

THE STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND       §

**ROADWAY USE AND MAINTENANCE AGREEMENT**

THIS ROADWAY USE AND MAINTENANCE AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (the "County"), a body politic acting herein by and through its Commissioners Court, and AP Solar 2, LLC, a Delaware limited liability company (the "Project Company"). The County and the Project Company may be individually referred to as a "Party" or collectively as the "Parties."

WHEREAS, the Project Company is currently developing its property located in within the jurisdiction of the County which will require use of certain public roads maintained by the County, (hereinafter defined as "County Roads" as described in Exhibit A attached hereto and incorporated herein for all purposes) for delivery, access and egress to and from that certain property as a solar energy project to be constructed by the Project Company, (the "Project Company's Facility"); and

WHEREAS, the Project Company is applying for a Development Permit and a Right of Way Permit (collectively, the "Permits") to develop the Project Company's Facility that may cause extraordinary damage to County Roads by use of vehicles, cranes, or other means of delivery, access and egress during the construction phases of developing the Project Company's Facility; and

WHEREAS, the Parties desire to enter into this Agreement to memorialize the terms in which the Project Company will address extraordinary damage to the County Roads and comply with the terms of the Permits to be issued by the County.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the County and the Project Company agree as follows:

1. Project Company's Responsibilities. The Project Company agrees to:

A. Pay a bond in the amount of \$3,000,000 to cover any costs of repairing the entire Subject Roadways, if necessary; and

B. Use commercially reasonable efforts to minimize the disruption to public roadways and "Repair" the County Roads in a manner as described below:

- (I) For Graveled County Roads -
  - (a) Light grading using motor grader;
  - (b) Repair of potholes that are caused by the Project Company and were not existing prior to on-site construction activities, as determined by initial site-walk with authorized representatives

of both Parties and documented in Exhibit B attached hereto and incorporated herein for all purposes;

- (c) Washboard conditions;
- (d) Importing and installing of aggregate (crushed concrete) as necessary to make such repairs
- (e) Usage of brush skid steer attachment for track-out'
- (f) Usage of water truck for dust suppression; and
- (g) Maintenance as needed to match pre-existing conditions.

(II) For Chip Seal County Roads -

- (a) Repair of potholes that are caused by the Project Company and were not existing prior to on-site construction activities, as determined by the initial site-walk with both Parties and documented in Exhibit B;
- (b) Importing aggregate (crushed concrete) as necessary;
- (c) Applying Cold Mix asphalt and hand tamping as required;
- (d) Usage of brush skid steer attachment for track-out;
- (e) Maintenance as needed to match pre-existing conditions.

C. Perform all Repairs within the following timelines:

- (I) Within twenty-four (24) hours of the Project Company's receipt of notification of the need to Repair provided by the County for notifications received Monday through the close of business Thursday;
- (II) Within seventy-two (72) hours of the Project Company's receipt of notification of the need to Repair provided by the County for notifications received between the close of business on a Thursday and the opening of business on the following Monday, and those notifications received during a County holiday; and
- (III) As soon as commercially reasonable to perform emergency repairs, as determined by County.

D. Place personnel and/or signage, subject to Texas Department of Transportation approval, at the following intersections to enforce delivery, access and egress routes according to Exhibit A, during scheduled delivery hours for the construction phase:

- (I) FM 1994 and Brumbelow Road;
- (II) FM 1994 and Wolfgang Road;
- (III) Brumbelow Road and Beard Road;
- (IV) Hughes Road and Kemp Road;

- (V) Wolfgang Road and Beard Road;
- (VI) Kocurek Road and FM 1462;
- (VII) Hughes Road and FM 1994;
- (VIII) Wolfgang Road and Wolfgang Road;
- (IX) Barak Road and Highway 36; and
- (X) Hughes Road and Beard Road.

E. Request approval of Commissioners Court for approval for non-emergency roadway closures to the County Roads. Emergency closures, as determined within the sole discretion of the County's Road Commissioner or his designee, may be approved by such Road Commissioner or his designee; and

F. Notify the office of the County's Road Commissioner by electronic mail at least four (4) hours prior to the repair of potholes performed on behalf of the Project Company; and

G. Reimburse the County for the cost of repairs performed by the County if the Project Company does not commence the necessary repair work within the deadlines prescribed above payable at the follow rates:

- (I) \$35 per man hour; and
- (II) \$85 per equipment hour.

H. Submit a picture of the defect and the remediated area with the name of the County Road & Bridge inspector and the date of the inspection by email to [Greg.Zook@fortbendcountytexas.gov](mailto:Greg.Zook@fortbendcountytexas.gov) and [brent.mccauley@fortbendcountytexas.gov](mailto:brent.mccauley@fortbendcountytexas.gov) (CIP email address: [fightingjays@bluepp.dk](mailto:fightingjays@bluepp.dk)) to close out the Repair.

2. County's Responsibilities. In exchange for the Project Company's commitments made in accordance with Section 1 above and satisfaction of all other requirements for receipt of the Permits, the County agrees:

A. To issue such Permits for the development of the Project Company's Facility;

B. To grant permission to use the County Roads for delivery, access and egress to and from the Project Company's Facility by vehicle, crane, or other means of delivery, access and egress during the construction phases of the Project Company's Facility, being February 1, 2021 through June 30, 2022, which phase may be extended by Project Company by providing notice to the County;

C. To grant permission to maintain the County Roads;

D. To repair damages to the County Roads caused by natural weather conditions, including but not limited to flooding and hurricanes;

E. Provide written acknowledgment of receipt of email provided by Project Company to close-out Repairs within five (5) calendar days of such receipt; and

F. Release Project Company or Project Company's contractors from any bonds for successfully completed Repairs within forty-five (45) calendar days of completion of the last item submitted for approved close-out.

**3. PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/PROJECT COMPANY'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.**

**A. PROJECT COMPANY ACKNOWLEDGES AND AGREES THAT THE COMMITMENT MADE BY THE PROJECT COMPANY TO THE COUNTY, IN WHOLE OR IN PART, DOES NOT CONSTITUTE A:**

- (I) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;**
- (II) VIOLATION OF THE TEXAS TRANSPORTATION CODE, AS IT EXISTS OR MAY BE AMENDED;**
- (III) NUISANCE; AND/OR**
- (IV) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.**

**B. PROJECT COMPANY RELEASES COUNTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL ACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

**C. PROJECT COMPANY WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

**D. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

4. Limitations of Agreement. The Parties hereto acknowledge this Agreement is limited to the development of the Project Company's Facility only. Further, this Agreement does not waive or limit any of the obligations of Project Company to County under any other order whether now existing or in the future arising.

5. Default. In the event Project Company fails to comply with any of the provisions of this Agreement within sixty (60) business days after Project Company's receipt of written notice thereof from County, County shall have any rights and remedies available at law or in equity. In the event of County's default under this Agreement, Project Company will be entitled to seek any remedy available to them at law or in equity.

6. Miscellaneous.

A. Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such Party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

If to County, to:

Fort Bend County Engineering  
Attention: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to:

Fort Bend County  
Attention: County Judge  
401 Jackson Street  
Richmond, Texas 77469

If to Project Company, to:

AP Solar 2, LLC  
c/o Copenhagen Infrastructure Partners  
Attn: Amelie Pedersen  
412 W 15<sup>th</sup> Street, 15<sup>th</sup> Floor  
New York, New York 10011

B. Assignment. This Agreement is not assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

C. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

D. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or

terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

E. Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.

F. Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

G. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

H. Authority to Execute. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other Parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

I. Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

J. Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its counsel.

K. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

L. Sovereign Immunity. The Parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

M. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third party beneficiaries by entering into this Agreement.

N. Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing Party may recover its reasonable and necessary attorneys' fees from the non-prevailing Party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

O. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of County and the Project Company and/or its authorized representatives.

P. Project Company's Warranties/Representations. All warranties, representations and covenants made by Project Company in this Agreement or in any certificate or other instrument delivered by Project Company to County under this Agreement shall be considered to have been relied upon by County and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by County or on County's behalf.

Q. Waiver and Release of Claims. The Parties agree that the Waiver and Release of Claims provisions set forth in Paragraph 3 herein are conspicuous, and the Parties have read and understood the same.

R. Waiver. Waiver by either Party of any breach of this Agreement, or the failure of either Party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance.

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IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective on the date executed by County.

FORT BEND COUNTY:

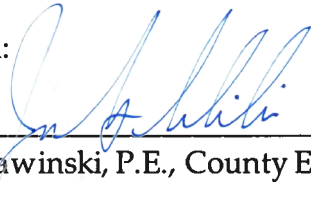
\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Laura Richard, County Clerk

Approved:




\_\_\_\_\_  
J. Stacy Slawinski, P.E., County Engineer

Approved as to legal form:

\_\_\_\_\_  
Marcus D. Spencer, First Assistant County Attorney

PROJECT COMPANY:

AP Solar 2, LLC,  
a Delaware limited liability company

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: Sean Toland  
Title: Secretary

**EXHIBIT A**

**Road Maintenance and Upkeep Corridors**

- Wolfgang Road between FM 1994 and Beard Road - Graveled
- Kocurek Road between Beard Road and FM 1462 - Graveled
- Hughes Road between FM 1994 and Kemp Road - Chip Seal
- Hughes Road between Kemp Road and Beard Road - Graveled
- Brumbelow Road between FM 1994 and FM 1462
- Beard Road from SH 36 and Brumbelow Road
- Kemp Road from Hughes Road and Brumbelow Road
- Barak Road from SH 36 and Wolfgang Road



## **EXHIBIT B**

### Photo and Video Footage

Please see link below to Exhibit B. We have included video footage and georeferenced photos of existing County road features in KMZ format (Google Earth).

<https://mortenson-my.sharepoint.com/:f/p/nlagrou/EIU-aqQNEitDIEmyKwkV9YBSwq5foVmETpfpQO8YlprRw?e=jPZzPw>