<u>Check No.</u>	<u>Amount</u>	<u>Vendor</u>
460403	2349.54	CONSORTIUM OF COUNTY LAW LIBRARY RESOURCES
460411	6000.00	KEEPING KIDS SAFE
460447	410.00	LEXIS NEXIS
460448	648.00	LEXIS NEXIS
460464	2159.51	POGGEMEYER DESIGN GROUP
460468	8000.00	POGGEMEYER DESIGN GROUP
460469	3000.00	POGGEMEYER DESIGN GROUP

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
5th day
May, 2022

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

David Bambauer, yes
David Bambauer

John N. Bergman, yes
John N. Bergman

Douglas A. Spencer, yes
Douglas A. Spencer

cc: County Auditor

IN THE MATTER OF APPROVING AND AUTHORIZING A ROAD USE, REPAIR, MAINTENANCE AND DRAINAGE AGREEMENT BETWEEN THE AUGLAIZE COUNTY ENGINEER AND THE AUGLAIZE COUNTY COMMISSIONERS AND BIRCH SOLAR 1, LLC.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 5th day of May, 2022.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, Birch Solar 1, LLC (the "Company") intends to construct an approximately 300 megawatt photovoltaic solar energy facility with associated on-site substation, inverters, fencing, road and other ancillary facilities ("Project") in and across portions of Auglaize County ("County"), Ohio; and,

WHEREAS, in association with the Project, the Company intends to use roads under the jurisdiction of Auglaize County (the "County") and Logan Township (the "Township") for construction, operation, routine maintenance, repowering, and eventual decommissioning of the Project, and will be constructing the Project in the vicinity of drainage structures; and,

WHEREAS, the public rights-of-way and ditches under the jurisdiction of County and/or the Township are public resources which are constructed, maintained, and repaired for the benefit of the citizens of the County and the County Authority and the Township have a duty to ensure that the public rights-of-way are constructed, used, maintained, and repaired in a manner which services the public interest; and

WHEREAS, the Company, the County and the Township have negotiated terms of a Road Use, Repair, Maintenance and Drainage Agreement (the "Agreement") to address the potential repairs, reconstruction and/or development of County and/or Township roadways or ditches as impacted by the Project; and

WHEREAS, the County Administrator has presented such Agreement for consideration by the Board of County Commissioners.

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio, does hereby approve the Road Use, Repair, Maintenance and Drainage Agreement with Birch Solar 1, LLC as mentioned above for said "County Authority"; and,

BE IT FURTHER RESOLVED that the Board does hereby authorize the President of the Board to execute said Agreement and said Agreement with become part of this resolution.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
5th day of
May, 2022

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

David Bambauer, yes
David Bambauer

John N. Bergman, yes
John N. Bergman

Douglas A. Spencer, yes
Douglas A. Spencer

cc: Birch Solar 1 LLC
County Engineer

ROAD USE, REPAIR, MAINTENANCE AND DRAINAGE AGREEMENT

This ROAD USE, REPAIR, MAINTENANCE AND DRAINAGE AGREEMENT ("Agreement") is made and entered into on May 5, 2022 by and between the Auglaize County Engineer and the Auglaize County Commissioners acting on behalf of Auglaize County (collectively, "County Authority"), and Birch Solar 1, LLC a Delaware limited liability company ("Company"). The Company and the County Authority are sometimes referred to herein individually as a "Party" and collectively as the "Parties." The term "Company Representative(s)" shall include the Company's agents, contractors, sub-contractors, employees, material suppliers, vendors, transport providers, representatives, and designees.

RECITALS

- A. The Company is a validly existing Delaware limited liability company authorized to do business in the State of Ohio.
- B. The Company intends to construct an approximately 300 megawatt photovoltaic solar energy facility with associated on-site substation, inverters, fencing, road and other ancillary facilities ("Project") in and across portions of Auglaize County ("County"), Ohio ("State").
- C. In association with the Project, the Company intends to use roads under the County Authority's jurisdiction for construction, operation, routine maintenance, repowering, and eventual decommissioning of the Project, and will be constructing the Project in the vicinity of drainage structures.
- D. The Company has provided to the County Authority a preliminary alignment plan and map for the Project showing the haul route, road crossings, and construction access roads, a copy of which is attached hereto as Exhibit A, and referred to as the "Project Layout Map".
- E. The public rights-of-way under the jurisdiction of the County Authority and/or Logan Township (the "Township") are a public resource which are constructed, maintained, and repaired for the benefit of the citizens of the County and the County Authority and the Township have a duty to ensure that the public rights-of-way are constructed, used, maintained, and repaired in a manner which serves the public interest.
- F. Pursuant to that certain Resolution dated May 4, 2022, the Township has authorized the County Authority to act on its behalf in the negotiation and enforcement of this Agreement.
- G. By this Agreement, the Company, County Authority and the Township desire to address certain issues relating to the Company's use of the roads under the jurisdiction of, operated and maintained by, the County Authority and/or the Township (collectively, the "County Roadways"), as well as certain issues relating to the County and/or Township drainage structures.
- H. In consideration of the benefits provided to the County by the Project, the County Authority agrees to provide the Company (and its assigns, contractors, subcontractors, licensees and permittees) a right to use the County Roadways as provided herein.

I. The Company and the County Authority wish to set forth their understanding and agreement as to the road and drainage issues relating to the construction, operation, maintenance, re-powering, and decommissioning of the Project.

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

SECTION 1. COMPANY UNDERTAKINGS.

(A) **PRE-CONSTRUCTION REQUIREMENTS.** Prior to the start of construction on the Project, the Company shall complete the following:

(1) **Local Rights-of-Way Permits.** At or prior to the start of construction of the Project, the Company shall complete all applicable local road use permits and pay appropriate fees as follows (mark applicable with an "x"):

(a) Road Use Permit

(b) Access Permit

(c) Utility Installations

(d) Other _____

(2) **Permit Fees.** Payment of the applicable permit fees shall be made in accordance with instructions provided by the County Authority. This payment(s) shall be deemed full consideration for all permits issued in accordance with this Agreement, and for: 1) the right to allow overweight, oversize, and over-width vehicles, if any, related to the Project to travel upon the County Roadways as designated on the Project Layout Map; 2) the issuance of driveway access permits and utility installation permits; 3) the use and alteration of the County Roadways and rights-of-way for Project construction and maintenance as provided for in this Agreement; 4) permits issued in accordance with this Agreement; 5) use of the public rights-of-way for installation of the transmission, communication, and collection system cables and crossings; and 6) for the issuance of any other permit, inspection, consent, or approval required under this Agreement. The Parties further agree that the fee compensates the County for time spent on this Project by the County Authority prior to and subsequent to the execution of this Agreement, and to ensure the County taxpayers do not bear any financial burden as result of the construction of the Project.

(3) **Notice of Construction Manager.** The Company shall provide written notice to the County Authority identifying the Company's designated construction contact; and providing both regular and emergency contact information (address, telephone, and email) for the individual.

(4) **One Call.** The Company shall become a member of One Call utility locating service ("One Call") for the State and shall provide One Call with the necessary information to update its records and memorialize where the underground cables are located under the County Roadways and rights-of-way. The Company shall, upon request, provide proof of its membership in One Call to the County Authority. The Company shall preserve and protect all properties of public and private utility companies, such as lines, conduits, gas or water pipes, sewers and tile lines which run over, through, or under any part of the County Roadways and rights-of-way used by the Company. It shall be the Company's

responsibility to contact the various public and private utility companies, and locate their properties prior to construction. The Company shall assume full responsibility for reimbursing owners for any damage or injury to such properties which may be caused by the Company's activities and operations.

(5) **Scheduling and Traffic Control Plan.** The Company shall provide the County Authority a construction schedule which reasonably minimizes the adverse impact on the motoring public, emergency vehicle access, mail delivery, school bus transport, and local agricultural truck transport for the scheduling of Project construction traffic. The Company shall consult with all public or semi-public entities as designated by the County Authority that may be affected by Project construction including, but not limited to, schools, mail carriers, ambulance, and fire protection districts. Through this process, the Company shall develop and implement a traffic control plan in compliance with the Manual on Uniform Traffic Control Devices issued by the Ohio Department of Transportation ("ODOT").

(6) **Road and Drainage Inventory.** The Company shall complete a Road and Drainage Inventory as specified in Section 3. The purpose of this Inventory is to establish a baseline for road conditions and any known drainage locations in preparation for the Company's completion of any needed Road or Drainage Repairs as specified in Section 4. Drainage baseline is established using good faith efforts to obtain private drain tile information from landowners and County GIS data.

(7) **Financial Assurance.** The Company shall post a Financial Assurance as detailed in Section 5 of this Agreement. The purpose of the Financial Assurance is to provide a readily available source of funds that the County can use for repairs for damage caused by the Company, if after notice and reasonable opportunity to cure the Company fails to make the repair.

(B) **CONSTRUCTION REQUIREMENTS.** Throughout the duration of the construction period, the Company shall adhere to the following:

(1) **Super Load Provisions.** Except as otherwise provided for in this Agreement, the Company shall ensure the Company Representative(s) transporting overweight, oversize, and worldwide loads use the County Roadways during daylight hours only. The Company shall apply to the County Authority for a "Super Load" movement permit at least three (3) business days in advance of movement of the oversize/worldwide load. A load is considered a "Super Load" if at least one of the following is true: (1) WIDTH is greater than 14'-6", (2) LENGTH is greater than 145'-0", HEIGHT is greater than 15'-0", or (4) WEIGHT is greater than 120,000 lbs. gross. A "Super Load" may also be defined in accordance with information obtained by a Party from the ODOT Permit Office.

(2) **Scheduling.** The Company shall adhere to the construction schedule, issuance of the point of delivery, and the traffic control plan as agreed upon between the County Authority and the Company prior to the commencement of construction. In the event of traffic conflicts, priority shall be given to emergency response vehicles, rural mail delivery, transportation of children to and from school, the transportation of agricultural commodities and implements of husbandry, and funeral processions. The Company shall comply with the time limits established by the County Authority with respect to any requested closures of County Roadways for Project construction. In any event, no road closures shall exceed three (3) hours past the approved starting time for which such closures shall be approved by the County Authority, unless otherwise agreed to by the Parties. Notwithstanding the foregoing, the Parties agree that road closures necessary for pre-construction road improvement work, post-construction road repair work, and emergency road repairs may exceed three (3) hours; provided, that, such maximum closure time has been approved by the County Authority. The Company shall provide reasonable notice

to the County Authority, the County Emergency Services and Disaster Agency, local law enforcement agencies, affected rural mail providers, affected school districts, and fire protection and ambulance service providers of road closings prior to closing any roads, portion of roads, or intersections. In the event this provision is violated by the Company, the County Authority may issue a "Notice of Violation" and impose a fine of \$1,000.00 for each thirty (30) minute increment the approved road closure period is exceeded and the Company shall pay any fine imposed within thirty (30) business days. The County Authority may issue a Notice of Violation and impose a fine of \$10,000.00 in the event the Company fails to notify the County Authority of a road closure; provided, however, that in the case of an emergency the Company shall not be required to provide prior notice to the County Authority, but shall notify the County Authority as soon as reasonably practical and in any event, within one (1) business day.

(3) **Posting of Construction Zones - Highways.** At its expense, the Company shall post signs for all highway construction zones, including road and intersection closures, in accordance with the Manual on Uniform Traffic Control Devices. All road closures shall comply with the ODOT standards for the appropriate volume road according to current AASHTO Green Book Standards.

(4) **Posting of Construction Zones - Local Roads.** At its expense, the Company shall post signs or mark routes for Project construction traffic in accordance with the Project Layout Map (Exhibit A). The Company shall obtain and post signs advising "No Solar Farm Construction Traffic" at various locations as an aid to traffic management. All such signs or postings shall comply with the Manual on Uniform Traffic Control Devices.

(5) **Construction Traffic - Use of Designated Routes.** All of the construction traffic attributable to the Company and the Company Representative(s) related to the Project shall exclusively use the routes designated for use by construction traffic on the Project Layout Map (Exhibit A), and shall not use County Roadways other than those so designated except in the case of emergency, as determined in the reasonable judgment of the Company and/or the Company Representative(s). "Construction traffic" shall mean any traffic in support of the Project, including travel by workers to and from any job site in vehicles weighing five (5) tons or more.

(6) **Road Debris During Construction.** The Company shall keep all County Roadways and appurtenances used by the Company or the Company Representative(s) clear of mud, dirt, excessive dust, spilled or tracked material, garbage, obstructions, or other hazards created or caused by the Company's construction activities. Upon request of the County Authority, which request may be made solely by email notice, the Company shall clear any construction-related mud, dirt, debris, garbage, obstructions, or hazards from a County Roadway, culvert, or ditch prior to dusk on the day such a request is made, or the following morning if the request is made after dusk. The Company is not responsible for the removal of mud or debris related to third-party agricultural operations.

(7) **Storage Areas.** The Company shall not use County Roadway rights-of-way as storage or staging areas or as parking areas for the Company's or the Company Representative(s)'s vehicles and equipment.

(8) **Temporary Road Modifications.** The Company shall make the necessary temporary improvements for the widening of any corner radius necessary to facilitate delivery of any requisite equipment, reduce restriction on traffic and the main power transformer ("MPT") transport trucks used by Company or the Company Representative(s). Such modifications shall be designed by a civil engineer licensed in the State in which the Project is located, who regularly practices and has experience

in highway construction and design standards in such State and is mutually acceptable to the Company and the County Authority and shall satisfy the applicable ODOT standards for temporary improvements ("DOT Standards"). The proposed modifications must be approved by the County Authority before any changes are made to an intersection. When the widened corners are no longer needed, the Company shall repair all damage, replace signs, guardrails and other appurtenances, remove temporary culvert extensions, return the corners substantially to their original lines and grades, and ensure proper drainage in accordance with the ODOT Standards; unless the County Authority requests that the widened corners remain as improved.

(9) **Road Repairs.** The Company shall pay for the costs of all repairs to all County Roadways and appurtenances that are damaged by the Company or the Company Representative(s) during the construction of the Project in accordance with Section 4 of this Agreement.

(10) **Road Weatherization Activities.** All such methods undertaken by the Company to prepare the roads for winter conditions and the plowing of the roads by the County Authority shall be subject to approval by the County Authority. In the event rapidly changing winter weather conditions (by way of example and not limitation, sudden thaws or heavy rains) make road conditions hazardous for the motoring public, the County Authority may close the road to construction traffic upon providing reasonable notice to the Company.

(11) **Section Monuments.** In accordance with the ODOT Standard Specifications for Highway Construction, all section corner stones and monuments shall be properly preserved.

(12) **County Authority Access.** The County Authority and/or its designee(s) shall have unfettered access to the County Roadways to inspect the roads, culverts, adjacent ditches, *et cetera*.

(13) **Public Ditch Crossings – Temporary and Permanent.**

(a) The Company shall, at its own expense, hire a qualified civil engineer to hydraulically and structurally assess any new temporary or permanent bridges or structures on a public drainage ditch crossings to be installed by the Company Representative(s) and provide documentation to the reasonable satisfaction of the County Authority of acceptable structural integrity and conveyance of flow. Any such structure shall be properly rip rapped and slopes stabilized to prevent erosion, and the Company shall be responsible for reseeding and any ditch cleaning required by construction and/or washouts. Short term crossings may be sized to accommodate the existing flow so long as such crossings are removed prior to foreseeable events that may exceed the crossings flow capacity.

(b) If, during construction, it is necessary to cross a public ditch for which a hydraulic analysis from a professional engineer is not available, the Company will take the following actions with regard to the crossing:

(1) The necessary pipe will be sized with an equal or larger end area than the immediate downstream structure, or

(2) Pipe size may be reduced if the crossing will be lowered within 12 hours of crane use, prior to foreseeable rain event that might exceed the crossings flow capacity.

(C) **OPERATIONAL REQUIREMENTS.** During the operations and maintenance phase of the Project, the Company shall abide by the terms and conditions set forth below:

(1) **Additional Permits.** As needed, the Company shall apply for applicable permits from the County Authority using the application forms currently in effect and shall not move such vehicles until the necessary permits are issued. These permits shall include but not be limited to: overweight; oversize and over-width vehicle; Access Entrance Permits; Utility Permits; and a permit to make installation across, through, or under a county road.

(2) **Repair & Maintenance.** The Company shall be financially responsible for damage to the County Roadways caused by Project vehicle traffic during the course of ordinary operations and maintenance of the Project. Repairs shall be made in accordance with Section 4.

(D) **DECOMMISSIONING REQUIREMENTS.** During the Decommissioning phase of the Project, the Company agrees to, and shall cause the Company Representative(s) to, abide by the terms and conditions set forth in the Decommissioning Plan on file with the Ohio Power Siting Board ("OPSB") in Case No. 20-1605-EL-BGN and as specified in Section 1(B), Construction Requirements.

(E) **FINANCIAL OBLIGATIONS.**

(1) **Violations – Procedures & Fines.** In the event that any provision of this Agreement is violated by the Company, the County Authority may issue a Notice of Violation and impose a fine of \$5,000.00 per occurrence on the Company. Before issuing a Notice of Violation the County Authority shall notify and direct the Company to correct the deficiency within one business day, based upon the urgency of the situation and the nature of the deficiency. Such time for curing a traffic control deficiency may be extended as may be reasonably required due to the nature of the deficiency; provided that the Company is using diligent efforts to actively cure the deficiency. A deficiency may be any lack of repair, maintenance, or non-compliance with the traffic control plan.

(2) **Attorney's Fees and Costs.** The Company agrees to reimburse the County Authority for all reasonable attorneys' fees and costs associated with the negotiation and execution of this Agreement, which shall include the time spent by County staff, and for the ongoing review of compliance with the Agreement in the ordinary course.

SECTION 2. COUNTY AUTHORITY UNDERTAKINGS. In consideration of the obligations of the Company under this Agreement, the County Authority agrees to permit the Company and the Company Representative(s) access to the County Roadways and appurtenance as set forth below. Whenever the consent or approval of the County Authority is required such consent or approval shall be in writing and shall not be unreasonably withheld or delayed and, in all matters contained herein, the County Authority shall have an implied obligation of reasonableness, except as may be expressly set forth otherwise.

(A) **Use of Rights-of-Way - Utilities.** The County Authority consents to the use of the County's rights-of-way for utility encroachments for the Project provided the Company submits a permit application for utility installations and the installation conforms to good utility practice. The Parties anticipate that cable installations will not be within two hundred fifty (250) feet of any bridges or box culverts (measured from the center of the stream or ditch and within the rights-of-way) and any parallel installations shall be no closer than twenty (20) feet from the edge of public rights-of-way, unless otherwise agreed upon by the Parties. Any proposed cable installations within two hundred fifty (250) feet of any bridges or box culvert shall be subject to review and approval by the County Authority. Any utility permit issued by the County Authority is effective only to the extent of the County's property interest and such consent shall not be binding on any owner of a fee over or under which the highway is

located and shall not relieve the Company or the Company Representative(s) from obtaining by purchase, or otherwise, the necessary approval of any owner of the fee over or under which the highway is located if such approval is required.

(B) **Use of Rights-of-Way – Access.** The County Authority agrees to review Access Entrances from the County Roadways provided the Company submits a permit application for a road entrance and the installation conforms to the requirements stated in Section 1(E) and the permit application. Access entrances are subject to review by County due to safety considerations and approval of which will not be unreasonably withheld.

(C) **Use of Rights-of-Way – Oversized Loads.** The Company may transport overweight or oversize loads or vehicles or otherwise engage in construction activities on the County Roadways during the spring posting season; provided, however, in the event weather conditions (by way of example and not limitation, sudden thaws or heavy rains) make road conditions hazardous for the motoring public, the County Authority may close the road to construction traffic upon providing reasonable notice and details of such hazardous conditions to the Company. Delivery of the MPT(s) are the only overweight/oversize vehicles expected to be utilized for the Project.

(D) **Use of Rights-of-Way – Super Loads.** The County Authority will issue individual "Super Load" permits provided the Company submits a Super Load permit application and the proposed movement conforms to the requirements stated in this Agreement and the permit application.

(E) **Location of Public Drainage System.** At the request of Company, the County Authority will provide to the Company the locations of all Public Drainage Tile and Roadway Ditches and, if available, design elevations from the plans and specifications.

(F) **Coordination.** The County Authority will coordinate with Company and the Company Representative(s) so as to minimize the adverse impact of Project construction on the motoring public and the County Roadways.

(G) **Routine Maintenance.** The County Authority will perform all routine maintenance on the County Roadways in accordance with Section 4(B) of this Agreement.

SECTION 3. ROAD AND DRAINAGE INVENTORY. The Company shall complete the following road inventory requirements:

(A) **Pre-Construction Inventory - Roads.** The Company, at least sixty (60) days before using the County Roadways, shall retain an independent engineer, to be approved by the County Authority, to perform an inventory and/or survey to record the condition of the pavement surface of the County Roadways designated on the Project Layout Map (Exhibit A). The Company shall provide at least five (5) days' notice to the County Authority of the start dates and completion dates of the road survey work which shall produce a high-definition video, geospatial referenced, date stamped, and compiled to provide a viewer a virtual drive of the County Roadways. As part of the road survey, it will be a requirement to core the existing pavement in the center and edge of pavement at reasonable intervals determined by the independent engineer and reasonably approved by the County Authority. The data for the core testing will be used to determine the existing load carrying capacity of the Roadways. If the existing load capacity is less than ninety percent (90%) of the needed load capacity, the County Authority in consultation with the Company will determine appropriate mitigations to be carried out and funded by

the Company prior to the start of construction of the Project. If the existing load capacity is greater than or equal to ninety percent (90%) of the needed load capacity, then no mitigation is necessary. In addition, to the extent reasonably accessible, photographs of the interior of all bridges, box culverts, culverts and the road surface above each bridge, box culvert and culvert on County Roadways designated for use by construction and delivery vehicles. The survey firm shall also provide an analysis of the condition of the County Roadways using the pavement condition index ("PCI") methodology adopted by ASTM Testing Standard D6433 Standard Practice for Roads and Parking Lots Pavement Condition Index Surveys, with detail provided for each road segment (mile or half mile sections). The County Authority will provide the Company or the Company Representative(s) copies of any plans, cross-sections and specifications relevant to the existing road structure in possession of the County Authority, if requested.

(B) **Pre-Construction Inventory - Drainage Structures.** The Company shall, before using the County Roadways, retain an independent Engineer, to be approved by the County Authority, such approval not to be unreasonably withheld, conditioned or delayed, to complete the following:

(1) **Drainage Map.** Based upon records and maps provided by the County Authority, the Company shall make a good faith effort to prepare a map of any reasonably known existing drainage structures on the County Roadways designated for use during Project construction. The structures included on this map shall include: (1) bridges, culverts, and box culverts in accordance with National Bridge Inspection Standards, and a load rating of all load carrying components of any such bridge or box culvert that will be crossed by a "Super Load", or that has an Operating Rating of less than thirty-six (36) tons shall be completed by an engineer; and (2) tile drains, including lateral drains connecting directly thereto, that lie under, or within one hundred (100) feet of, any point at which the Company may conduct any Project construction activity or operate a motor vehicle or other equipment weighing more than five (5) tons ("Affected Drains").

(2) **Inspection Report.** The engineer shall complete an inspection report to set forth recommendations as to actions, if any, to be taken in advance of Project construction to assure that the bridges and box culverts can withstand the volume and weight of Project construction vehicles; or recommended pre-construction improvements, such as constructing a jump bridge, temporarily shoring, or strengthening the structure such that the bridge or box culvert is then capable of withstanding the volume and weight of Project construction vehicles.

(C) **Post-Construction Inventory.** Upon completion of construction of the Project, the Company shall retain an engineer, acceptable to the County Authority, to perform a post-construction inventory and/or survey, the methods of which shall be identical to those of the pre-construction survey of the highways and drainage structures. The two sets of data will be compared and if there is any wheel lane rutting, cracking, or other damage in excess of the original survey, the Parties shall cooperate in good faith to determine the extent of the repairs or improvements needed to repair the County Roadways and drainage structures in accordance with Section 4.

(D) **Optional Interim Inventory.** The Company may conduct one or more interim inventories and/or surveys, using methods and formulating appropriate photographs and other data comparable to that of the pre-construction inventory and the post-construction inventory to aid the Parties in ascertaining and differentiating the damage caused to County Roadways and drainage structures by the Company and the Company Representative(s) from that caused by others' use and traffic.

SECTION 4. REPAIR AND MAINTENANCE. The Company shall complete the following repair and maintenance requirements:

(A) **Repairs.** The Company, at its sole expense, shall maintain the County Roadways, roadway appurtenances, and drainage infrastructure to the extent damage and/or degradation is caused by the Company and the Company Representative(s) and repairs or maintenance work is needed to ensure the continued safe passage of the motoring public. To the extent a condition exists posing an immediate threat to public safety, the Company shall immediately implement repairs required to make the County Roadway safe for the motoring public. If any necessary repair or maintenance action is not undertaken by the Company within 5 business days after becoming aware of the necessity of such repairs with respect to conditions requiring immediate repair pursuant to the foregoing sentence, or within 10 days after becoming aware of the necessity of any other repairs, the County Authority may initiate the necessary repair and the Company shall reimburse the County Authority for the reasonable costs of such repairs plus a 10% administrative fee within thirty (30) business days of a written request for reimbursement. All work shall be in accordance with the ODOT Design Standards and the ODOT Standard Specifications for Highway Construction limited to the material specifications and means and methods prescribed, but not with respect to the cross section geometry and clearances where conditions not meeting the ODOT Design Standards currently exist, unless otherwise approved by the County Authority.

(B) **Routine Maintenance.** The daily routine maintenance of the County Roadways affected by Project construction, including snow removal, striping, and routine signage, but not including blading of aggregate surfaced roads, shall be the responsibility of the County Authority.

(C) **Financial Responsibility.** The Company shall bear financial responsibility for necessary improvements and repairs to the County Roadways as a result of Project construction, including the costs incurred for inspections by the County Authority. The Parties cannot acknowledge that the County Roadways currently do not require significant improvements, reconstruction, or significant repairs to accommodate the current use of the County Roadways by the motoring public until the pre-construction road inventory is made.

(D) **Nature of Repairs.** The Parties agree that post-construction repairs and pre-construction improvements, the "Road Work" and "Drainage Repairs", may include the work described in the following paragraphs.

(1) Subsurface repair work may be required as evidenced by ruts deeper than two (2) inches, or noticeable longitudinal displacement on the surface of the road. In addition to such subsurface repair work, the Company shall be responsible for the following items (if needed following Project construction):

(a) Repairing drainage problems resulting from Project construction so that post-construction drainage performance equals or exceeds pre-construction conditions.

(b) Ditch and shoulder work to be completed as required by the particular conditions existing of each road at the time of the post-construction road work. Disturbed ditches will be graded and seeded in accordance with the ODOT Standard Specifications with respect to materials and methods, but correcting pre-existing geometric deficiencies shall not be the responsibility of the Company.

(c) All culverts and reinforced concrete pipes shall be inspected for damage following Project construction by a qualified engineer and compared to the documented pre-construction condition. Culverts and reinforced concrete pipes damaged by construction activities, but not by the County Authority, road user, or landowner owner activities, such as ditch mowing or run-off the road incidences, shall be replaced with new culverts of the same size which are reinforced concrete or, with County Authority approval, corrugated polyethylene smooth walled interior pipe, with LSM backfill. No spiral culverts or corrugated metal shall be used.

(d) All bridges and box culverts shall be inspected by a qualified structural engineering firm mutually agreed upon by the Parties for damage following Project construction and compared to the documented pre-construction condition. Damage caused by construction activities, but not from implements of husbandry or hauling activities related to farming as documented by Optional Interim Inventories as described in Section 3(D), shall be repaired or, if necessary, the bridges or box culverts replaced as needed.

(e) With respect to roadbed damage (ruts deeper than two (2) inches) to seal coat and gravel roads resulting from subbase failures caused by Project construction activities, the repair work will include completing subsurface base repairs including subsurface drainage work. The entire length and width of the damaged roadway shall be marked for repair and excavated to a depth sufficient to construct a suitable base. The design of the repair shall be based on a geotechnical analysis of the subsoils, and is subject to review by the County Authority. The area shall be backfilled and compacted in controlled lifts in accordance with the ODOT Standard Specifications for Highway Construction.

(f) Shoulders shall be restored adjacent to the road to the extent to which they existed prior to construction or as required by the ODOT.

(2) **Drain Tile Repairs.** If a Public Drainage Tile is damaged by the Company, and water is flowing through the damaged tile, the Company shall immediately notify the County Authority, and commence with repairs. If the damage impedes the flow of water, the Company shall excavate the area and remove the damaged section so that normal flow can resume until the repairs can be made. If the damaged tile is not actively carrying water, the Company shall make repairs within thirty (30) days of the discovery of the damage.

(3) **Replacement of Public Drainage Tile.** If at the end of the Project construction, there is evidence that any Public Drainage Tile under Haul Routes, Project access roads, or at collection line crossings have been damaged by the Company, those damaged tiles shall be replaced at the Company's expense in a manner that is reasonably acceptable to the County Authority. Public roads shall have the new drainage tiles bored under the road. Open cuts are not allowed on public roads.

(E) **Completion of Repairs.** Upon the Company's determination, to be made in coordination with the County Authority, that construction of the Project and repair of the affected County Roadways, or a portion of the Project, is substantially complete, the Company shall arrange for a Proof Roll of the applicable aggregate surfaced County Roadways, and inspection of the affected roads, culverts, bridges, and box culverts. Based on the Proof Roll and inspections, the County Authority shall prepare and deliver to the Company a punch list, clearly identifying the scope of repairs and work to be performed by the Company for the repairs to the County Roadways to be considered complete ("Punch List"). The Punch List shall be made in good faith to assess, qualify, and quantify the remaining repairs to correct the damages resulting from Project construction. The Company shall then have fourteen (14) calendar days

to accept or dispute the Punch List from the date the Punch List is delivered by overnight delivery to the Company. If the Company disputes the Punch List, the Company shall, within the fourteen (14) calendar days, deliver by overnight delivery, a written notice to the County Authority setting forth disputed portions of the Punch List and the factual basis the disputed portions. The Parties shall then make a good faith effort to resolve the dispute(s). If the Parties are unable to resolve the dispute, the Parties may submit the dispute to the Neutral Engineer, as provided for in this Agreement for resolution.

(F) **Completion Disputes.** In the event the negotiation efforts of the Parties are unsuccessful or upon written demand by either Party, the Parties, within twenty-one (21) calendar days shall select a neutral engineer for resolution of the dispute ("Neutral Engineer"). The Neutral Engineer shall be an independent civil engineering firm which regularly practices and has experience in highway construction and design standards in the State in which the Project is located. The Neutral Engineer shall have no prior relationship with the Parties unless such relationship is fully disclosed to, and waived by, the other Party in writing. The Parties and the Neutral Engineer shall promptly agree to procedures for submitting position papers and information to the Neutral Engineer and for an on-site inspection (if needed) by the Neutral Engineer. The Neutral Engineer shall complete its review and inspection within thirty (30) business days of its engagement by the Parties and issue its written report. The determination of the Neutral Engineer shall be binding upon the Parties. The costs for such inspection and report by the Neutral Engineer shall be paid by the Company.

SECTION 5. FINANCIAL SECURITY. Prior to the commencement of any pre-construction improvements or use of the County Roadways, the Company shall provide to the County Authority a Performance Bond or an irrevocable Letter of Credit in the amount of \$2.5 million dollars ("Letter of Credit") in form and substance reasonably acceptable to the Parties. The Parties acknowledge that the exact terms of the Letter of Credit may be subject to terms requested by the financial institution issuing the Letter of Credit.

(A) In the event the Company fails to perform any Road Work or Drainage Repairs required by this Agreement, the Letter of Credit may be used by the County Authority to perform such Road Work or Drainage Repairs; provided, however, that the County Authority shall not be permitted to draw on the Letter of Credit until thirty (30) calendar days after the delivery of a written notice to the Company specifying a default hereunder by the Company, during which thirty (30) calendar days the Company may cure such default and, in the event the Company so cures, or commences to cure and is diligently working towards the same, the County Authority shall not draw on the Letter of Credit on account of such default. For the avoidance of doubt, the amount stated on the Letter of Credit shall not be deemed to be the limit of the Company's financial obligations under this Agreement. Should the cost or expense of any of the Company's financial responsibilities under this Agreement exceed the amount stated on the Letter of Credit, the Company shall remain liable for any reasonable additional cost or expense.

(B) The Letter of Credit shall remain in effect until the date that is five (5) years after the Company ceases construction of the Project, completes road repairs, or completes all items on the Punch List prepared by the County Authority, whichever is later ("Warranty Period"); provided, however, that the Letter of Credit may be reduced after two years to an amount of \$100,000, which amount may be drawn upon if the Company fails to perform any Road Work or Drainage Repairs required by this Agreement.

SECTION 6. AUGLAIZE FUND. Prior to the start of construction of the Project, the Company shall pay to the County Authority the sum of one hundred thousand dollars (\$100,000) (the "Auglaize Fund"). The

County Authority agrees to deposit the Auglaize Fund in a separate account. The original purpose of the Auglaize Fund is to provide a readily available source of funds that the County controls and can use for repairs for damage caused by the Company during construction if the Company fails or refuses to perform repairs or to pay the cost of performing repairs as required under this Agreement. For clarification the addition of this fund in no way removes or limits the Company's obligations to perform under the other terms of this Agreement. After the termination of this Agreement or the expiration of the Warranty Period, whichever is earlier, the County Authority shall transfer the remaining balance of the Auglaize Fund to the County's general revenue fund to be used for other County business in accordance with the County's standard spending protocols.

SECTION 7. INSURANCE. The Company shall at all times throughout the term of this Agreement maintain in full force and effect, the following insurance coverages:

(A) If the Company has employees, Workers Compensation Insurance covering all employees engaged in the work to the limits required by the applicable laws in the State in which the Project is located;

(B) Automobile Liability Insurance covering all motor vehicles, owned, operated and/or licensed or leased by Company, if any, and engaged in constructing or overseeing construction of the Project. Limits of liability shall not be less than two million dollars (\$2,000,000) for the accidental death of one or more persons, or damage to or destruction of property as a result of one accident; and

(C) Commercial General Liability Insurance with minimum limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, covering the activities of the Company contemplated by this Agreement, without restricting the generality of the foregoing, such coverage shall include, but not be limited to, bodily injury and property damage, non-owned automobile, sudden and accidental pollution liability, employer's liability, products and completed operations and contractual liability. The insurance shall be written by a company rated by Standard & Poor's rating group as B+ or better or as otherwise determined to be acceptable by the County Authority. The policy shall name the County Authority as an additional insured to the Commercial General Liability policy.

The Company may utilize any combination of primary and/or excess insurance to satisfy the above requirements. A Certificate of Insurance shall be submitted to the County Authority prior to the initiation of any work or transportation of any materials or equipment on the County Roadways by the Company or the Company Representative(s). The insurance policy shall provide for a thirty (30) day "prior notice of changes or termination" provision in favor of the County Authority. Should the Company allow such liability insurance to terminate, the County Authority shall have recourse against the Letter of Credit for funds sufficient to cause the liability insurance to be reinstated.

SECTION 8. OPERATIONS DITCH PETITIONS. The Company shall coordinate with the County on any ditch petitions received pursuant to Ohio Revised Code Chapter 6131 (each, a "Ditch Petition") to appropriately identify any costs associated with new petitions within the Facility Area as approved by the OPSB in Case No. 20-1605-EL-BGN ("Facility Area"). If a Ditch Petition is received for areas within the Facility Area, the County shall notify both landowner and company representative as provided in Section 9. Company has 30 days to request an alternative route. If an alternative route is requested, County shall identify costs associated with the development of the alternative route which may include construction costs of routing the petition around the Facility Area. If the cost of developing the alternative route is beyond industry standard, Company agrees to pay the development costs. A comparison of the original

petition route and the alternative petition route will be provided to the Company for feedback. The Company will have the opportunity to request additional alternative routes or solutions to the original Ditch Petition area of concern. The Company shall pay for the cost to develop such alternative routes or solutions. The Company will be able to determine which route, either the original route or an alternate route, will be submitted for County approval, provided that the alternative route will accomplish the same, if not better goals of the original petition and will not cost the landowners within the watershed any additional monies and, at the discretion of the County Authority, will not cause any undue hardship on the other landowners within the watershed. The Company will pay a direct assessment of the difference between the final cost of construction of the project and the original estimate of the original petition if an alternative route is chosen by the Company. For the avoidance of doubt, any alternative route requested by the Company shall ensure that post-construction drainage performance equals or exceeds pre-construction conditions.

SECTION 9. INDEMNIFICATION. The Company 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 County Authority, County, Township, and/or (notwithstanding that such individuals are not specifically named herein) their respective elected and appointed officials, employees, contractors and consultants, caused by the Company or the Company Representative(s) in connection with construction of the Project or improvements, repairs, or reconstruction of the County Roadways performed by the Company. The Company agrees that the Township shall be a third-party beneficiary of the rights granted in this Section 9.

SECTION 10. MISCELLANEOUS.

(A) **Recitals.** The recitals set forth in the Agreement 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 thirty (30) calendar days after receipt of a written notice to the defaulting Party of such default or such longer period for default, that cannot be reasonably cured within thirty (30) calendar days provided the defaulting party commences the cure within such thirty (30) calendar day period and diligently pursues a cure of the same, the Party seeking to enforce said provisions shall thereafter have the right to file a breach of contract claim, an action for a declaratory relief and/or to seek the remedies of specific performance and injunctive relief, as well as other remedies available at law or in equity. Notwithstanding the foregoing, the County Authority may, without notice, take remedial action if immediate hazards exist and the Company is unable to or fails to take immediate action to make the County Roadways safe for the motoring public and any costs reasonably incurred by the County Authority in such a circumstance shall be reimbursed by.

(C) **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.

(D) **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.

(E) **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. The Company understands that the County Authority and the Township are moving forward with this Agreement while adjacent jurisdictions continue to negotiate certain provisions. As such, the Company agrees to consider amending this Agreement if a provision is negotiated with a neighboring jurisdiction which would be beneficial to the County Authority of the Township.

(F) **Notices.** All notices shall be in writing. Unless otherwise provided, a notice shall be deemed to be received by a Party: (1) on the date of personal service; (2) five (5) calendar days after being sent by registered or certified mail, return receipt requested, postage prepaid; or (3) on the next business day if sent by overnight delivery service (e.g. Federal Express) with all fees prepaid. Notice may be sent via e-mail to the e-mail address provided, however, notice sent via e-mail shall be followed by notice delivered by personal service or via registered or certified mail, return receipt requested, postage prepaid or by overnight delivery unless such additional notice is waived in writing (which writing may be delivered via e-mail) by the Party receiving the notice. If notice is effected by e-mail, notice shall be deemed received on the date the receiving Party provides written notification to the other Party that a delivery of notice by supplemental means is not required.

Company: Birch Solar 1, LLC
400 Montgomery Street, 8th Floor
San Francisco, CA 94104
Attn: Legal Notices
Email: legalnoticesus@lightsourcebp.com

County Authority: Andrew Baumer
Auglaize County Engineer
1014 S. Blackhoof Street
Wapakoneta, OH 45895
Phone: [419-739-6520](tel:419-739-6520)
Email: abaumer@auglaizecounty.org

Auglaize County Commissioners
Attn: Auglaize County Administrator
209 S Blackhoof St Rm 201
Wapakoneta, OH 45895
Phone: [419-739-6710](tel:419-739-6710)
Email: commissioners@auglaizecounty.org

(G) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page to this Agreement by email shall be as effective as delivery of a manually signed counterpart to this Agreement.

(H) **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State in which the Project is located, irrespective of any conflict of laws' provisions.

(I) **Successors and Assigns.** This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors and permitted assignees. This Agreement may not be assigned without the written consent of the other Party hereto, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that the Company may without the consent of the County Authority, assign this Agreement or any or all of its rights, interests, and obligations under this Agreement to: (i) any affiliate or subsidiary of the Company; (ii) to a company that acquires substantially all of the assets of the Company; or (iii) to a public utility purchasing power the Project. In addition, the Company may collaterally assign this Agreement in connection with any financing or refinancing of the Project. Any such permitted assignment will not relieve the Company of its obligations under this Agreement. In the event of such a permitted assignment, the Company shall, no later than thirty (30) calendar days after such assignment, provide written notice of such assignment to the County Authority, along with evidence that the assignee assumes and agrees to be bound by the terms and conditions of this Agreement.

(J) **Termination.** The Company shall have the right to terminate this Agreement at any time by providing sixty (60) days prior written notice to the County Authority of its intent to terminate this Agreement. Notwithstanding the foregoing, however, the Company may not terminate this Agreement after the start of construction of the Project unless the Project has been fully decommissioned. In the event such termination occurs, the Letter of Credit shall remain in place as follows, rather than the date specified in Section 5 of this Agreement. In the event such termination occurs prior to the initiation of any work on the Project in the County Authority, including the transportation of materials or equipment on the roads identified on Exhibit A that are subject to this Agreement, then notwithstanding anything herein to the contrary the Letter of Credit, and ninety percent (90%) of the Auglaize Fund shall be returned to the Company and the Company shall have no further liability to the County Authority under this Agreement. In the event such termination occurs after the commencement of construction on the Project or transportation of materials or equipment on the roads identified on Exhibit A, but prior to commencement of commercial operations of the Project in the County Authority, the Letter of Credit shall remain in place until the expiration of the Warranty Period.

(K) **Term.** Unless earlier terminated in accordance with the terms hereof, this Agreement shall remain in full force and effect until the Project has been fully decommissioned.

(L) **Due Authorization.** The Company hereby represents and warrants that this Agreement has been duly authorized, executed and delivered, and is a binding obligation of the Company, enforceable against the Company in accordance with its terms. The County Authority hereby represents and warrants that this Agreement has been duly authorized, executed and delivered and is a binding obligation of the County Authority, enforceable against the County Authority in accordance with its terms.

(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.


(Signatures appear on following page)

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

COUNTY AUTHORITY:

COUNTY ENGINEER

By: _____



Name: Andrew Baumer
Title: Interim County Engineer

COUNTY COMMISSIONERS

By: _____


Name: David Bambauer

By: _____


Name: John N. Bergman

By: _____


Name: Douglas A. Spencer

COMPANY:

Birch Solar 1, LLC, a Delaware limited liability company

By: _____



Printed Name: Kevin B. Smith
Title: Chief Executive Officer

EXHIBIT A
Project Traffic Map

See Attached

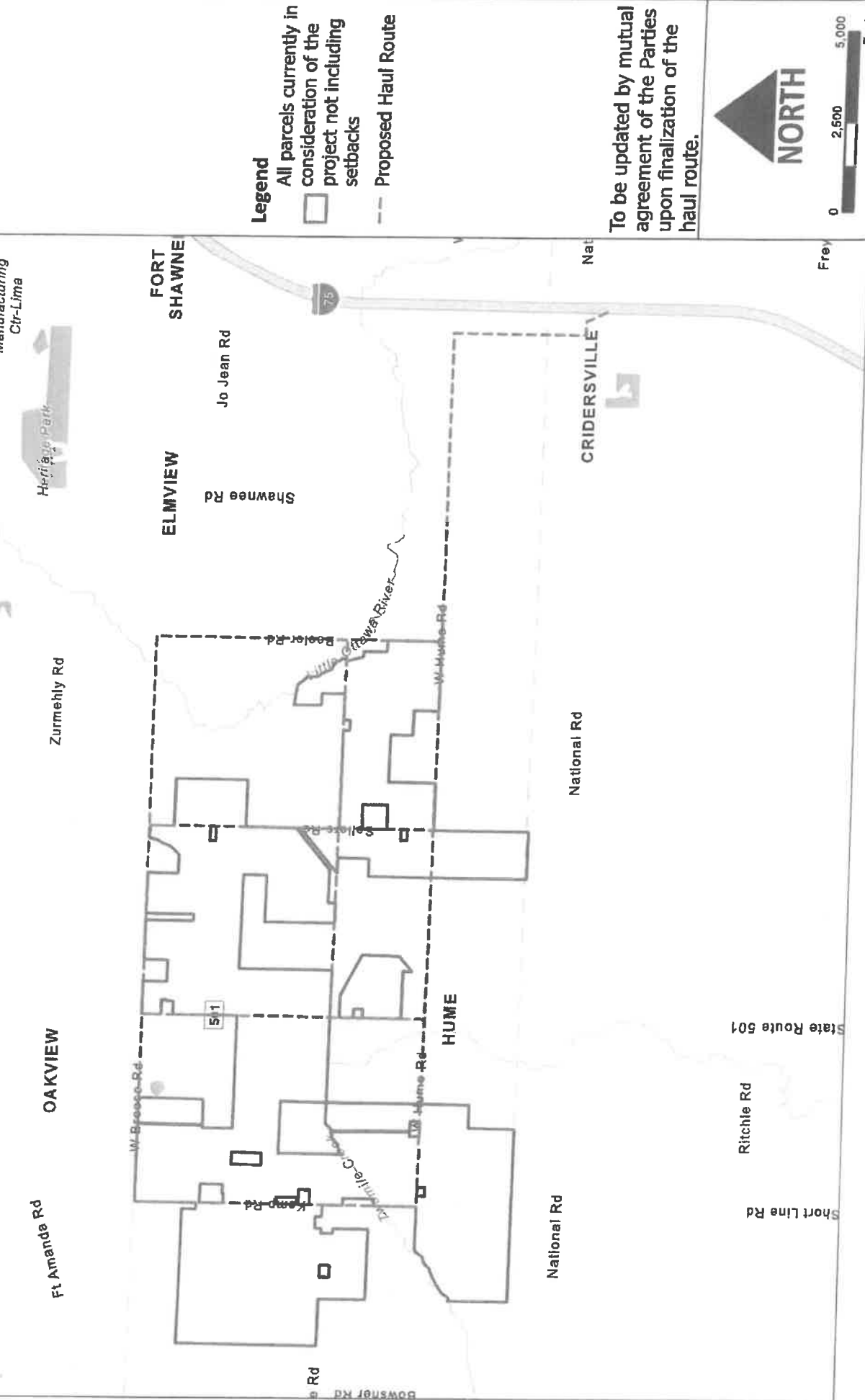
Birch Solar - Road Exhibit

Lightsource BP, advancing solar

Birch Solar
 Allen & Auglaize Counties, OH
 Date: May 5, 2022

Lightsource BP, advancing solar

Birch Solar
 Allen & Auglaize Counties, OH
 Date: May 5, 2022



To be updated by mutual agreement of the Parties upon finalization of the haul route.

