#### **DRAFT**

### **ROAD USE AGREEMENT**

#### **Between**

Bluestem Solar Farm, LLC or its permitted assigns (the Project) c/o RWE Renewables Development, LLC AND 353 N. Clark Street, 30<sup>th</sup> Floor Chicago, IL 60654 312-923-9463

LaPorte County Commissioners 555 Michigan Avenue, Suite 202 LaPorte, IN 46350 regarding use of:

Roads in LaPorte County, Indiana (the "County")

This Agreement pertains to use of County Roads (the "Roads") for all three (3) Phases of the Solar Project with an Exhibit A to be prepared to identify total mileage and Roads Bonded at time of completion of 100% design drawings for each of Phase I, II and III as referenced herein (with Exhibit A attached pertaining to initial design for Phases I, II, and III attached)

WHEREAS, Bluestem Solar Farm, LLC, a Delaware limited liability company, authorized to do business in the State of Indiana (herein after called the "Company") intends to construct a commercial, ground-mounted solar energy and battery storage facility, related generation tie and collection lines and substations/switchyards, along with other ancillary facilities (the "Bluestem Solar Farm Project" or "Project") in and across portions of LaPorte County and Wills, Kankakee, and Pleasant Townships, Indiana, and

WHEREAS, in connection with the construction of the Project, Company desires to utilize LaPorte County Roads in Wills, Kankakee, and Pleasant Townships per each Exhibit A (individually and collectively the "Roads") to haul equipment and materials necessary to provide permanent access Roads and complete the construction of a commercial scale solar and battery storage project (the "Project"). The Company also desires to utilize the Roads generally with other motor vehicles.

WHEREAS, under Chapter 70 of the LaPorte County Code, the Highway Department Superintendent has the authority to regulate and control vehicular traffic on public roadways within the unincorporated areas of the County and is authorized to issue temporary or "Special Project" permits subject to reasonable conditions.

WHEREAS, there is the possibility that the Roads, including, but not limited to the surface, base, ditches, berms, culverts, driveways, and other improvements, may be impacted by the Heavy Equipment that the Company desires to haul over the Roads.

NOW THEREFORE, the Company and the Board of Commissioners of LaPorte County (hereinafter called "Commissioners") AGREE as follows:

- 1. Grant of Right. The Commissioners grant to the Company the non-exclusive right to use said sections of the Roads for use by licensed motor vehicles, without restriction as to size, weight, and volume of loads, to haul Heavy Equipment and other items or materials to the Project job site, subject to separate permits for each Project Phase for oversize/overweight loads greater than 80,000 pounds (see Exhibit B for details). A final Exhibit A shall be provided by Company to the County at the time of completion of 100% design drawings for each Phase.
- 2. <u>Driveways and Crossings</u>. County agrees that the Company may install permanent driveways or entrances from the Roads under a single form of County permit for each Phase. Driveways for the first 50 feet from Roads shall be constructed of a hard surface, consisting of asphalt, concrete, pervious pavement or other material to provide for a dust free surface that meets the minimum specifications of the Highway Superintendent. Company shall also be allowed to install underground crossings for electrical collection lines under a single County permit form per Phase subject to compliance with the following specifications:
  - a. To lay underground electric cable, Company shall cut an "open trench" along paved Roads and across gravel Roads and the trench will be back filled and compacted in twelve (12) inch lifts two (2) feet beyond each shoulder with #53 stone. To cross paved Roads, Company shall bore underneath the road to minimize disturbance. Regarding Scholl Road, the Company shall coordinate with the Highway Superintendent a necessary Road closure for not to exceed three (3) business days to provide for trenching across this Road.
  - b. Each boring or cut across the Roads will be identified by general location, also by centerline coordinate.
  - c. Developer may also install overhead transmission line crossings across the Roads so long as the same are designed, constructed, installed, maintained, operated and removed in accordance with the National Electric Safety Code and other applicable state or federal rules, regulations or guidelines governing the clearance requirements above the Roads.
  - d. County agrees that the Company shall have the right to use County Road rights-of-way for transmission poles, electric and communication lines (above ground or underground) based upon a construction plan presented by Company to the Highway Superintendent. This includes, but is not limited to, laying cable alongside County Road 400 E.
- 3. <u>Video Narrative</u>. The Company agrees to use the Roads in a reasonable and prudent manner, using reasonable care sharing the Roads with other public traffic in a normal manner. Company shall provide to the County a video survey (the "Video Narrative") of the Roads prior to the initiation of each Phase of Project construction. The Video Narrative shall be done by a qualified 3<sup>rd</sup> party engineer, and paid for by Company. Notwithstanding how carefully the Roads are used, the Company agrees to maintain

entire sections of the Roads (from intersection to intersection to other County roads) based solely on its use of the Roads beginning upon commencement of construction including all individual specified parts thereof, to the same condition as exists on the date of the preparation of the Video Narrative to the satisfaction of the LaPorte County Highway Superintendent. Only the Roads specified in Exhibit A shall be used to haul Heavy Equipment, materials or loads.

- 4. Repairs. The Company agrees, during the term of its use for each Phase, to make reasonable repairs as needed, to the extent damage has been caused by its use of the Roads, including any necessary repairs to any damaged drainage ditches, signage, and other transportation structures as required by notice from the County Inspector under Section 8 hereof. The Commissioners may during such construction period, upon written notice to the Company, initiate with its own resources repairs and restoration for Minor Repairs. Minor Repairs are defined as those in total that are not expected to excess \$150,000 during the course of construction. The Company agrees to initiate any repairs or restoration other than noticed Minor Repairs, within sixty (60) days after the issuance by Company of a Completion Notice (as set out in Section 6) or notice from the County Inspector or Highway Superintendent, Extreme Weather excepted. Extreme Weather is defined to mean weather events lasting seven (7) days or more in total as set out in a written notice from the Company to the Highway Superintendent and County Inspector. All repairs and restoration of the Roads by Company pursuant to this Agreement shall comply with any standards of the County for such improvements that are in effect at the time of such repairs or restoration as set out in the notice from the County Inspector. Company shall be mindful of the timing of the closing of the asphalt plants in the late fall. Company agrees to pave the portion of Scholl Road along Project Haul Route with asphalt upon end of construction of applicable Phase, with County to maintain thereafter.
- 5. Traffic Management. During the course of construction of each Phase, Company, its EPC Contractor and Highway Superintendent shall confer monthly via in person or video conference to discuss construction schedule. Project truck deliveries will follow the Haul Route outlined in each Exhibit A. Company anticipates on average twenty (20) daily truck deliveries during the construction period. Parking for workers will be at central staging and laydown areas off of Pumping Station Road and 600 E. Company will request its EPC contractor to provide escorts for delivery trucks from E State Road 2 and E State Road 4, to alleviate lost truck traffic and potential resulting issues. For dust control: (a) prior to installation of any solar equipment, Company will put up perimeter fence, install stormwater and erosion control measures in accordance with its Stormwater Pollution Prevention Plan, and plant seed mix across Project areas; and (b) during construction, Company will manage dust by spraying roads with water or noncalcium chloride. Company shall coordinate with the Highway Department regarding the schedule for school buses, garbage and recycling vehicles, to minimize impact from truck deliveries. Highway Department shall connect Company with these entities, and then Company shall directly coordinate truck delivery and construction schedule so as not to disrupt these services.

6. Security. In order to protect the County, the Company is required to provide for Heavy Equipment use for each Project Phase (but not to apply to ordinary truck or vehicle traffic) a letter of credit in the amount of 10% of anticipated Road repair costs in addition to the anticipated Minor Repairs budget amount, such amount to be submitted to the Auditor of LaPorte County and credited to the LaPorte County Highway Department account (collectively the "Security"). The Security shall remain in full force and effect until the earlier of i) the expiration of two (2) years thereafter, or ii) the date that the Company provides written notice to the County that it has completed construction and has provided the County and County Inspector an updated Video Narrative comparing the condition pre-construction to that of post-construction for the applicable Phase (the Completion Notice). Should the Company fail to make reasonable repairs and restoration to the Roads, drainage ditches, signage, or other transportation structures as by this Agreement upon completion of construction and as set out in the Repair Notice from the County Inspector pursuant to Section 8 c., subject to any ongoing dispute resolution process under Section 8 c., the Commissioners may provide thirty (30) days final notice that the County intends to use the Security (which shall be deemed forfeited to the extent necessary) to perform any required restoration and/or repair of the Roads or any part thereof and any damaged ditches, signage or other transportation structures as set out in the Repair Notice. The Company shall remain liable, however, for any damages in excess of the Security.

Notwithstanding the above, County agrees that it shall provide an invoice for amounts alleged to be owed pursuant to the above and allow Company thirty (30) days to pay off an invoice prior to the County drawing on the Security provided to the benefit of the County.

7. <u>Use by Others</u>. During construction by Company, should any other entity desire to utilize all or a portion of the Roads route for construction purposes, and no other reasonable alternative road route is available, County shall require said entity to enter into a similar agreement, and the Company, the County and the other entity shall negotiate in good faith for the apportionment between the Company and the other entity as to the possible costs of repair. This restriction shall not apply to residential construction.

### 8. <u>Inspections</u>.

a. The County may retain an inspector ("County Inspector") during construction of the Project as a result of the process set out in (b) below. The County Inspector shall inspect Company's repairs and restoration to the Roads and provide written acknowledgement that such repairs and restoration appear to have been made in accordance with this Agreement, where such is the case or, where such is not the case, so inform Company and the County Highway Superintendent and act as liaison between Company and the County Highway Superintendent and in order to see that such repairs are brought into compliance with this Agreement. The County Inspector shall inform Company of any

- damage noted by the County Inspector in the performance of the County Inspector's duties.
- b. Prior to the initiation of construction of the Project, the Company shall provide the County Highway Superintendent a construction schedule based upon which the parties shall mutually agree upon the estimated number of hours that will be required of the County Inspector based on a periodic, as needed basis. County agrees to not unreasonably withhold approval of the budgeted hours. County agrees that the person or persons retained by it shall not charge the Company more than \$200 [County to insert hourly rate] per hour. UNDER REVIEW Upon agreement as to a budget for the County Inspector, Company shall pay in advance the estimated amount of the expenses that the Company will incur with respect to the retention of the County Inspector to perform such duties (the "Budgeted Amount"). The County agrees to deposit the Budgeted Amount in a separate account for the sole purpose of paying the fee of the County Inspector. The County shall promptly refund a portion of the advance payment to the Company to the extent that the actual expenses incurred by the County are less than such advance payment, and the Company shall pay to the County an additional amount as is necessary to pay all expenses, to the extent that the actual amount of the expenses is more than the advance payment, provided, however, that such additional amount shall not exceed the Budgeted Amount by more than ten percent (10%) unless the additional cost is agreed to by Company.
- c. Company shall provide a Completion Notice to the County Inspector, together with the updated Video Narrative comparing the condition of the Roads preconstruction to that of post- construction for a particular Phase. Not later than fifteen (15) days after receipt of such updated Video Narrative from Company, the County Inspector shall inspect the Roads as described in the Completion Notice and provide written notice to Company and the County of the County Inspector's determination that the repairs and restoration to the Roads have or have not been completed (the Post-Construction Roadway Condition Survey). The purpose of the Post-Construction Roadway Condition Survey shall be to determine what damage remains, if any, that was caused by Company, its agents, employees and contractors on the Roads that were used by Company based on the initial Video Narrative. In such case the County Inspector, in consultation with the County Highway Superintendent, may require additional repairs. A notice of the County Inspector's determination (the Repair Notice) that the required repairs to the Roads has not been completed shall specify the additional work that still needs to be completed, which Company shall complete within sixty (60) days (subject to Extreme Weather) provided that Company does not dispute the determination by providing written notice of appeal of the Repair Notice to the County Highway Superintendent and County Inspector (an Appeal). In the event the Company, the Highway Superintendent and the County Inspector fail to resolve the dispute regarding Roads within sixty (60) days of receipt of an Appeal, the Company and County Inspector shall select a

mutually agreed upon third-party neutral licensed engineer or licensed structural engineer, as applicable, to resolve the dispute within a fifteen (15) day period. The costs of the intermediary will be paid equally by the Parties if an agreeable solution is proposed, or if not, the costs of the intermediary will be paid by the Party rejecting the intermediary-proposed solution. Either Party may reject the intermediary solution by written notice to the other Party with three (3) business days after the date it is proposed by the intermediary in a writing delivered to both Parties. Any continuing dispute may then be resolved by any appropriate legal process.

### 9. <u>Imposition of Fines</u>.

- a. Upon written notice to Company of Company's default during construction of a Phase of the Project regarding the provisions of this Agreement as set out in Paragraph (b) below and Company's failure or refusal to abate, correct, or otherwise remedy such default, the County may impose a fine upon Company, as indicated in Paragraph (b) below. Fines are imposed for each day of the same incident of default after expiration of the applicable notice/cure period as set forth below. Company shall pay all fines to the County within thirty (30) days of receipt from the County of proper notice of and request for payment of a fine. Any issuance to the Company of a notice of and request for the payment of a fine shall be approved in advance by the Commissioners.
- b. The provisions to which the default shall subject Company to fines during construction, the amount of such fines, applicable notice/cure requirements, and other relevant conditions shall be as follows:

# Section Amount Notice/Cure Period

4 \$500 (road repair)

Reasonable time period under the circumstances, taking into account, among other factors, safety concerns, weather conditions, and nature of the repairs, but in the case of damage that does not impose a danger to the safety of the public or traffic, commencement of such repairs no more than thirty (30) days after the notice from the County Highway Superintendent under Section 4. If the damage poses danger to the safety of the public, the repair shall be commenced within forty-eight (48) hours County after notice from the Highway Superintendent. This fine shall not apply to Minor Repairs to be undertaken by the County.

#### 10. Frost Law.

a. Company agrees to make all reasonable efforts to avoid driving trucks on LaPorte County roads while the Frost Law is in effect, a roughly two-week period that occurs each year around March/April. If use of the Roads during this period is necessary, the Company shall notify the County in writing and obtain any required permit.

### 11. Speed Limit.

a. Company agrees to stay under LaPorte County's speed limit of 55 miles per hour if not otherwise designated and marked with a speed limit (per 88 Code, § 7-10).

#### 12. Heavy Loads.

- a. For deliveries of "Heavy Equipment" (defined per Indiana Code § 9-20 as use of vehicles with a gross vehicle weight in excess of 80,000 lbs. or exceeding 20,000 lbs. per single axle or 34,000 lbs. per tandem axle), Company will submit a Special Operating Permit to the LaPorte County Highway Department (see **Exhibit B** for form). The Heavy Equipment components for this Project are Main Power Transformers (MPTs) and High Voltage Breakers.
- 13. <u>Indemnity</u>. Company shall indemnify, defend, and hold the County harmless for any and all claims, demands, suits, actions, proceedings, or causes of actions brought against County, its officers, the Commissioners, affiliates, and employees and permitted assignees of any of the foregoing for any judgments, liabilities, obligations, fines, penalties, or expenses, including reasonable attorneys' fees and expenditures pertaining to third party personal injury or property damage ("Losses"), but only to the extent that such Losses arise directly from the acts of Company in the course of performance by Company under or in relation to or connection with this Agreement and excluding such Losses caused by the sole negligence of the County.
- 14. Warranty. Company warrants that all materials supplied and workmanship performed by Company to satisfy its obligation to make improvements and repair damage to the Roads resulting from its use by Company during the construction of the Project will be free from defects for a period of, with respect to Roads, two (2) years after date of the Completion Notice provided by Company to County for each of Phases I, II and III. THE WARRANTY SET FORTH IN THIS SECTION IS EXCLUSIVE AND IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CUSTOM, USAGE OR OTHERWISE. EXCEPT AS SET FORTH IN THIS SECTION, THERE ARE NO OTHER WARRANTIES, AGREEMENTS OR UNDERSTANDINGS WITH RESPECT TO THE REPAIR OF THE ROADS AND NO OTHER WARRANTY, ORAL OR WRITTEN, WHICH MIGHT HAVE BEEN GIVEN BY AN EMPLOYEE, AGENT, OR REPRESENTATIVE OF COMPANY IS AUTHORIZED BY COMPANY. COMPANY IS NOT AND SHALL NOT BE HELD LIABLE FOR ANY ALLEGED BREACH OF THE WARRANTY GIVEN IN THIS SECTION CAUSED BY OR ARISING OUT OF ORDINARY WEAR AND TEAR. Notwithstanding anything in this Agreement to the contrary, Company shall be

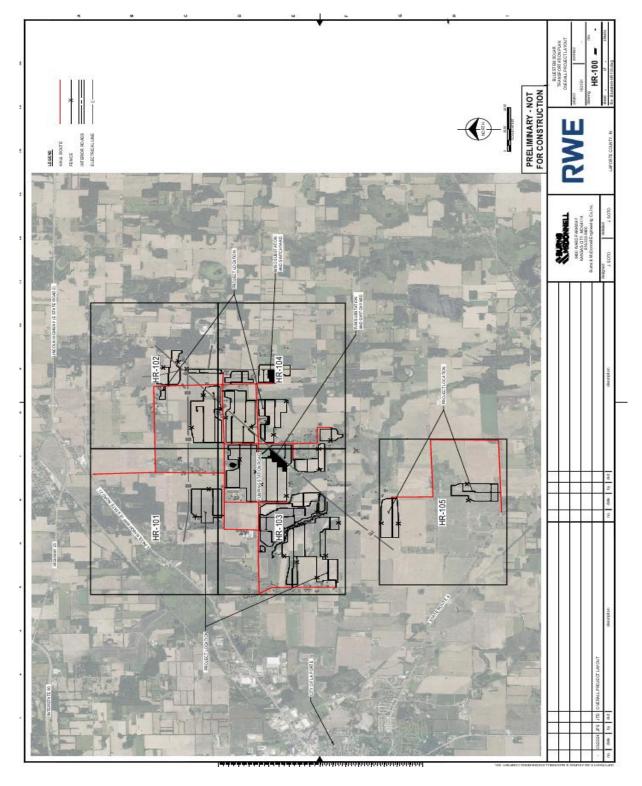
- responsible for any damage that it or its employees, contractors, or subcontractors cause to the Roads that occur after completion of construction of the Project.
- Extraordinary Events. The Parties acknowledge that during the expected life of the Project, circumstances may arise under which it will be necessary or advisable for Company to replace major components or make repairs to equipment beyond ordinary maintenance ("Extraordinary Events"), and that – while unlikely for solar and battery storage – transportation of components on overweight or oversize vehicles on or across the Roads may be necessary. The Parties agree that it is impossible to predict the timing, nature, or extent to which the Roads may be damaged beyond the normal amount of wear and tear by such transportation. The Parties agree that at any time during the life of Project, when Company determines Extraordinary Events, during any sixty (60) day period, will reasonably require activities which will involve more than ten (10) movements of overweight or oversize vehicles on the Roads (e.g. a trip on the Roads to and from a State road or U.S. highway to the site constitutes two movements), Company will give advance written notice of the intended movements to the County Highway Superintendent for his/her approval, such approval not to be unreasonably withheld. Upon such approval, Company agrees to reasonably coordinate such activities and make or pay for all necessary repairs to the Roads and drainage improvements, in substantially the same manner provided for in this Agreement. Based on the extent of the movements required as a result of Extraordinary Events, the Company may be required at the election of the County Highway Superintendent to provide additional financial assurance, in such amount as is reasonably agreed to by the County Highway Superintendent and Company.
- Force Majeure. Whenever performance is required of a Party hereunder, such Party shall use all diligence and take all necessary measures in good faith to perform; provided, however, that if a Party's performance of its obligations under this Agreement is prevented, delayed, or otherwise impaired at any time due to any of the following causes, then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances: acts of God, pandemic, extreme weather, war, civil commotion, riots, or damage to work in progress by reason of fire or other casualty, strikes, lock outs or other labor disputes; delays in transportation; inability to secure labor or materials in the open market; war, terrorism, sabotage, civil strife or other violence; the effect of any law, proclamation, action, demand or requirement of any government agency; or litigation contesting all or any portion of the right, title and interest of Company or the County under this Agreement. If either Party experiences, or anticipates that it will experience, an event that, pursuant to this Section, shall extend the time of performance by such Party of any obligation under this Agreement, then such Party shall provide prompt written notice to the other Party of the nature and the anticipated length of such delay.
- 17. <u>Successors</u>. This Agreement shall be binding upon the parties, their successors, and assigns.
- 18. <u>No Cross- Default</u>. County agrees that any alleged or actual default by Company regarding its obligations under a particular Phase will not impact the rights and

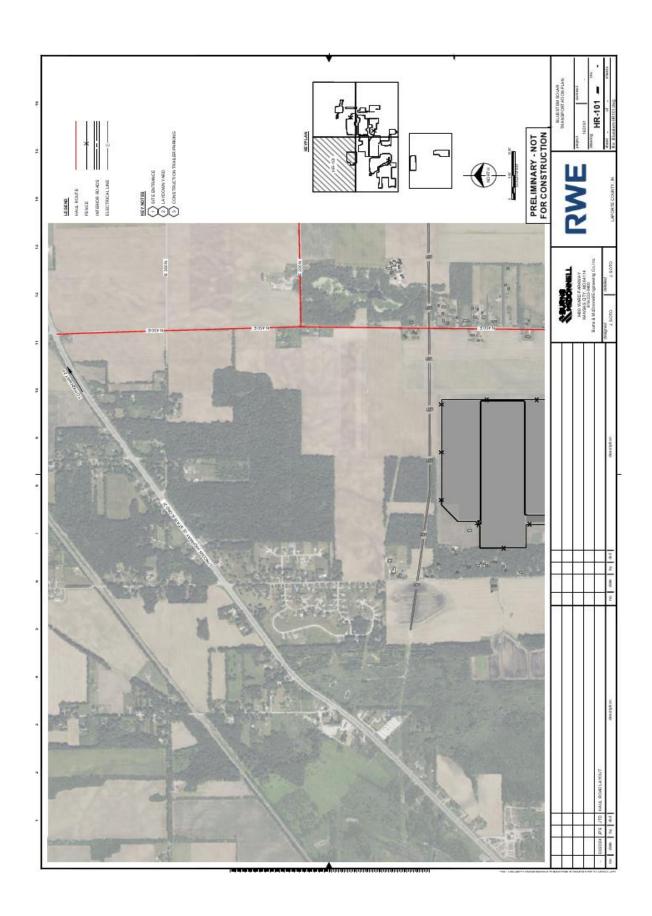
responsibilities of either County or Company under this Agreement as to either of the other 2 Phases and accordingly no "cross-default" shall be alleged or exercised by County.

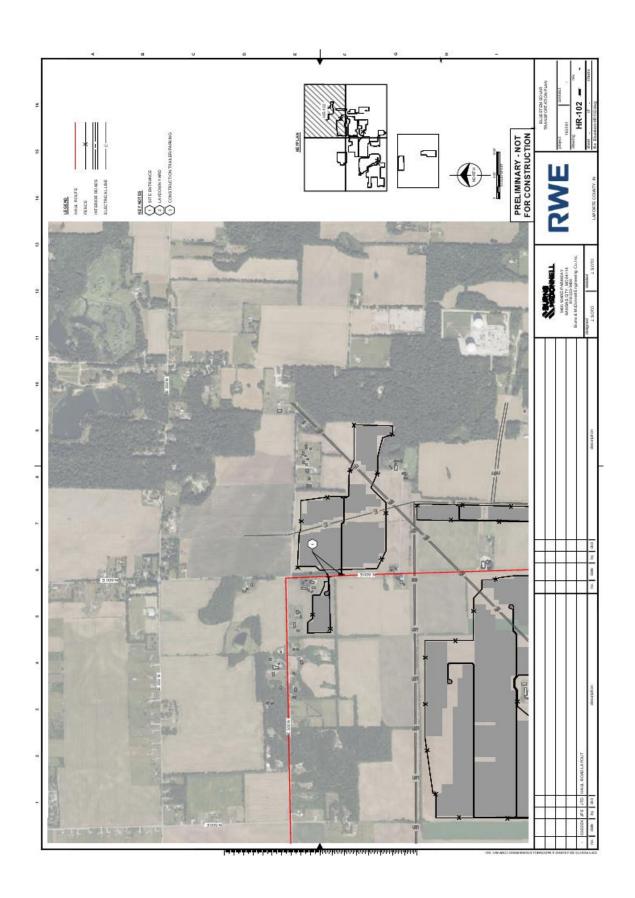
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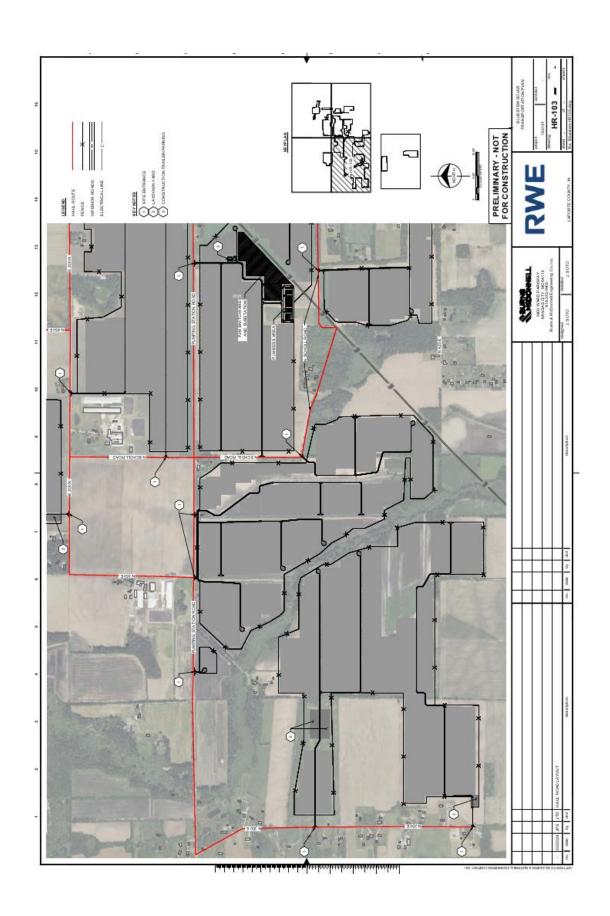
Agreement dated this	day of	, 2024
		BLUESTEM SOLAR FARM, LLC
		By:Authorized Signatory
		LAPORTE COUNTY COMMISSIONERS
		By:Connie Gramarossa, Commissioner
		By:
		By: Joe Haney, Commissioner

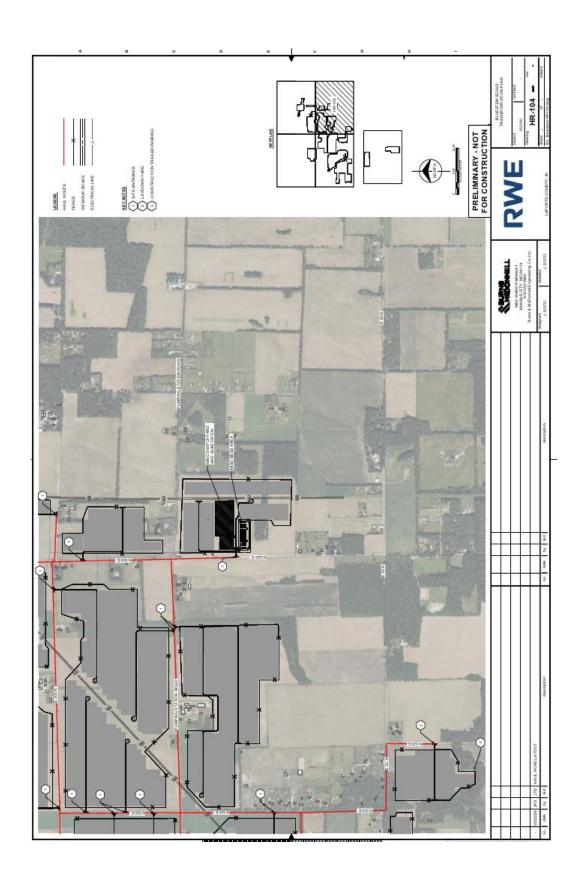
 $\underline{\textbf{EXHIBIT A}}$  PROPOSED **HAUL ROUTE / ROADS BONDED for Phases I, II, and III** 

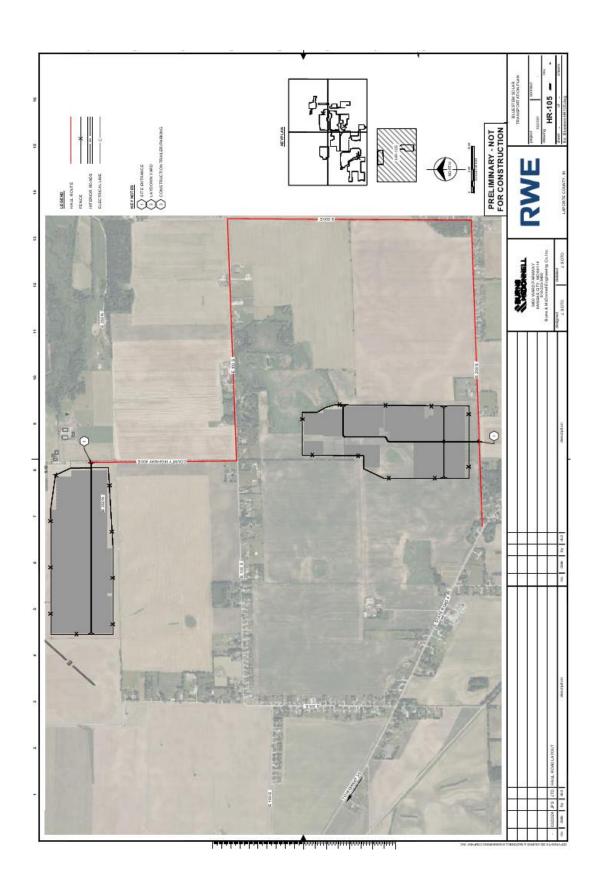












## **EXHIBIT B**

Overweight/oversize permit application on **OXCART**: <a href="https://www.oxcartpermits.com/">https://www.oxcartpermits.com/</a>

Company to include in application information similar to the following:

## La Porte County Highway Department Special Operating Permit I.C. § 9-20-1-3 La Porte County Code § 70.17

Permit #		<b>Date Issued:</b>		
the La Porte County C permit, are satisfied. V	ode of Ordinances, Titl	ne below described vehicle provided all provisions in e VII, Chapters 70 and 71, except as written on this ndition, or provision of this permit VOIDS this permit lalties as provided for in § 71.99.		
Start Date:	End Date:	Hours of Operation:		
Permit Type: ☐ Over	rsize 🗆 Overweight	☐ Oversize/Overweight ☐ Bridge Weight		
☐ Fros	st Law 🗆 Annual Ac	cess		
	-	eneral Provisions of an Oversize/Overweight Vehicle f Revenue will result in a violation of this permit.		
Description of Vehicle	e: Plate Number:	State: Make:		
Year: Color	r: Maxim	num Speed: MPH (POSTED MPH)		
Maximum Gross We	ight: Max	cimum Allowed Axle Weight:		
Height:	Width:	Length:		
Route:	Route with sho	rtest distance driven on county roadways		
		authorized by this permit under any conditions***		
Company Address: _				
Company Phone No.	·	Insurance Carrier:		
affirms the accuracy	lid unless signed by a	company representative who, by signing below,		
parts, conditions, or plaws.	of the information co provisions contained i	ntained in this permit and agrees to abide by all in this permit as well as applicable state and local		
laws.  Printed Name:	provisions contained i	in this permit as well as applicable state and local  Title:		
laws.  Printed Name:	provisions contained i	in this permit as well as applicable state and local		