

## Road Use Agreement

between

Dunns Bridge Energy Storage, LLC  
and  
Starke County, Indiana

This Road Use Agreement (“**Agreement**”), dated as of March 21, 2022, is between **Dunns Bridge Energy Storage, LLC** (“**Developer**”), a Delaware limited liability company, and **Starke County, Indiana** (“**County**”).

### Background

A. In connection with the installation of solar panels, power collection and communication systems, tracking devices, substation, staging areas, and related facilities, collectively termed the Dunns Bridge Solar project (the “**Project**” and “**Project Facilities**”) in Starke County, Indiana, Developer, and its contractors and subcontractors, will use certain roads and rights-of way located in Starke County, including route of transport into the County, as agreed upon by and between the County, its Highway Department Director and Developer (collectively, the “**Roads**”).

B. The County will allow Developer and its contractors and subcontractors to use trucks and other equipment on the Roads to transport parts, facilities and equipment and to carry out other related activities during the construction of the Project Facilities, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

#### *1. Health, Safety, Security, and Environment:*

- i. In the completion of the Project Facilities, Developer will strive to avoid (a) damage to the Roads; (b) unreasonable disruption of vehicular circulation around the development site; and (c) unreasonable disruption of power or other utility services to surrounding areas.
- ii. Vehicles driven by Developer employees, contractors, and subcontractors will abide by all local, state, and federal laws, regulations, and ordinances, including without limitation all applicable speed limits. In the event a County road does not have a posted speed limit sign, all vehicles will abide by a speed limit not to exceed 40 miles per hour or lower as conditions require.
- iii. Maps of the Roads (“**Maps**”) will be provided electronically to Starke County Fire Department (“**Fire Department**”), Starke County Sheriff’s Office (“**Sheriff’s Office**”), Starke County EMA (“**EMA**”), Starke County Surveyor’s Office (“**Surveyor**”), Starke County Highway Department Director of Engineering (“**Highway Department Director**”), Starke County Building Inspector (“**Building Inspector**”), the public school corporations, the United States Postal Service, and the regional office of the Indiana Department of Transportation (hereinafter collectively the “**County Officials**”).

- iv. No non-rubber wheeled equipment owned, leased, or used by Developer or its contractor(s), subcontractor(s), or agents shall be used on any Starke County road, except during transverse crossings of the Roads as approved by the County in writing.
  - v. The County hereby provides an exemption to the County Ordinance Frost Law provision for construction of the Project pursuant to this Agreement.
2. *Communication and Local Traffic Coordination:* Developer will appoint a designated person to coordinate the following functions during construction of the Project Facilities (the “**Transportation Coordinator**”):
- i. Communication with County Officials can be made by handheld radio provided by Developer, telephone, and/or electronic mail as determined by Developer. Contact information will be provided by Developer.
  - ii. On any day that construction on the Roads will take place, the Transportation Coordinator will be responsible for communicating road work, including road closures at least twenty-four (24) hours (excluding hours of a holiday and weekend day) prior to the road closure through an e-mail and/or telephone to the County Officials. Additionally, at least twenty-four (24) hours prior written notice shall be provided any adjoining and otherwise affected property owners of a road closure anticipated to exceed 10 minutes.
  - iii. If there is a road closure or limited access to a county road, County Officials will be notified by telephone and/or email by the Transportation Coordinator prior to the road closure or limited access event at least twenty-four (24) hours (excluding hours of a holiday and weekend day) prior to scheduled closure.
  - iv. Developer and its contractors and subcontractors will monitor the construction of the Project Facilities for any road safety issues, road damage during construction that need immediate repairs, safety signs needing replacement, or other activity requiring actions to alleviate transportation restrictions on county roads. Highway Department Director will communicate any road safety issues, damages during construction that need immediate repairs, safety signs needing replacement, or other activity that needs to be resolved by Developer, its contractors and subcontractors with the Transportation Coordinator and follow-up activities will be monitored by Developer.
  - v. Highway Department Director will communicate any necessary issues associated with this Agreement with the Transportation Coordinator. Transportation Coordinator will work with Highway Department Director to reach agreement on how to cure issues in a timely manner.
  - vi. All Developer employees, its contractors, subcontractors, and agents, shall have a copy of the Maps in vehicles greater than 5 tons gross vehicle weight (if any) used for construction activity.
3. *Use of Roads:* The County hereby grants Developer and its contractors and subcontractors the right to use the Roads identified within this agreement to transport parts, facilities and equipment and to carry out other related activities during the construction of the Project Facilities pursuant to the terms and conditions of this Agreement. All fees as set out in the County Right of Way Fees Ordinance shall be paid as the time that the Highway Department Director and County approve the Maps which set out use of specific Roads, driveways, and crossings. Developer shall be responsible for the following:

- i. Publish Notice in *The Leader* (a/k/a *Pilot News*) of potential Road closures lasting more than twenty (20) minutes – such publication to occur no later than twenty-four (24) hours prior to a scheduled closure but may occur earlier when determined by Developer.
- ii. Safety signs shall be displayed at all times and at affected intersections when crews are working on the Roads within five hundred (500) feet of current construction activities.
- iii. Roads not proposed for use under this Agreement, but which are identified on the Maps, shall be clearly marked as “No Transportation Zone” using metal posts and signs.
- iv. “Slow Road Construction Ahead”, “Road Closed”, “One Lane Road Ahead”, “Rough Stretch Ahead”, and any other sign that is needed to properly identify a potential hazard caused by construction activities or danger to public safety caused by construction activities shall be visible from any direction, and shall be posted in one-mile increments for the distance of the hazardous or dangerous condition.
- v. Highway Department Director may provide written notification to Transportation Coordinator of required signs (in addition to safety signs) indicating unsafe conditions. Posting of requested signs shall occur immediately after receiving e-mail notification. Failure to post shall result in a daily assessed fee of five hundred dollars (\$500) until necessary signage is posted. Signs shall be posted consistent with Section 3(i) of this Agreement.
- vi. Signs for daytime road closures must be removed at night, unless signs are consistent with Section 3(vi).
- vii. Roads that may be closed for more than one day must be illuminated and barricaded in accordance with the laws, rules, and regulations of the State of Indiana.
- viii. Dust control on gravel roads shall be maintained using commercially reasonable measures such as watering and/or dust palliative.
- ix. Highway Department Director may provide e-mail request for dust control measures. Dust control measures shall be applied within twenty-four (24) hours of e-mail request. Upon expiration of the twenty-four (24) hour period, the County may, without additional notice to Developer, apply the dust control at Developer’s expense.

#### 4. *Preconstruction Survey; Surety Bond:*

- i. Developer, at its expense, prior to the commencement of construction of the Project, shall perform an inventory and/or survey to record the condition of the pavement surface of the Roads, in the form of a Video Narrative (the “**Pre-Construction Inventory**”). Developer shall provide notice to the Highway Department Director of the start dates and completion dates of the Pre-Construction Inventory. The Pre-Construction Inventory shall identify any necessary repairs or improvements of the Roads and affected drains, both open and tiled, in the public right-of-way that are required for construction of the Project. The Pre-Construction Inventory shall also identify all County legal drains which are located in the area of Project construction but which do not need any necessary repairs or improvements prior to construction. Developer shall provide the Pre-Construction Inventory to the Highway Department Director at least five (5) business days prior to the start of Project construction which involves use of the Roads. Developer shall perform all repairs or improvements of the Roads and affected drains required for construction of the Project.
- ii. Prior to the start of construction of the Project, Developer shall provide to County financial security in the form of one surety bond in the amount of Three Million and No/100 Dollars (\$3,000,000.00) (the “**Surety Bond**”) with a surety and in a form reasonably acceptable to

the County. County shall be identified as beneficiary of the Surety Bond. The Surety Bond shall be issued by a bank, insurance company or other financial entity with a rating of AA or better.

- iii. If Developer materially breaches its obligations hereunder by failing to perform or pay expenses for the repair and/or restoration for the Roads and drains in accordance with the terms of this Agreement, the Highway Department Director shall provide written notice of such to Developer, specifying the facts constituting the material breach of the Agreement. Developer shall have forty-five (45) days after receipt of the written notice to cure, or begin to cure, such material breach. If Developer fails to cure, or to begin to cure, such material breach within such forty-five (45) days after receipt of the written notice, the Highway Department Director may make claim on said Surety Bond.
  - iv. The Surety Bond shall remain in place for one (1) year after the completion of the Project and the post-construction repair of the Roads and two (2) years after completion of the Project and post-construction repair of any drains. The Highway Department Director agrees to deliver any certification required for the surrender or release of the Surety Bond when Developer is no longer required to provide the Surety Bond pursuant to the terms of this Agreement.
5. *Transportation Permits*: No over-weight or over-size permits will be required from the County for use of the Roads identified on the Maps by Developer or its contractors or subcontractors. For other roads, Developer or its contractors or subcontractors may apply for over-weight or over-size permits.
6. *Driveways*: Developer may install driveways or entrances from certain Roads as shown on the Maps, subject to the following:
- i. Diagrams of a “typical” driveway during construction and after construction will be shown on the Maps. Developer and the County shall work together to determine a reasonable size of the pipe culvert.
  - ii. All expenses for the construction of driveways or road entrances will be the responsibility of Developer.
  - iii. After construction of the Project Facilities is complete, Developer will return drainage to its condition as of the date of this Agreement by repairing or replacing, as necessary, any field tiles or culverts damaged by Developer’s use of the Roads. Notice of completion of the work shall be provided to the Highway Department Director, who shall be provided a period of ten (10) days to inspect and provide written comments based on Road conditions prior to the start of construction. Any contractor, subcontractor, agent, or employee hired by Developer to repair or replace such field tiles or culverts damaged in the public right-of-way will provide a two-year warranty per Section 10 hereof.
  - iv. A separate agreement or permit from the County is NOT required for driveways or road entrances.
  - v. Each driveway entrance from the county road will have a coordinate that will be transmitted in a shape file to the Highway Department Director, Building Inspector, and County Surveyor at the completion of construction.
  - vi. In the event that Developer needs to relocate a driveway location, Developer will provide written notice to the Highway Department Director no later than five (5) days before its establishment. The new driveway location(s) will adhere to the following standards: (1)

minimum intersection radius shall be twenty (20) feet; (2) be between twelve (12) feet and twenty-four (24) feet wide; (3) be constructed of aggregate road base materials; and (4) if a driveway interrupts an existing roadside ditch, a culvert shall be installed to provide equivalent flow during the 25-year 24-hour storm event. The new location(s) will also be transmitted in a shapefile to the Highway Department Director upon construction completion.

7. *Road Crossings:*

- i. Crossings. County agrees that Developer shall have the right to use Road rights-of-way for transmission, electric and communication poles and lines (above ground or underground) based upon a construction plan presented by Company no later than thirty (30) days prior to the start of construction and approved by the County. Developer may install cables and wires underneath certain Roads as shown on the Maps, subject to the specifications set forth in this Agreement. The Road right-of-way uses are approved based on this Agreement and do not require further review or bonding when the permit form is submitted, other than as provided in this Agreement.
- ii. Developer will cut an “open trench” (if any) within gravel Roads, and the trench will be backfilled and compacted in 12-inch lifts two (2) feet beyond each shoulder with No. 53 stone per the Work in ROW permit form specifications. If the trench is placed within a paved Road, Developer will repair the trench with Hot Mix Asphalt Pavement if available or as soon as available to the Road’s original condition or better within thirty (30) days, weather permitting.
- iii. Each boring or cut within a Road will be identified by general location and also by centerline coordinate as shown on the Maps.
- iv. A single county permit form will be required with each of the individual “open trench” (if any) underground crossing locations as shown on the Maps. The issued permit shall be based on 90% CEI. The permit forms will only be used as an official record for documenting the location of the underground crossings.
- v. 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.
- vi. Developer’s right to use the Roads for the Project Facilities shall be irrevocable for the life of the Project as set forth in this Agreement.
- vii. County will execute and deliver on request any and all instruments and documents which may reasonably be requested by Developer in order to confirm Developer’s rights hereunder.

8. *Repairing Road and Sign Damage During Construction:* During construction of the Project Facilities, Developer is responsible, at its expense, for:

- i. Providing notification to the Transportation Coordinator of damages caused by construction activities to Roads or signage in need of immediate repair.
- ii. Maintaining and repairing Roads and safety signs as necessary to ensure the safe and continued passage of the public and Developer’s vehicles while construction is ongoing. If contacted by the Highway Department Director, Developer, its contractors, or subcontractors

will commence the needed repairs within seventy-two (72) hours of notification from the Highway Department Director to the Transportation Coordinator (weather permitting). In the event that any damage poses a danger or potential danger to traffic, construction work, or the public, including without limitation damaged stop signs, potholes, washouts, and collapsed culverts, Developer shall cause the repair and appropriate safety measures to commence as promptly as possible. If, at any time, Developer fails to make any repair required by this Agreement, the parties agree that the County shall have the right to make all repairs as it sees fit, and shall do so and Developer shall reimburse the County accordingly upon written demand for same.

- iii. Providing at least twice monthly status updates to the Highway Department Director via twice a month meetings (or as may be otherwise reasonably requested by the Highway Department Director) on the general progress of construction of the Project Facilities and any necessary road repairs.

9. *Post-Construction Repairs.* Upon completion of construction of the Project, Developer will perform a post-construction inventory and/or survey (the “**Post-Construction Inventory**”) and, the methods of which shall be identical to those of the Pre-Construction Inventory. The Pre-Construction Inventory will be compared with the Post-Construction Inventory and the Developer shall repair the Roads and affected drains to the condition identified in the Pre-Construction Inventory.

10. *Warranty:* Developer warrants that all materials supplied and workmanship performed by Developer to satisfy its obligation to repair damage to the Roads and field tiles and culverts resulting from their use by Developer during the construction of the Project Facilities pursuant to Sections 8 and 9 of this Agreement will be free from defects for a period of two (2) years after the completion of such work. THE WARRANTY SET FORTH IN THIS SECTION 10 IS EXCLUSIVE AND IN LIEU OF ALL WARRANTIES REGARDING THE SUBJECT MATTER OF THIS SECTION 10, EXPRESSED OR IMPLIED, OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CUSTOM, USAGE OR OTHERWISE. NO OTHER WARRANTY, ORAL OR WRITTEN, WHICH MIGHT HAVE BEEN GIVEN BY AN EMPLOYEE, AGENT, OR REPRESENTATIVE OF DEVELOPER, IS AUTHORIZED BY DEVELOPER. DEVELOPER IS NOT AND SHALL NOT BE HELD LIABLE FOR ANY ALLEGED BREACH OF THE WARRANTY GIVEN IN THIS SECTION 10 CAUSED BY OR ARISING OUT OF ORDINARY WEAR AND TEAR.

11. *Liquidated Damages:* If at any time during construction (1) any non-rubber wheeled vehicle of Developer or its contractor(s), subcontractor(s), or agents is used on any Starke County road, except as approved by the County in writing; or (2) any vehicle of Developer or its contractor(s), subcontractor(s), or agents weighing more than five (5) tons gross vehicle weight is used on any road not included within Roads as defined herein, upon written notice to Developer with appropriate evidence of violation, Developer shall pay One Thousand Dollars (\$1,000) for each occurrence as liquidated damages. The parties agree that damages for Developer’s breach of any of these obligations would be uncertain, difficult, or impossible to ascertain, and the parties stipulate that the agreed sum is not a penalty, but a reasonable measure of damages, based upon the parties experience in road construction.

12. *Limitation on Liability:* In no event shall Developer or its members, officers, directors or employees, or the County or its Board, officers or employees be liable (in contract or in tort, involving negligence, strict liability or otherwise) to any party or their contractors, suppliers, employees, members or shareholders for indirect or punitive damages resulting from the performance, non-performance, or delay in performance under this Agreement.
13. *No Third Party Beneficiaries:* No provision of this Agreement shall be construed to afford any third party rights hereunder including, but not limited to, any claims against Developer, County or Board, whether in contract, tort, or involving negligence, strict liability, or otherwise, resulting from the performance, nonperformance, or delay in performance under this Agreement.
14. *Assignment:* Developer shall have the right to assign this Agreement or any of its rights and obligations hereunder, in whole or in part, to any person, or entity, without the prior written consent of the County. Any assignee of this Agreement will assume, as of the date of the assignment, all obligations and liabilities of Developer under this Agreement.
15. *Indemnification:* Developer shall indemnify, defend, and hold harmless the County and its officials, officers, employees, agents, successors, and assigns, from any and all claims, suits, liability, damages, losses, reasonable attorney's fees, and costs, arising or resulting from, relating to, or in any way connected with the preparation and construction of the Project Facilities, including third party claims asserted during the applicable statute of limitations period regarding preparation and construction of the Project Facilities. Notwithstanding the foregoing, Developer's indemnity obligations above shall be capped at \$1,000,000 per occurrence and \$3,000,000 in the aggregate.
16. *Time of the Essence:* Time is of the essence of this Agreement and each of its provisions.
17. *Governing Law:* This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules.
18. *Forum:* The parties agree to consent to jurisdiction, venue, and forum in the Circuit Court of Starke County, Indiana regarding any controversy, dispute, claim, or complaint of whatever nature between the parties under this Agreement. Developer further agrees and does hereby irrevocably waive the defense of inconvenient forum and further irrevocably waives trial by jury.
19. *Modifications:* Modifications and amendments to this Agreement, including any exhibit or appendix, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.
20. *Successors and Assigns:* This Agreement shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.
21. *Severability:* The invalidity or unenforceability of any provision of this Agreement shall not

affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

22. *Waiver*: Failure of either party to insist on strict compliance with the terms hereof, or to exercise any rights or remedies authorized by law or by the terms of this Contract, shall not constitute a waiver of its rights to later enforce said terms.
23. *No Agency*: Nothing in this Agreement shall be construed as creating an agency, joint venture, or other form of joint enterprise between the parties.
24. *Mutual Drafting*: The Parties agree that this Agreement has been mutually drafted and authored by all parties and shall not be construed against any one party.
25. *Notice*: All notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed (registered or certified mail, postage prepaid, return receipt requested) as follows:

[SEE NEXT PAGE]



If to the County:

Starke County, Indiana  
53 East Mound Street  
Knox, IN 46534  
Attn: County Auditor

Starke County, Indiana  
3835 East 250 North  
Knox, IN 46534  
Attn: Highway Department Director of Engineering

Starke County, Indiana  
53 East Mound Street  
Knox, IN 46534  
Attn: County Surveyor

Starke County Commissioners  
53 East Mound Street  
Knox, IN 46534

With a copy to:

Justin Schramm, Esq.  
Schramm Law Group, P.C.  
118 N. Monticello Street  
P.O. Box 137  
Winamac, IN 46996  
Email: schrammlawgrouppe@gmail.com

If to Developer:

Dunns Bridge Energy Storage, LLC  
c/o NextEra Energy Resources, LLC  
700 Universe Blvd., FEW/JB  
Juno Beach, FL 33408  
Attn: Business Manager

With a copy to:


Dentons Bingham Greenebaum LLP  
2700 Market Tower, 10 West Market Street  
Indianapolis, IN 46204  
Attn: Matthew G. Nolley, Esq.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, each party hereto has caused its duly authorized representative to sign this Agreement on its behalf as of the date first set forth above.

**“Developer”**

**Dunns Bridge Energy Storage, LLC**

DocuSigned by:  
By:   
F5C968BD9C2148B...

Printed: Anthony Pedroni

Its: \_\_\_\_\_

**“County”**

By: 

Printed: MARK Gourley  
Commissioner

By: 

Printed: Bryan Cavender  
Commissioner

By: N/A

Printed: \_\_\_\_\_  
Commissioner