

# **BATTERY ENERGY STORAGE SYSTEM (B.E.S.S.) SITING ORDINANCE OF MENARD COUNTY**

A Center of Lincoln's Illinois



Adopted November 25, 2025

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## **1.01 TITLE**

This Ordinance shall be known, cited, and referred to as the Battery Energy Storage System (B.E.S.S.) Siting Ordinance of Menard County.

## **1.02 PURPOSE**

The purpose of this ordinance is to facilitate the construction, installation, and operation of a Battery Energy Storage System (B.E.S.S.) in Menard County in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands, conservation lands, historical and other sensitive lands. This ordinance is not intended to abridge safety, health, or environmental requirements contained in other applicable codes, standards, or ordinances.

## **2.01 DEFINITIONS**

**"Applicant"** means the entity who submits to the Menard County an application for the siting and operation of any Battery Energy Storage System (B.E.S.S.). All references to Applicant in this Ordinance shall include Applicant's successors-in-interest and assigns, which includes a Commercial Battery Energy Storage Facility Permittee (as defined herein).

**"AIMA"** Agricultural Impact Mitigation Agreement

**"ANSI"** American National Standards Institute

**"Battery (ies)"** A single cell or group of cells connected electrically in a series, in a parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this ordinance, batteries utilized in consumer products are excluded from these requirements.

**Battery Energy Storage System (BESS):** One or more devices, assembled, capable of storing energy to supply electrical energy at a future time. The term includes, but is not limited to, electrochemical, thermal, and electromechanical technologies. For the purposes of this ordinance, battery energy storage systems are classified as a "Tier 1" or "Tier 2" Battery Energy Storage System as follows:

**Tier 1** - A BESS that has an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consists of only a single energy storage system technology. A rechargeable BESS typically used to provide standby or emergency power and/or uninterruptible power supply, load shedding, load sharing, or similar capabilities relating to the energy consumed by a residence, farm operation or other businesses on site. These are permitted in all zoning districts and shall only be subject to the permitting regulations set forth in the Menard County Zoning Ordinance of 2025.

**Tier 2** - A BESS that has an aggregate energy capacity greater than 600 kWh or is comprised of more than one battery storage technology in a room or enclosed area. Tier 2 BESS are permitted only in Agricultural & Industrial Zoning district classifications.

**“Cell”** The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

**“Commissioning”** A systematic process that provides documented confirmation that a A BESS functions according to the intended design criteria and complies with applicable code requirements.

**“Commercial Operation Date”** means the calendar date on which the Battery Energy Storage Facility produces power for commercial sale, not including test power.

**"Battery Energy Storage Facility" or "Battery Energy Storage System"** means any device or assembly of devices that is ground installed and uses solar energy from the sun for generating electricity for the primary purpose of wholesale or retail sale and not primarily for consumption on the property.

**"Battery Energy Storage Building Permit"** means a permit necessary for the commencement of work performed toward the construction, erection or installation of an approved Battery Energy Storage Facility, Substation, Supporting Facilities or operations and maintenance buildings in connection with a Battery Energy Storage Facility. A Battery Energy Storage Building Permit may be issued by the Menard County after a Battery Energy Storage Facility has obtained a Special Use Permit from the Menard County Board of Commissioners, and the Menard County Zoning Office determines that all conditions, if any, have been satisfied that are imposed by the Special Use Permit. The Battery Energy Storage Building Permit shall require the Applicant to deliver a written "Notice to Proceed" for the Battery Energy Storage Facility to the Menard County Board of Commissioners prior to commencement of construction of the Battery Energy Storage Facility. The term "commencement of construction", as used in this Ordinance, includes any site development work (e.g., demolition, grubbing, grading, excavation, road work, construction of Project-related structures and infrastructure improvements, etc.) regarding the Battery Energy Storage Facility.

**“Battery Energy Storage Facility Permittee”** means an Applicant who applies for and receives a Special Use Permit under this Ordinance for the siting and operation of any Battery Energy Storage Facility or Substation. All references to a Battery Energy Storage Facility Permittee in this Ordinance shall include a Battery Energy Storage Facility Permittee's successors-in-interest and assigns.

**“Dedicated-Use Building”** A building that is built for the primary intention of housing battery energy storage equipment.

**"Financial Assurance" or "Financial Security" or "Decommission Security"** means assurance from a credit worthy party, examples of which include a surety bond (e.g.,

performance and payment bond), trust instrument, cash escrow or irrevocable letter of credit.

**“Fire Code”** The fire code of the State of Illinois as currently in effect and as hereafter amended from time to time.

**“NEC”** National Electric Code

**“NFPA”** National Fire Protection Association

**“Non-Dedicated-Use Building”** All buildings that contain a A BESS and do not comply with the dedicated -use building requirements.

**"Notice to Proceed"** means a written document, named as such, stating that the Applicant expresses an intent to commence construction activities on a Battery Energy Storage Facility and identifying the date on which the construction activities are scheduled to commence.

**"Nonparticipating property"** means real property that is not a participating property.

**"Nonparticipating residence"** means a residence that is located on nonparticipating property and that is existing and occupied on the date that an application for a permit to develop the Battery Energy Storage Facility is filed with the Menard County Zoning Office.

**"Occupied Community building"** means any one or more of the following buildings that is existing and occupied on the date that the application for a permit to develop the Battery Energy Storage Facility is filed with the Menard County Zoning Office: a school, place of worship, day care facility, public library, or community center.

**"Operator"** means the person or entity responsible for the day-to-day operation and maintenance of a Battery Energy Storage Facility, including any third-party subcontractors. The Operator must be a qualified solar power professional. All references to Operator in the Ordinance shall include Operator's successors-in- interest and assigns.

**"Owner"** means the person or entity or entities with an equity interest in a Battery Energy Storage Facility, including their respective successors-in-interest and assigns.

The Owner does not mean:

- (i) the property owner from whom land is leased for locating a Battery Energy Storage Facility (unless the property owner has an equity interest in a Battery Energy Storage Facility); or
- (ii) any person holding a security interest in a Battery Energy Storage Facility solely to secure an extension of credit, or a person foreclosing on such security interest, provided that after foreclosure such person seeks to sell a Battery Energy Storage Facility at the earliest practicable date. This definition includes the definition of Facility Owner as defined in 55 ILCS 5/5-12020.

**"Participating property"** means real property that is the subject of a written agreement between a facility owner and the owner of the real property that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of constructing a Battery Energy Storage Facility or supporting facilities. "Participating property" also includes real property that is owned by a facility owner for the purpose of constructing a Battery Energy Storage Facility or supporting facilities.

**"Participating residence"** means a residence that is located on participating property and that is existing and occupied on the date that an application for a permit to develop the Battery Energy Storage Facility is filed with the Menard County Zoning Office.

**"Professional Engineer"** means a qualified individual who is licensed as a professional engineer in the State of Illinois. Where a structural engineer is required to take some action under terms of this Ordinance, a Professional Engineer may serve as the structural engineer if he or she has the appropriate structural engineering certification in the State of Illinois.

**"Protected lands"** means real property that is subject to a permanent conservation right consistent with the Real Property Conservation Rights Act or registered or designated as a nature preserve, buffer, or land and water reserve under the Illinois Natural Areas Preservation Act.

**"Public Conservation Lands"** means land owned in fee title by Menard County, state or federal agencies and managed specifically for conservation purposes, including but not limited to Menard County, state and federal parks, state and federal wildlife management areas, state scientific and natural areas, and federal wildliferefuges and waterfowl protection areas. Public conservation lands do not include private lands upon which conservation easements have been sold to government agencies or non-profit conservation organizations. Public conservation lands also do not include private lands for which the owners have entered into contractual relationships with government or non-profit conservation organizations for conservation purposes.

**"Special Use Permit"** means a permit approved by the Menard County Board of Commissioners, after a public hearing, allowing a particular use at a specified location subject to compliance with certain specified special conditions as may be required by the Menard County Board of Commissioners.

**"Structural Engineer"** means a qualified individual who is licensed as a professional engineer in the State of Illinois and will analyze, design, plan and research structural components and structural systems to achieve design goals and ensure the safety and comfort of users or occupants. Their work takes account mainly of safety, technical, economic, and environmental concerns, but they may also consider aesthetic and social factors of the WECS project.

**"Substation"** means the apparatus that collects and connects the electrical collection

system of the Battery Energy Storage Facility and increases the voltage for connection with the utility's transmission lines.

**“Supporting Facilities”** means the transmission lines, substations, access roads, storage containers and equipment associated with the generation and storage of electricity by the Battery Energy Storage Facility.

**“Variation”** A variation is a minor deviation from the bulk requirements of this ordinance where such variation will not be contrary to the public interest and where, due to conditions peculiar to the property and not the direct result of the actions of the owner, a literal enforcement of this ordinance would result in unnecessary hardship.

**“Zoning Ordinance”** Means the Menard County Zoning Ordinance of 2025, as amended from time to time.

### **3.01 APPLICABILITY**

- A. This Ordinance governs the siting of a BESS and Substations that generate electricity to be sold to wholesale or retail markets.
- B. Owners of a BESS with an aggregate generating capacity of 600 KWH dc or less who locate a BESS(s) on their own property are not subject to this Ordinance.

### **4.01 PROHIBITION**

No Battery Energy Storage Facility or Substation governed by this Ordinance shall be constructed, erected, installed, or located within the Menard County, unless prior siting approval has been obtained for each individual Battery Energy Storage Facility or for a group of Battery Energy Storage Facilities under a joint siting application pursuant to this Ordinance.

### **5.01 SPECIAL USE PERMIT APPLICATION**

- A. To obtain siting approval, the Applicant must first submit a Special Use Permit application to the Menard County Zoning Office to be forwarded onto the Menard County Board of Commissioners for public hearing and approval or denial.
- B. The Special Use Permit requested by the applicant will be understood to be used only in Menard County Agriculture and Industrial Zoning Districts, excluding any property in such district located within a flood plain as determined by the Flood Insurance Rate Map utilized by the National Flood Insurance Program.
- C. Requirements for Tier 1 Battery Energy Storage Systems

**Tier 1 BESS:** shall be permitted in all zoning districts, subject only to the permitting regulation set forth in the Menard County Zoning Ordinance of



2025.

D. Requirements for Tier 2 Battery Energy Storage Systems:

**Tier 2 BESS:** shall require a Special Use Permit application to the Menard County Zoning Board of Appeals and the permitting regulations set forth in the Zoning Ordinance of 2025.

E. The Special Use Permit application shall contain or be accompanied by the following information:

1. A Battery Energy Storage Facility Summary, including, to the extent available:
  - a. a general description of the project, including
    - i. its approximate overall power generating capacity and/or energy capacity, and discharge duration of the BESS,
    - ii. The type(s) of battery(ies) used, and their potential equipment manufacturer(s),
    - iii. A preliminary equipment specification sheet that documents the proposed BESS components, inverters and associated electrical equipment that are to be installed,
    - iv. the maximum height of any battery storage container, racking system or dedicated-use building,,
    - v. An electrical diagram detailing the BESS layout, associated components, and electrical interconnection methods, with all NEC compliant disconnects and other current devices,
    - vi. a project site plan, project phasing plan and project construction timeline plan, and
    - vii. the general location of the project; and
    - viii. transmission location – both above and below ground.
2. A description of the Applicant, Owner, and Operator, including their respective business structures, business ventures and operating history.
3. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s), if known, and documentation demonstrating land ownership or legal control of the property.

4. A detailed site plan for the BESS Project showing the planned location of each BESS and all related components, including legal descriptions for each site, GPS coordinates of each BESS location and anchor bases (if any), Participating and Non-participating Residences, Occupied Community Buildings parcel boundary lines (including identification of adjoining properties), setback lines, public access roads and turnout locations, Substation(s), operations and maintenance buildings, electrical cabling from the BESS to the Substation(s) and/or energy generation facility, ancillary equipment, third party transmission lines, the location of any wetlands, flood plain, drainage structures including surface ditches and subsurface drainage lines, underground mines, scenic and natural areas within one thousand five hundred (1,500) feet of the proposed BESS, the location of all known communications towers within two (2) miles of the proposed BESS and the layout of all structures within the geographical boundaries of any applicable setback.
5. A proposed Decommissioning Plan for the A BESS Project including cost estimations.
6. All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance.
7. An Agricultural Impact Mitigation Agreement (AIMA) executed between the Applicant and the Illinois Department of Agriculture.
8. A topographic map that includes the BESS Project site and the surrounding area.
9. Any other information normally required by the Menard County Zoning Office as part of its permitting requirements for siting buildings or other structures.
10. Results and recommendations from the Illinois Department of Natural Resources obtained through the Ecological Compliance Assessment Tool or a comparable successor tool.
11. Results of the United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with the United States Fish and Wildlife Service's Land-Based Solar Energy Guidelines.
12. Information demonstrating that the BESS Project will avoid protected lands.

13. All required utility permitting to be issued pursuant to the Menard County Highway Policy.
  14. Waivers from the setback requirements executed by the Occupied Community Building owners and/or the Non-Participating Property owners, bearing a file stamp from the Menard County Recorder's Office, confirming that the waiver was recorded against the title to the affected real property.
  15. Any other information requested by the Menard County Zoning Office or the Menard County Board of Commissioners, or its consultants, that is necessary to evaluate the siting application and operation of the BESS Project and to demonstrate that the BESS Project meets each of the regulations in this Ordinance including the Special Use Permit standards set forth below.
- F. Material changes to the application are not permitted once the notice of the public hearing has been published unless requested or permitted by the Menard County Zoning Office and the Menard County Board of Commissioners.
- G. The Applicant shall submit Twelve (12) paper copies of the Special Use Permit application to the Menard County and at least one (1) copy in electronic format.

NOTE: The Special Use Application is not considered complete until all requirements and documentation have been received by the Menard County Zoning Office. Once the documentation is received, the appropriate fees will be collected and the process of scheduling a public meeting with Menard County Board of Commissioners will begin.

## **6.01 DESIGN AND INSTALLATION.**

### **A. Design Safety Certification**

1. BESSs shall conform to applicable industry standards, including those of the American National Standards Institute ("ANSI"). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories ("UL") or an equivalent third party. All batteries, cells, panels, racking systems, containers and all anchoring systems shall be new equipment commercially available; no used or experimental equipment shall be used without the approval of a variance by the Menard County Board of Commissioners.
2. BESS(s) shall conform to applicable industry standards, including:

- National Electrical Safety Code (NESC)
- National Electric Code (NEC)
- National Fire Protection Agency (NFPA)
- Occupational Safety and Health Administration (OSHA)
- American Society of Testing and Materials (ASTM)
- Institute of Electrical and Electronic Engineers (IEEE)
- International Electrotechnical Commission (IEC)
- American Society of Civil Engineers (ASCE)
- American Concrete Institute (“ACI”)
- United States Environmental Protection Agency (EPA)
- National Electrical Testing Association (NETA)
- Underwriter’s Laboratories (UL)
- American National Standards Institute ("ANSI")

3. Following the granting of siting approval under this Ordinance, a structural engineer, licensed in the State of Illinois, shall certify, as part of the BESS Building Permit application process, that the design of the Battery Energy Storage Facility is within accepted professional standards given local soil, subsurface and climate conditions.

#### B. Electrical Components

All electrical components of the BESS shall conform to applicable local, state and national codes as well as relevant national and international standards (e.g., **ANSI** and International Electrical Commission).

#### C. Height

No component of a battery, cell, racking system, container or Dedicated-Use Building may exceed Twelve (12) feet in height above ground level.

#### D. Aesthetics and Lighting

The following items are minimum standards to mitigate visual impact:

1. Vegetative Screening: A vegetative screen shall be provided for any part of the Battery Energy Storage Facility. The landscaping screen shall be located between the required fencing and the property line of the participating parcel upon which the facility sits. The vegetative screen tier shall be planted fifteen (15) feet from the fence. The vegetative screening shall include at a minimum Arborvitae giant

variety selected for appropriate hardiness zone and be at a minimum of six (6) foot height planted on twelve (12) foot centers.

NOTE: The landowner and/or Applicant may request alternative tree species of conifer/pine/spruce for 1<sup>st</sup> tier and use another native hardwood (oak/hackberry/black walnut) for the second and third tier. No alternative tree may be planted without first obtaining written consent from the Menard County Board of Commissioners.

Vegetation shall be cleared of all combustible vegetation regularly, so as they do not form a means of readily transmitting fire. Noxious weeds shall be controlled in accordance with all state and local laws, regulations, and ordinances.

2. Lighting: If lighting is provided at the Battery Energy Storage Facility, all such lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel.
3. Intra-project Power and Communication Lines: All power lines used to collect power from individual BESSs and all communication lines shall be buried underground at a depth in accordance with the Agricultural Impact Mitigation Agreement until same reach the property line or a substation adjacent to the property line.
4. The Battery Energy Storage Facility shall at all times comply with and adhere to the recommendations provided by the Illinois State Historic Preservation Office. If at any time throughout the life of the Battery Energy Storage facility project, the project is found to not be in compliance with the IDNR recommendations or the Illinois State Historic Preservation Office, the applicant of facility owner will immediately shut down the Battery Energy Storage facility to ensure compliance with these recommendations until a solution to the violations is found and approved by the Menard County Zoning Office and the Menard County Board of Commissioners

E. Fencing

1. A fence of at least eight (8) feet and not more than twelve (12) feet in height shall enclose and secure the Battery Energy Storage Facility.
2. Fencing shall be constructed in compliance with the 2022 IDOT Standard Specifications for Road and Bridge Construction Section 664 and IDOT Highway Standard 664001-02.

3. All locked gates with access to a public road must be locked with a lock that utilizes a numeric code or be equipped with a Knox Box. If equipped with a lock utilizing a numeric code, that code must be on file with the Menard County 911 dispatch center, and updated annually.
4. The fencing plan shall be approved by the Menard County Zoning Office and the Menard County Board of Commissioners prior to construction.
5. A BESS that is enclosed within the project area of a Commercial Solar Energy Facility shall not require additional fencing.

F. Warnings

1. Signage shall be in compliance with ANSI Z35 (American National Standards Institute Specifications for Accident Prevention) and shall include the type of technology associated with the BESS, any special hazards associated, the type of suppression system installed for the BESS, and 24-Hour emergency contact information, including reach-back phone numbers. These sign(s) shall be placed at all gates of entrance to the facility, as well as on the entrance to any buildings that may house any components of the BESS.
2. As required by the NEC (National Electric Code), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface.
3. A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and Substations, and at all entrances to the A BESS facility.

G. Setback Requirements

The Battery Energy Storage Facility shall be sited as follows, with setback distances measured from the nearest edge of any component of the facility:

1. Occupied Community Buildings and Dwellings on Nonparticipating Properties: five hundred (500) feet from the nearest edge of any component of the BESS, to the nearest point on the outside wall of the structure.

2. Nonparticipating Residences: five hundred (500) feet from the nearest edge of any component of the BESS, to the nearest point on the outside wall of the structure.
3. Boundary Lines of Participating Property: None.
4. Boundary Lines of Nonparticipating Property: two-hundred (200) feet from the nearest edge of any component of the BESS, to the nearest point on the property line of the nonparticipating property.
5. Public Road Rights-of-Way: two-hundred (200) feet from the nearest edge of any component of the BESS, to the nearest edge of the public road right-of-way.
6. The setback requirements for Non-Participating Properties may be waived by the written consent of the owner(s) of each affected Non-Participating Property. The Applicant does not need to obtain a variance from the Menard County Zoning Board of Appeals up on waiver by the property owner of any of the above setback requirements. Any waiver of the above setback requirements shall run with the land and shall be recorded at the expense of the Applicant, with Land Records, in the Menard County Recorder' s Office.

#### H. Compliance with Additional Regulations

1. Menard County municipalities may solely require pre-annexation/annexation agreements and shall regulate BESS(s) within the 1.5-mile planning jurisdiction in accordance with 65 ILCS 5/11-13-26.
2. Municipal BESS: BESS(s) that are proposed to be located on lands within the 1.5-mile radius of an incorporated municipality's zoning jurisdiction shall seek zoning and building approval from said municipality.
3. Prior to the start of any construction or ground work the facility owner must either:
  - a. Present documentation that the proposed site is the subject of an approved pre-annexation agreement, and facilitate the creation of an Intergovernmental Agreement between the municipality and the County identifying that the municipality will be taking full jurisdiction over the project site and affected properties for the life of the project; or

- b. Present documentation that the proposed site has been the subject of an annexation into the municipality.
- 4. Nothing in this Ordinance is intended to preempt other applicable state and federal laws and regulations.

I. Use of Public Roads

- 1. An Applicant proposing to use any county, municipality, township or village road(s) for the purpose of transporting BESS(s) parts, components or related Substation parts, infrastructure and/or equipment for construction, operation or maintenance of the BESS(s) or Substation(s) shall follow the Menard County Road Use Agreement executed with the Menard County Engineer and applicable Road District Commissioner. The Applicant shall notify the Menard County Engineer of need to use roads and associated infrastructure when performing replacement of infrastructure and shall:
  - a. Identify all such public roads; and
  - b. Obtain applicable weight and size permits from relevant government agencies prior to construction.
- 2. To the extent an Applicant must obtain a weight or size permit from Menard County, or from any municipality, township or village located within Menard County, the Applicant shall:
  - a. Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage and the need for pre-construction modifications and improvements on existing roadways; and
  - b. Any proposed public roads that will be used for construction purposes shall be identified and approved in writing by the respective Road District Commissioner and the County Engineer prior to the granting of the Special Use Permit. Traffic for construction purposes shall be limited to these roads. All overweight and/or oversized loads to be transported on public roads may require a permit from the respective highway authority. Any road damage caused by the transport of the facility's equipment, installation, maintenance or removal must be completely repaired to the reasonable satisfaction of the Road District Commissioner and the County Engineer. The Road District Commissioner



and County Engineer may choose to require either remediation of road repair upon completion of the A BESS Project or are authorized to collect fees for overweight and/or oversized load permits. Further, financial assurance in an amount to be fixed by the Road District Commissioner and/or the County Engineer to ensure the Road District or the County that future repairs are completed to their reasonable satisfaction shall be provided. Applicant shall submit a draft form of said financial assurance with application for Special Use Permit with the Menard County Zoning Office.

c. Enter into a road use agreement with the Menard County Highway Department and each affected Road District that includes, at a minimum, the following provisions:

- i. Project layout map;
- ii. Transportation impact analysis;
- iii. Pre-construction plans;
- iv. Project traffic map;
- v. Maximum hauling weight loads per roadway;
- vi. Project scope of repairs;
- vii. Post-construction repairs;
- viii. Insurance;
- ix. Financial Security in forms and amounts acceptable to Menard County Highway Department and Menard County Board of Commissioners;

3. The road use agreement shall require the Applicant to be responsible for the reasonable cost of improving roads used to construct A BESS and the reasonable cost of repairing roads used by the facility owner during construction of the A BESS so that those roads are in a condition that is safe for the driving public after the completion of the BESS construction. Roadways improved in preparation for and during the construction of the BESS shall be repaired and restored to the improved condition at the reasonable cost of the developer if the roadways have degraded or were damaged as a result of construction-related activities.

a. Any road not shown as being initially utilized for hauling and/or construction traffic, but is noted to have hauling and/or construction traffic on it during construction for a total of two (2) offenses, will then be

included into the schedule of initially noted haul routes scheduled for repair and maintenance.

- b. All repairs and improvements to Menard County and Road District public roads and roadway appurtenances shall be subject to the prior approval of the Menard County Board of Commissioners of Commissioners before being made and shall also be subject to inspection and acceptance by the Menard County Engineer and Road District Commissioner after such repairs and improvements are completed. The Menard County and Road District's Road Use Agreement, and any further agreements contemplated therein, regarding the maintenance and repair of Menard County and Road District public roads and highways, must be approved by the Menard County Board of Commissioners of Commissioners and respective Road Commissioner prior to the Board's approval of any BESS Building Permit applications related to the construction of the proposed BESS Project.
- 4. An initial engineering and legal deposit fee of no less than One Hundred Thousand Dollars (\$100,000) shall be deposited into the County Treasury ("Engineering Fund") to cover all engineering, consulting and legal fees incurred by Menard County for the duration of the project. The amount may be adjusted the discretion of the Menard County Engineer based on the size of the proposed project. Additional funds shall be required as deemed necessary by the Menard County Engineer. Monies remaining in the Fund at the completion of the project will be refunded back to the Applicant.

J. Site Assessment

To ensure that the subsurface conditions of the site will provide proper support for the BESS and soil restoration, the Applicant, at its expense, shall provide soil and geotechnical boring reports to the County Engineer as part of its BESS Special Use Permit application. The Applicant shall follow the guidelines for Conservation Practices Standards and Natural Resource Inventory Report submitted by the Menard County Soil and Water Conservation District (or equivalent regulatory agency). The Applicant shall submit grading plans for the proposed Substations and any related infrastructure for review and comment by the Menard County Soil and Water Conservation District. The grading plans shall be a public record and shall be submitted as part of the Special Use Permit application

for the issuance of any BESS permitting for the construction of said systems.

K. Noise Levels

Noise levels from each BESS or BESS Project shall be in compliance with applicable Illinois Pollution Control Board (IPCB) regulations (Illinois Pollution Control Board 35 Ill. Adm. Code Parts 900, 901, and 910). The Applicant shall submit manufacturer's project sound power level characteristics and other relevant data regarding project noise characteristics necessary for a competent noise analysis. The Applicant, using a qualified professional, shall demonstrate compliance with the applicable noise requirements in its Special Use Permit application. The Applicant, using a qualified professional, shall demonstrate compliance with the applicable noise requirements cited by the Illinois Pollution Control Board regulations of each BESS and the BESS project upon construction completion. Menard County may hire a qualified noise acoustician every 24 months, or more frequently if noise complaints are received, to conduct testing for a thirty-day period at the ten most at risk residential property lines and ten most at risk primary structures of any agricultural property to ensure ongoing compliance with the IPCB noise regulations. The cost to conduct such testing shall be borne by the facility owner. If the facility owner does not pay within thirty (30) days of being provided an invoice for these costs, its special use permit shall be immediately revoked. If at any time throughout the life of the Battery Energy Storage facility project, the noise levels are found to be not in compliance with this section, the applicant or facility owner will immediately shut off the Battery Energy Storage facility until the Menard County Board of Commissioners and Menard County Zoning Office approves a solution.

L. Agricultural Impact Mitigation

Pursuant to 505 ILCS 147/15(a), the Applicant, at its expense, shall enter into an Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture prior to any public hearing required before a siting decision on the BESS Project application. All impacted agricultural land, whether impacted during construction, operation, or decommissioning activities, must, at a minimum, be remediated by the Applicant pursuant to the terms of the Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture. The Applicant shall submit the executed Agricultural Impact Mitigation Agreement to the Menard County Board of Commissioners of Commissioners as part of the Special Use Permit application.

M. Avian and Wildlife Impact Study

The Applicant, at its expense, shall have a third party, qualified professional (after submission and approval of resume and relevant work experience) conducts an avian and wildlife impact study and submit said study to the County as part of the Special Use Permit application. Each BESS or BESS Project shall be located, designed, constructed, and operated to avoid and if necessary, mitigate, the impacts to wildlife. The Applicant will comply with all applicable avian and wildlife protection rules and regulations including, but not limited to:

1. Endangered Species Act (protects federally listed threatened and endangered species) (16 U.S.C. §§1531 et seq.)
2. Illinois Endangered Species Protection Act (“IESPA”) (520 ILCS 10)
3. Migratory Bird Treaty Act (“MBTA”) (16 U.S.C. §§ 703-712), and
4. Bald and Golden Eagle Protection Act (“BGEPA”) (16 U.S.C. 668-668d and 50 Code of Federal Regulation [CFR] 22.26)

N. Illinois Environmental Protection Agency Impact Study

The Applicant, at its expense, Illinois Environmental Protection Agency conduct water impact studies and submit said studies to the County as part of the Special Use Permit application. Each BESS or BESS Project shall be located, designed, constructed, and operated to avoid, and if necessary, mitigate the impacts to water under Section 401 of the Clean Water Act and Section 402 - National Pollutant Discharge Elimination (NPDES) Permit of Construction Site Activities.

O. Coal Mine – Mine Subsidence Study

The Applicant, at its expense, shall have a third party, a qualified professional engineer licensed in the State of Illinois (after submission of resume and relevant work experience) conduct a Coal Mine – Mine Subsidence impact study and submit said study to the Menard County Board of Commissioners of Commissioners as part of the Special Use Permit application. Each BESS or BESS Project shall be located, designed, constructed, and operated to avoid siting over active or inactive mine areas.

P. Historical Impact Study

The Applicant, at its expense, shall have a third party, qualified professional (after submission of resume and relevant work experience) conducts an historical impact study and submit said study to the Menard

County Board of Commissioners of Commissioners as part of the Special Use Permit application. Each A BESS or A BESS Project shall be located, designed, constructed, and operated to avoid and, if necessary, mitigate the impacts to rich historical history of Menard County.

Q. As-Built Map and Plans

Within sixty (60) calendar days of completion of construction of the A BESS Project, the Applicant or Operator shall deliver 2 (two) sets of "as-built" maps including all BESS projects, equipment, driveways, substations, replaced drainage structures and all transmission (above and below ground) in the site plan and engineering plans for the BESS Project that have been signed and stamped by a Professional Engineer and a licensed surveyor in the State of Illinois, with 1 (one) set being in an electronic format.

R. Engineer's Certificate

The BESS Project engineer's certificate shall be completed by a Structural Engineer or Professional Engineer licensed in the State of Illinois, and shall certify that the specific soils and subsurface conditions at the site can support the apparatus given local soil, subsurface and climate conditions. The Battery Energy Storage Facility engineer's certificate shall be a public record and shall be submitted as part of the Special Use Permit application.

S. Conformance with Approved Application and Plans

1. The Applicant shall construct and operate the BESS Project in complete conformance with the construction plans contained in a Menard County approved Special Use Permit application(s), conditions placed upon the operation of the Facility, this ordinance and all applicable state, federal and local laws and regulations unless otherwise submitted and approved by the Menard County Board of Commissioners.
2. The Applicant shall be bound by all proposals and representations made under oath at the public hearing before the Menard County Board of Commissioners of Commissioners, which shall be considered supplementary conditions of the Special Use Petition granted by the Menard County Board of Commissioners of Commissioners, even if not directly specified herein.

T. Additional Terms and Conditions

1. All technical submissions as defined in the Professional Engineering Practice Act of 1989 (225 ILCS 325/4(w)) and contained in the Special Use Permit Application shall be prepared and signed by an Illinois Professional Engineer (or Illinois Structural Engineer) for the relevant discipline.
2. The Menard County Board of Commissioners may retain a qualified independent code inspector or Professional Engineer both to make appropriate inspections of the BESS Project during and after construction and to consult with the Menard County Board of Commissioners to confirm that the construction, substantial repair, replacement, repowering and/or decommissioning of the BESS Project is performed in compliance with applicable electrical and building codes. The cost and fees incurred by Menard County in retaining said inspector or engineer shall be reimbursed by the Applicant or owner of the BESS Project within thirty (30) days of the presentation of invoice. Failure to pay within the time period prescribed will result in the automatic revocation of its special use permit, if one has been granted.
3. The Applicant shall provide that locked metal gates or a locked chain are installed at the access road entrances of all the BESS facilities.
4. The Special Use Permit granted to the Applicant shall bind and inure to the benefit of the Applicant, its successors-in-interest, and assigns. If any provision in this Ordinance, or conditions placed upon the operation of the A BESS Facility is held invalid, such invalidity shall not affect any other provision of this Ordinance that can be given effect without the invalid provision and, to this end, the provisions in this Ordinance are severable.
5. The Applicant shall provide an executed road use agreement to the Menard County Board of Commissioners of Commissioners between the Applicant and the appropriate governing road and highway jurisdictions or the Illinois Department of Transportation to the Menard County and Road District showing approved entrances, construction access, and haul routes prior to the issuance of any BESS Building Permit or prior to construction of the BESS Project.
6. Treatment of Existing Drainage Tile shall be the responsibility of the BESS Owner to notify the Menard County Engineer if the construction of any part of the project encounters underground field

drainage tiles. A plan sufficient to provide remediation shall be submitted, reviewed, and approved by the Menard County Engineer. All existing drainage tiles that will be crossed by private access roads shall be removed and replaced with a load resistant tile as specified by the Menard County Engineer. This shall be done before the private access roads are used for construction purposes. The load resistant tile shall extend a minimum of 30 feet across any private access roads and shall be of the same diameter of the existing tile. To ensure that all drainage tiles have been located, reasonable measures should be made to locate all existing tile in the vicinity of the private access roads by exploratory trench or other appropriate methods. All drainage tile that are encountered during construction shall be noted on the site plan.

7. The Applicant shall provide from U.S. Environmental Protection Agency (EPA) a completed Spill Prevention Control and Countermeasures Plan (SPCC Plan). The Applicant shall submit the executed SPCC Plan to the Menard County Board of Commissioners of Commissioners as part of the Special Use Permit application. The SPCC Plan shall be implemented in coordination with and at the time of Issue for Construction design documents.
8. The Applicant shall notify the County of any material changes to the information provided in all subsections of this Ordinance that occur prior to the issuance of a building permit.
  - a. The Applicant shall not commence construction activity associated with the BESS Project before 6:00 A.M. nor continue past 9:00 P.M. on any day of the week within one-quarter ( $\frac{1}{4}$ ) of a mile of any non-participating landowner unless a waiver is obtained from such landowner.
  - b. Prior to issuance of a building permit, the Applicant shall provide to the Menard County Zoning Office documentation of the specifications for the BESS equipment chosen for the Project.
9. The Applicant shall commence construction of the BESS Project within thirty-six (36) months of the date of the Special Use Permit approval by the Menard County Board of Commissioners of Commissioners. After construction is complete, the Applicant shall provide certified “as-built” drawings to the Menard County Zoning Office, the Menard County Assessor and the Menard County Board of Commissioners showing the locations of the BESS Project and a legal description of the land utilized for the improvements. The Special Use Permit shall thereafter automatically be modified to

limit the legal description of the area of the Special Use Permit to the land utilized for the improvements.

## **7.01 OPERATION.**

### **A. Maintenance**

1. Annual Report. The Applicant (BESS Permittee) or facility owner shall submit to the Menard County Zoning Office on the first Monday of May of each year following A BESS project approval by the Menard County Board of Commissioners, a report regarding A BESS maintenance and operation. This report shall contain the following information:
  - (i) a general description of any physical repairs, replacements, or modification(s) to the BESS and/or its infrastructure;
  - (ii) complaints pertaining to setbacks, noise, appearance, safety, lighting, and use of any public roads received by the Applicant concerning the BESS and the resolution of such complaints;
  - (iii) calls for emergency services, including the nature of the emergency and how it was resolved;
  - (iv) status of liability insurance;
  - (v) any other information that the Menard County Zoning Office or the Menard County Board of Commissioners might reasonably request; and
  - (vi) a general summary of service calls to the BESS.

NOTE: Menard County may require the Annual Report to be presented at the Board of Commissioners' meeting by the Applicant or facility owner upon written notice delivered at least 60 days prior to the presentation.

2. Failure to provide the annual report shall be considered a material violation of this Ordinance and subject to Article 10.01 (Administration and Enforcement).
3. Within ninety (90) days of the receipt of this annual report, the Menard County Zoning Office shall review it; conduct an on-site field review of the BESS project; and within one hundred twenty (120) days of the receipt of the report provide a summary of the report and its on-site field review to the Menard County Board of Commissioners of Commissioners.



4. The Menard County Zoning Office shall charge a fee for the annual review in the amount of no more than two hundred fifty dollars (\$250.00) per BESS project area facility. This fee shall be provided to the Menard County Zoning Office by the A BESS applicant, owner, and/or operator at the time of annual report submission. Failure to provide the annual report and required fee shall be considered a cessation of operations.
5. The applicant, owner, and/or operator of a BESS project shall allow the Menard County Zoning Office to have access to the BESS project site for the purposes described in Section 7.01(A)(2) above. Failure to provide access shall be deemed a material violation of the Special Use Permit.
6. Re-Certification. Any physical modification to the BESS that alters the mechanical load, mechanical load path or major electrical components shall require re-certification under Article 6.01 Design and Safety Certification section, paragraph 1, of this Ordinance. Like-kind replacements and modifications that are made in the ordinary course of operations, including expected repairs and warranty items, shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement or other modifications made in the ordinary course of operations), the Applicant shall confer with a relevant third-party certifying entity identified in Article 6.01 Design and Safety Certification section, paragraph 1, of this Ordinance to determine whether the physical modification requires re-certification.

B. Coordination with Emergency Responders:

1. The Applicant shall submit to the local emergency responders a copy of the Site Plan, Standard Operating Procedures (SOPs) and Standard Operating Guidelines (SOGs) and any amendments to such documents, for the BESS facility so that the local law enforcement, fire protection district and rescue units, emergency medical service providers, and emergency management service providers that have jurisdiction over each BESS project site may evaluate and coordinate their emergency response plans with the Applicant of the BESS Project.
2. The Applicant, at its expense, shall provide annual training for and the necessary equipment to the Operator and local emergency response authorities and their personnel so that they can properly respond to a potential emergency at the BESS Project. Special equipment to be provided includes, but is not limited to, key access (Knox) boxes, and permanently installed rescue equipment.

3. The Applicant and the Operator shall cooperate with all local emergency responders to develop an emergency response plan. The plan shall include, at a minimum, 24-hour contact information (names, titles, email addresses, cell phone numbers) for the Applicant and the Operator and at least three (3) designated BESS Project representatives (a primary representative with two (2) alternate representatives, each of whom are on-call 24 hours per day / 7 days per week 365 days per year). Any change in the designated BESS Project representative or his/her contact information shall be promptly communicated to the Menard County Board of Commissioners of Commissioners in writing. The content of the emergency response plan, including the 24-hour contact information, shall be reviewed and updated on an annual basis.
4. Nothing in this section shall alleviate the need to comply with all other applicable life, safety, fire / emergency laws and regulations.
5. Any emergency work or response required in direct response to the BESS project will be billed directly to the developer outside of the scope of the Special Use Permit pursuant to 70 ILCS 705/11 for local responders. For any specialized operation requiring municipal responders, response will be billed per the standard base rate of each agency. Additionally, the provisions of “The Hazardous Material Response Reimbursement Act” (430 ILCS 55) shall also apply.

C. Water, Sewer, Materials Handling, Storage and Disposal

1. All solid wastes related to the construction, operation, and maintenance of the BESS shall be removed from the site promptly and disposed of in accordance with all federal, state, and local laws.
2. All hazardous materials related to the construction, operation, and maintenance of the BESS shall be handled, stored, transported, and disposed of in accordance with all applicable local, state, and federal laws.
3. The BESS Project shall comply with existing septic and well regulations as required by the Menard County Public Health Department, The Sangamon Menard County Department of Public Health, and the State of Illinois Department of Public Health.

D. Drainage Systems

The Applicant or facility owner at its expense will repair, within 90 days after a complaint is filed, all waterways, drainage ditches, agricultural drainage systems, field tiles or any other private and public infrastructure improvements damaged during construction, maintenance, and operation phases of the BESS Project in accordance with the Agricultural Impact Mitigation Agreement and the IDOA Drain Tile Repair schedule figures 1-2. (See Appendix (3)). Additionally, the Applicant or facility owner shall provide a drainage impact assessment every 5 years including inspection or assessment of property drainage system. Failure to provide the assessment to the Menard County Zoning Office and Menard County Board of Commissioners shall be considered a material violation of this ordinance.

E. Complaint Resolution

The Applicant or facility owner shall, at its expense and in coordination with the County, develop a system for logging and investigating complaints related to the BESS Project. The Applicant shall resolve such non-emergency complaints on a case-by-case basis and shall provide written confirmation to the Menard County Zoning Office. All costs and fees incurred by the County in resolving or attempting to resolve complaints shall be reimbursed by the Applicant of the A BESS Project within thirty (30) days of the County providing proof of costs and fees. The Applicant shall also designate and maintain for the duration of the A BESS Project either a local telephone number or a toll-free telephone number as well as an email address as its public information inquiry / and complaint "hotline" which shall be answered by a customer service representative on a 24/7 basis. The Applicant shall post the telephone number(s) and email address(es) for the customer service representative(s) in a prominent, easy to find location on their websites and at the A BESS Project site on signage.

**8.01 LIABILITY INSURANCE AND INDEMNIFICATION.**

Commencing with the issuance of a BESS Building Permit, the Applicant or facility owner shall maintain a current general comprehensive liability policy and automobile liability coverage covering bodily injury, death and illness, and property damage with limits of at least Five Million Dollars (\$5,000,000.00) per occurrence; and shall further maintain the above-stated lines of insurance from delivery of the "Notice to Proceed" by the Applicant for the BESS Project and throughout the duration of the life of the facility coverage amounts of at least Five Million Dollars (\$5,000,000.00) per occurrence and

Twenty Million Dollars (\$20,000,000.00) in the aggregate during the life of the BESS Project. The Applicant shall file the original certificate of insurance upon commencement of project construction prior to the issuance of a BESS Building Permit, corresponding policies, and endorsements to be provided within sixty (60) days of issuance as well as at each subsequent renewal at least annually thereafter. Additionally, the Applicant shall name Menard County and its agents as an additionally insured participant on all policies of insurance.

The Applicant (BESS Permittee) or facility owner shall defend, indemnify and hold harmless the Menard County and its officers, appointed and elected officials, employees, attorneys, engineers and agents (collectively and individually the "Indemnified Parties") from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees relating to or arising out of the issuance of the Special Use Permit or the construction, operation, maintenance and removal of the BESS and affiliated equipment including, without limitation, liability for property damage or personal injury (including death or illness), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence) or any acts or omissions of the Applicant (BESS Permittee), the Owner or the Operator under this Ordinance or the Special Use Permit except to the extent any such claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities arise from the negligence or intentional acts of such Indemnified Parties. This general indemnification shall not be construed as limiting or qualifying Menard County's other indemnification rights available under the law.

#### **9.01 DECOMMISSIONING AND SITE RECLAMATION PLAN REQUIRED.**

The Applicant (or Owner, if different from Applicant) must submit a Decommissioning Plan with cost estimation to the Menard County as part of the siting application and provide testimony supporting the calculation of costs provided in said plan during the public hearing on the application. Prior to receiving any building permit for the A BESS facility, the Applicant or Owner shall provide a Decommissioning Agreement and post the required Financial Assurances for the benefit of Menard County with the Treasurer of Menard County. The Decommissioning Agreement and Financial Assurances shall comply with 55 ILCS 5/5-12020. Periodically, and as required by the Agricultural Impact Mitigation Agreement, the Owner must update the Decommissioning Plan, cost estimations and provide updated Financial Assurances to the benefit of Menard County. That plan shall include:

- A. A Memorandum of Understanding with property owners of each BESS facility that if decommissioning fees exceed what has been assured through the decommissioning financial plan, property owners shall be liable for remaining costs.

- B. Provisions for the removal of structures, debris, and cabling on the surface and at least five (5) feet below the surface, and the sequence in which removal is expected to occur.
- C. Provisions for the restoration of the soil and vegetation.
- D. An estimate of the decommissioning costs certified by a Professional Engineer in current dollars. The engineer providing this estimate shall be engaged under contract by the Menard County Engineer and all costs associated with this engagement shall be borne by the applicant.
- E. A financial plan approved by the Menard County Board of Commissioners of Commissioners to ensure funds will be available for decommissioning and land restoration. The applicant shall provide the Menard County Board of Commissioners with a new estimate of the cost of decommissioning the A BESS project every five (5) years under the same conditions as set forth in the Agricultural Impact Mitigation Agreement. Upon receipt of this new estimate, the Menard County Board of Commissioners may require, and the applicant, owner, and/or operator of the BESS project shall provide, a new financial plan for decommissioning acceptable to the Menard County Board of Commissioners. Failure to provide an acceptable financial plan shall be considered a cessation of operations.
- F. A provision that the terms of the decommissioning plan shall be binding upon the owner or operator and any of their successors, assigns, or heirs; and
- G. A provision that Menard County shall have access to the site and to the funds outlined above to effect or complete decommissioning one (1) year after cessation of operations.

#### **10.01 ADMINISTRATION AND ENFORCEMENT.**

- A. The Applicant's failure to materially comply with any of the provisions under the Special Use Permit, any conditions imposed on the project, and/ or failure to comply with any law or regulation, shall be a default and shall be grounds for revocation of the Special Use Permit by the Menard County Board of Commissioners within Forty-five (45) days.
- B. Prior to implementation of the applicable Menard County procedures for the resolution of default(s), the Menard County Board of must first provide written notice to the Applicant and Operator setting forth the alleged default(s), and provide an opportunity for the Applicant or the Operator to cure the default(s) within a thirty (30) calendar day period from the date of the notice. Should the Applicant commence the cure within that 30-day cure period and diligently pursues a cure, then the Applicant shall receive an additional sixty (60) days to continue to pursue the cure before the Menard

County pursues procedures for the resolution of default. If the default relates to a life safety issue or interference with local government public safety (police, fire, emergency medical services, emergency management services, 911 dispatch) communications, the Applicant or the Operator shall take all necessary and available commercial measures to immediately cure the default. If the Applicant or Operator cannot cure the default(s) or resolve the alleged default(s) within the cure period, then applicable Menard County ordinance provisions addressing the resolution of such default(s) shall govern.

## **11.01 FEE SCHEDULE AND PERMITTING PROCESS.**

### **A. Application Fees**

1. Prior to processing any Application for a BESS Facility, the Applicant must submit a certified check to the Menard County Zoning Office for the Application Fee equal to five thousand dollars (\$5000) per megawatt MW of nameplate capacity, additionally, if the nameplate capacity is less than 1 MW, the permit fee shall be reduced pro rata., up to a maximum fee of one million dollars (\$1,000,000.00). These funds shall be placed in an FDIC insured account and will be used to cover the county's cost incurred in processing the Application.
2. Should the actual costs to Menard County exceed the submitted Application Fee, the Applicant shall be responsible for those additional costs and shall remit additional funds to the Menard County within 15 days of receipt of a request from the Menard County. No hearings on an Application shall be conducted nor final decisions rendered on an Application if there are Application fees due to Menard County.
3. Any unused amounts of the Application Fee shall be refunded to the Applicant within six months of the Menard County Board of Commissioners rendering a final decision on the matter, unless any pending litigation, disputes or negotiations involving Menard County exist regarding the BESS Facility, in which case any amounts owed to the Applicant shall be refunded within six months of the conclusion of the litigation, disputes, or negotiations. An Applicant may request any unused Application Fee be applied toward the Building Permit Fees for the Facility.

## 2. Building Permit Fees

Prior to the issuance of building permits, the Building Permit Applicant must submit a certified check to the Menard County Zoning Office for a Building Permit Fee equating to eight thousand dollars (\$8000) per megawatt MW of nameplate capacity additionally, if the nameplate capacity is less than 1 MW, the permit fee shall be reduced pro rata.

## 3. All Costs to be Paid by Applicant or Owner

In addition to all fees noted above, the Applicant or Owner shall pay all costs incurred by Menard County, including but not limited to those costs associated with all offices and departments, boards and commissions of Menard County as well as third-party costs incurred by the Menard County. This includes, but is not limited to, the direct or indirect costs associated with hearings, permitting, operations, inspections, decommissioning, litigation, disputes and/or negotiations.

## 4. Due to the complexity of the project and the information submitted, it shall be reviewed by a committee consisting of one or more representatives from:

- Menard County Zoning Office;
  - Menard County Planning Commission;
  - Menard County Engineer;
  - Menard County Road Commissioner affected;
  - Menard County Drainage District Commissioner affected;
  - Menard County Emergency Telephone System;
  - Menard County Coordinator;
  - Menard County State's Attorney;
  - Applicable Fire Protection District;
- a. Due to the complexity of the project and the information submitted for review, Menard County may charge the BESS project applicant, owner, and/or operator for the cost of any special analytic or other review needs deemed by the committee to be reasonably necessary and incidental to adequate and timely review.
  - b. If the committee determines that all requirements of the ordinance have been met, the Menard County Zoning Office shall issue a certificate of compliance. The building permit may be reviewed at the same time.

## **11.02 VARIATIONS**

The Menard County Zoning Office and the Menard County Board of Commissioners may permit variations to the regulations of this ordinance but shall do so only when the granting of such a variation would be in harmony with the ordinance's general purpose and intent and may vary them only in specific instances where there would be practical difficulties or hardships in the way of carrying out the strict letter of the regulations of this ordinance.

## **12.01 HEARING FACILITATOR**

The Menard County Board of Commissioners may engage the services of a hearing facilitator. The hearing facilitator shall be an independent contractor who shall conduct a hearing in accordance with all applicable rules of the board and the Menard County but has no adjudicatory responsibility other than ruling on requests for continuances, procedural matters, admissibility of evidence and the propriety of any arguments.

The hearing facilitator shall be an attorney licensed to practice in the State of Illinois. The Applicant shall reimburse Menard County for the fees and costs charged by the facilitator, within thirty (30) days of the county providing proof of fees and cost incurred.

## **13.01 HEARING FACTORS**

- A. The Menard County Board of Commissioners may approve a BESS Facility Special Use Permit application if it finds the evidence complies with state, federal and local law, and regulations, and with the standards of this zoning code including the factors listed below. The factors below are applied as a balancing test, not individual requirements to be met.
  - a. The establishment, maintenance or operation of the BESS Project will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;
  - b. The BESS Project will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values of surrounding properties;
  - c. The establishment of the BESS Project will not impede the normal and orderly development and improvement of the surrounding properties;
  - d. Adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided;
  - e. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;



- f. The proposed BESS Project is not contrary to the objectives of the current comprehensive plan of the Menard County (if any); and
  - g. The BESS Project shall, in all other respects, conform to the applicable regulations of this Ordinance and the zoning district in which it is located (if a zoning ordinance is in effect), except as such regulations may, in each instance, be modified pursuant to the recommendations of and approved by the Menard County Board of Commissioners.
- B. Special Use Permit Conditions and Restrictions. The Menard County Board of Commissioners may stipulate conditions, guarantees and restrictions, upon the establishment, location, construction, maintenance, and operation of the BESS Project as are deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements of this Ordinance.
- C. Revocation.
  - a. In any case where a Special Use Permit has been approved for a BESS Project, the Applicant shall apply for a BESS Building Permit from the Menard County and all other permits required by other government or regulatory agencies to commence construction, and commence and actively pursue construction of the Project within thirty-six (36) months from the date of the granting of the Special Use Permit. If the Applicant fails to apply for a BESS Building Permit from Menard County and all other permits required by other government or regulatory agencies prior to construction, and/or fails to commence and actively pursue construction of the Project within the thirty-six (36) month period, then without further action by the Menard County Board of Commissioners the Special Use Permit authorizing the construction and operation of the BESS Project shall be automatically revoked and void. Upon written request supported by evidence that the Applicant has diligently pursued issuance of all necessary government and regulatory permits for the Project required to commence construction and that any delay in commencement of construction of the Project is due to conditions out of his/her/its control, the Menard County Board of Commissioners, in its sole discretion, may extend the above thirty-six (36) month period by passage of an ordinance that amends the Special Use Permit.
  - b. The Special Use Permit shall be subject to revocation if the Applicant dissolves or ceases to do business, abandons the

BESS Project, or the BESS ceases to operate for more than twelve (12) consecutive months for any reason.

- c. Subject to the provisions of Article 10.01(A), a Special Use Permit may be revoked by the Menard County Board of Commissioners if the BESS Project is not constructed, installed, and/or operated in substantial conformance with the Menard County-approved Project plans, the regulations of this Ordinance and the stipulated Special Use Permit conditions and restrictions.
- D. **Transferability: Owner or BESS Permittee.** The Applicant shall provide written notification to the Menard County Board of Commissioners at least Ninety (90) days prior to any change in ownership of a BESS Project of any such change in ownership. The phrase "change in ownership of a BESS Project" includes any kind of assignment, sale, lease, transfer, or other conveyance of ownership or operating control of the Applicant, the BESS Project, or any portion thereof. The Applicant or successors-in-interest or assignees of the Special Use Permit, as applicable, shall remain liable for compliance with all conditions, restrictions, and obligations contained in the Special Use Permit, the provisions of this Ordinance, and applicable Menard County, state, and federal laws.
- E. **Modification.** Any modification of a BESS Project that alters or changes the essential character or operation of the BESS Project in a way not intended at the time the Special Use Permit was granted, or as subsequently amended, shall require a new Special Use Permit. The Applicant or authorized representative, shall apply for an amended Special Use Permit prior to any modification of the BESS Project.

**Permit Effective Date: The Special Use Permit shall become effective upon approval of the Ordinance by the Menard County Board of Commissioners.**

#### **14.01 INTERPRETATION**

The provisions of these regulations shall be held to the minimum requirements adopted for the promotion and preservation of public health, safety, and general welfare of Menard County. These regulations are not intended to repeal, abrogate, annul or in any manner interfere with existing regulations or laws of Menard County nor conflict with any statutes of the State of Illinois.

#### **15.01 SEVERABILITY**

If any section, paragraph, clause, phrase, or part of this Ordinance is for any reason held invalid by any court or competent jurisdiction, such decision shall not affect the validity of the remaining provisions of these regulations.

#### **16.01 EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after its passage, publication, and approval as required by law.

## **APPENDIX**

### Agricultural Impact Mitigation Agreement – Construction of a Battery Energy Storage Facility

# STANDARD AGRICULTURAL IMPACT MITIGATION AGREEMENT

between

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and the  
**ILLINOIS DEPARTMENT OF AGRICULTURE**

Pertaining to the Construction of a Battery Energy Storage  
Facility in

\_\_\_\_\_ **County, Illinois**

Pursuant to the Renewable Energy Facilities Agricultural Impact Mitigation Act (505 ILCS 147), the following standards and policies are required by the Illinois Department of Agriculture (IDOA) to help preserve the integrity of any Agricultural Land that is impacted by the Construction and Deconstruction of a Battery Energy Storage Facility. They were developed with the cooperation of agricultural agencies, organizations, Landowners, Tenants, drainage contractors, and solar energy companies to comprise this Agricultural Impact Mitigation Agreement (AIMA).

\_\_\_\_\_, hereafter referred to as Battery Energy Storage Facility Owner, or simply as Facility Owner, plans to develop and/or operate a \_\_\_\_\_ Battery Energy Storage Facility in \_\_\_\_\_ County [GPS Coordinates: \_\_\_\_\_], which will consist of up to \_\_\_\_\_ acres that will be covered by solar facility related components, such as solar panel arrays, racking systems, access roads, an onsite underground collection system, inverters and transformers and any affiliated electric transmission lines. This AIMA is made and entered between the Facility Owner and the IDOA.

If Construction does not commence within four years after this AIMA has been fully executed, this AIMA shall be revised, with the Facility Owner's input, to reflect the IDOA's most current Solar Farm Construction and Deconstruction Standards and Policies. This AIMA, and any updated AIMA, shall be filed with the County Board by the Facility Owner prior to the commencement of Construction.

The below prescribed standards and policies are applicable to Construction and Deconstruction activities occurring partially or wholly on privately owned agricultural land.

## Conditions of the AIMA

The mitigative actions specified in this AIMA shall be subject to the following conditions:

- A. All Construction or Deconstruction activities may be subject to County or other local requirements. However, the specifications outlined in this AIMA shall be the minimum standards applied to all Construction or Deconstruction activities. IDOA may utilize any legal means to enforce this AIMA.
- B. Except for Section 17. B. through F., all actions set forth in this AIMA are subject to modification through negotiation by Landowners and the Facility Owner, provided such changes are negotiated

in advance of the respective Construction or Deconstruction activities.

- C. The Facility Owner may negotiate with Landowners to carry out the actions that Landowners wish to perform themselves. In such instances, the Facility Owner shall offer Landowners the area commercial rate for their machinery and labor costs.
- D. All provisions of this AIMA shall apply to associated future Construction, maintenance, repairs, and Deconstruction of the Facility referenced by this AIMA.
- E. The Facility Owner shall keep the Landowners and Tenants informed of the Facility's Construction and Deconstruction status, and other factors that may have an impact upon their farming operations.
- F. The Facility Owner shall include a statement of its adherence to this AIMA in any environmental assessment and/or environmental impact statement.
- G. Execution of this AIMA shall be made a condition of any Conditional/Special Use Permit. Not less than 30 days prior to the commencement of Construction, a copy of this AIMA shall be provided by the Facility Owner to each Landowner that is party to an Underlying Agreement. In addition, this AIMA shall be incorporated into each Underlying Agreement.
- H. The Facility Owner shall implement all actions to the extent that they do not conflict with the requirements of any applicable federal, state and local rules and regulations and other permits and approvals that are obtained by the Facility Owner for the Facility.
- I. No later than 45 days prior to the Construction and/or Deconstruction of a Facility, the Facility Owner shall provide the Landowner(s) with a telephone number the Landowner can call to alert the Facility Owner should the Landowner(s) have questions or concerns with the work which is being done or has been carried out on his/her property.
- J. If there is a change in ownership of the Facility, the Facility Owner assuming ownership of the Facility shall provide written notice within 90 days of ownership transfer, to the Department, the County, and to Landowners of such change. The Financial Assurance requirements and the other terms of this AIMA shall apply to the new Facility Owner.
- K. The Facility Owner shall comply with all local, state and federal laws and regulations, specifically including the worker protection standards to protect workers from pesticide exposure.
- L. Within 30 days of execution of this AIMA, the Facility Owner shall use Best Efforts to provide the IDOA with a list of all Landowners that are party to an Underlying Agreement and known Tenants of said Landowner who may be affected by the Facility. As the list of Landowners and Tenants is updated, the Facility Owner shall notify the IDOA of any additions or deletions.
- M. If any provision of this AIMA is held to be unenforceable, no other provision shall be affected by that holding, and the remainder of the AIMA shall be interpreted as if it did not contain the unenforceable provision.

## Definitions

### Abandonment

When Deconstruction has not been completed within 12 months after the Battery Energy Storage Facility reaches the end of its useful life. For purposes of this definition, a Battery Energy Storage Facility shall be presumed to have reached the end of its useful life

	if the Battery Energy Storage Facility Owner fails, for a period of 6 consecutive months, to pay the Landowner amounts owed in accordance with an Underlying Agreement.
Aboveground Cable	Electrical power lines installed above ground surface to be utilized for conveyance of power from the solar panels to the solar facility inverter and/or point of interconnection to utility grid or customer electric meter.
Agricultural Impact Mitigation Agreement (AIMA)	The Agreement between the Facility Owner and the Illinois Department of Agriculture (IDOA) described herein.
Agricultural Land	Land used for Cropland, hayland, pastureland, managed woodlands, truck gardens, farmsteads, commercial ag-related facilities, feedlots, livestock confinement systems, land on which farm buildings are located, and land in government conservation programs used for purposes as set forth above.
Best Efforts	Diligent, good faith, and commercially reasonable efforts to achieve a given objective or obligation.
Commercial Operation Date	The calendar date of which the Facility Owner notifies the Landowner, County, and IDOA in writing that commercial operation of the facility has commenced. If the Facility Owner fails to provide such notifications, the Commercial Operation Date shall be the execution date of this AIMA plus 6 months.
Commercial Solar Energy Facility (Facility)	A solar energy conversion facility equal to or greater than 500 kilowatts in total nameplate capacity, including a solar energy conversion facility seeking an extension of a permit to construct granted by a county or municipality before June 29, 2018. "Battery Energy Storage facility" does not include a solar energy conversion facility: (1) for which a permit to construct has been issued before June 29, 2018; (2) that is located on land owned by the Battery Energy Storage facility owner; (3) that was constructed before June 29, 2018; or (4) that is located on the customer side of the customer's electric meter and is primarily used to offset that customer's electricity load and is limited in nameplate capacity to less than or equal to 2,000 kilowatts.
Battery Energy Storage Facility Owner deemed (Facility Owner)	A person or entity that owns a Battery Energy Storage facility. A Battery Energy Storage Facility Owner is not nor shall it be to be a public utility as defined in the Public Utilities Act.
County	The County or Counties where the Battery Energy Storage Facility is located.
Construction	The installation, preparation for installation and/or repair of a Facility.
Cropland	Land used for growing row crops, small grains or hay; includes land which was formerly used as cropland, but is currently enrolled in a government conservation program; also includes pastureland that

	is classified as Prime Farmland.
Deconstruction	The removal of a Facility from the property of a Landowner and the restoration of that property as provided in the AIMA.
Deconstruction Plan	<p>A plan prepared by a Professional Engineer, at the Facility's expense, that includes:</p> <ol style="list-style-type: none"> <li>(1) the estimated Deconstruction cost, in current dollars at the time of filing, for the Facility, considering among other things: <ol style="list-style-type: none"> <li>i. the number of solar panels, racking, and related facilities involved;</li> <li>ii. the original Construction costs of the Facility;</li> <li>iii. the size and capacity, in megawatts of the Facility;</li> <li>iv. the salvage value of the facilities (if all interests in salvage value are subordinate to that of the Financial Assuranceholder if abandonment occurs);</li> <li>v. the Construction method and techniques for the Facility and for other similar facilities; and</li> </ol> </li> <li>(2) a comprehensive detailed description of how the Facility Owner plans to pay for the Deconstruction of the Facility.</li> </ol>
Department	The Illinois Department of Agriculture (IDOA).
Financial Assurance	A reclamation or surety bond or other commercially available financial assurance that is acceptable to the County, with the County or Landowner as beneficiary.
Landowner	Any person with an ownership interest in property that is used for agricultural purposes and that is party to an Underlying Agreement.
Prime Farmland	Agricultural Land comprised of soils that are defined by the USDA Natural Resources Conservation Service (NRCS) as "Prime Farmland" (generally considered to be the most productive soils with the least input of nutrients and management).
Professional Engineer	An engineer licensed to practice engineering in the State of Illinois.
Soil and Water Conservation District (SWCD)	A unit of local government that provides technical and financial assistance to eligible Landowners for the conservation of soil and water resources.
Tenant	Any person, apart from the Facility Owner, lawfully residing or leasing/renting land that is subject to an Underlying Agreement.
Topsoil	The uppermost layer of the soil that has the darkest color or the highest content of organic matter; more specifically, it is defined as the "A" horizon.
Underlying Agreement	The written agreement between the Facility Owner and the Landowner(s) including, but not limited to, an easement, option, lease, or license under the terms of which another person has



constructed, constructs, or intends to construct a Facility on the property of the Landowner.

Underground Cable	Electrical power lines installed below the ground surface to be utilized for conveyance of power within a Facility or from a Battery Energy Storage Facility to the electric grid.
USDA Natural Resources Conservation Service (NRCS)	An agency of the United States Department of Agriculture that provides America's farmers with financial and technical assistance to aid with natural resources conservation.

## Construction and Deconstruction Standards and Policies

### **1. Support Structures**

- A. Only single pole support structures shall be used for the Construction and operation of the Facility on Agricultural Land. Other types of support structures, such as lattice towers or H-frames, may be used on nonagricultural land.
- B. Where a Facility's Aboveground Cable will be adjacent and parallel to highway and/or railroad right-of-way, but on privately owned property, the support structures shall be placed as close as reasonably practicable and allowable by the applicable County Engineer or other applicable authorities to the highway or railroad right-of-way. The only exceptions may be at jogs or weaves on the highway alignment or along highways or railroads where transmission and distribution lines are already present.
- C. When it is not possible to locate Aboveground Cable next to highway or railroad right-of-way, Best Efforts shall be expended to place all support poles in such a manner to minimize their placement on Cropland (i.e., longer than normal above ground spans shall be utilized when traversing Cropland).

### **2. Aboveground Facilities**

Locations for facilities shall be selected in a manner that is as unobtrusive as reasonably possible to ongoing agricultural activities occurring on the land that contains or is adjacent to the Facility.

### **3. Guy Wires and Anchors**

Best Efforts shall be made to place guy wires and their anchors, if used, out of Cropland, pastureland and hayland, placing them instead along existing utilization lines and on land other than Cropland. Where this is not feasible, Best Efforts shall be made to minimize guy wire impact on Cropland. All guy wires shall be shielded with highly visible guards.

### **4. Underground Cabling Depth**

- A. Underground electrical cables located outside the perimeter of the (fence) of the solar panels shall be buried with:
  1. a minimum of 5 feet of top cover where they cross Cropland.
  2. a minimum of 5 feet of top cover where they cross pastureland or other non-

Cropland classified as Prime Farmland.

3. a minimum of 3 feet of top cover where they cross pastureland and other Agricultural Land not classified as Prime Farmland.
  4. a minimum of 3 feet of top cover where they cross wooded/brushy land.
- B. Provided that the Facility Owner removes the cables during Deconstruction, underground electric cables may be installed to a minimum depth of 18 inches:
1. Within the fenced perimeter of the Facility; or
  2. When buried under an access road associated with the Facility provided that the location and depth of cabling is clearly marked at the surface.
- C. If Underground Cables within the fenced perimeter of the solar panels are installed to a minimum depth of 5 feet, they may remain in place after Deconstruction.

## **5. Topsoil Removal and Replacement**

- A. Any excavation shall be performed in a manner to preserve topsoil. Best Efforts shall be made to store the topsoil near the excavation site in such a manner that it will not become intermixed with subsoil materials.
- B. Best Efforts shall be made to store all disturbed subsoil material near the excavation site and separate from the topsoil.
- C. When backfilling an excavation site, Best Efforts shall be used to ensure the stockpiled subsoil material will be placed back into the excavation site before replacing the topsoil.
- D. Refer to Section 7 for procedures pertaining to rock removal from the subsoil and topsoil.
- E. Refer to Section 8 for procedures pertaining to the repair of compaction and rutting of the topsoil.
- F. Best Efforts shall be performed to place the topsoil in a manner so that after settling occurs, the topsoil's original depth and contour will be restored as close as reasonably practicable. The same shall apply where excavations are made for road, stream, drainage ditch, or other crossings. In no instance shall the topsoil materials be used for any other purpose unless agreed to explicitly and in writing by the Landowner.
- G. Based on the mutual agreement of the landowner and Facility Owner, excess soil material resulting from solar facility excavation shall either be removed or stored on the Landowner's property and reseeded per the applicable National Pollution Discharge Elimination System (NPDES) permit/Stormwater Pollution Prevention Plan (SWPPP). After the Facility reaches the end of its Useful Life, the excess subsoil material shall be returned to an excavation site or removed from the Landowner's property, unless otherwise agreed to by Landowner.

## **6. Rerouting and Permanent Repair of Agricultural Drainage Tiles**

The following standards and policies shall apply to underground drainage tile line(s) directly or indirectly affected by Construction and/or Deconstruction:

- A. Prior to Construction, the Facility Owner shall work with the Landowner to identify drainage tile lines traversing the property subject to the Underlying Agreement to the extent

reasonably practicable. All drainage tile lines identified in this manner shall be shown on the Construction and Deconstruction Plans.

- B. The location of all drainage tile lines located adjacent to or within the footprint of the Facility shall be recorded using Global Positioning Systems (GPS) technology. Within 60 days after Construction is complete, the Facility Owner shall provide the Landowner, the IDOA, and the respective County Soil and Water Conservation District (SWCD) with “as built” drawings (strip maps) showing the location of all drainage tile lines by survey station encountered in the Construction of the Facility, including any tile line repair location(s), and any underground cable installed as part of the Facility.

**C. Maintaining Surrounding Area Subsurface Drainage**

If drainage tile lines are damaged by the Facility, the Facility Owner shall repair the lines or install new drainage tile line(s) of comparable quality and cost to the original(s), and of sufficient size and appropriate slope in locations that limit direct impact from the Facility. If the damaged tile lines cause an unreasonable disruption to the drainage system, as determined by the Landowner, then such repairs shall be made promptly to ensure appropriate drainage. Any new line(s) may be located outside of, but adjacent to the perimeter of the Facility. Disrupted adjacent drainage tile lines shall be attached thereto to provide an adequate outlet for the disrupted adjacent tile lines.

**D. Re-establishing Subsurface Drainage Within Facility Footprint**

Following Deconstruction and using Best Efforts, if underground drainage tile lines were present within the footprint of the facility and were severed or otherwise damaged during original Construction, facility operation, and/or facility Deconstruction, the Facility Owner shall repair existing drainage tiles or install new drainage tile lines of comparable quality and cost to the original, within the footprint of the Facility with sufficient capacity to restore the underground drainage capacity that existed within the footprint of the Facility prior to Construction. Such installation shall be completed within 12 months after the end of the useful life of the Facility and shall be compliant with Figures 1 and 2 to this Agreement or based on prudent industry standards if agreed to by Landowner.

- E. If there is any dispute between the Landowner and the Facility Owner on the method of permanent drainage tile line repair, the appropriate County SWCD’s opinion shall be considered by the Facility Owner and the Landowner.
- F. During Deconstruction, all additional permanent drainage tile line repairs beyond those included above in Section 6.D. must be made within 30 days of identification or notification of the damage, weather and soil conditions permitting. At other times, such repairs must be made at a time mutually agreed upon by the Facility Owner and the Landowner. If the Facility Owner and Landowner cannot agree upon a reasonable method to complete this restoration, the Facility Owner may implement the recommendations of the appropriate County SWCD and such implementation constitutes compliance with this provision.
- G. Following completion of the work required pursuant to this Section, the Facility Owner shall be responsible for correcting all drainage tile line repairs that fail due to Construction and/or Deconstruction for one year following the completion of Construction or Deconstruction, provided those repairs were made by the Facility Owner. The Facility Owner shall not be responsible for drainage tile repairs that the Facility Owner pays the Landowner to perform.

## **7. Rock Removal**

With any excavations, the following rock removal procedures pertain only to rocks found in the uppermost 42 inches of soil, the common freeze zone in Illinois, which emerged or were brought to the site as a result of Construction and/or Deconstruction.

- A. Before replacing any topsoil, Best Efforts shall be taken to remove all rocks greater than 3 inches in any dimension from the surface of exposed subsoil which emerged or were brought to the site as a result of Construction and/or Deconstruction.
- B. If trenching, blasting, or boring operations are required through rocky terrain, precautions shall be taken to minimize the potential for oversized rocks to become interspersed in adjacent soil material.
- C. Rocks and soil containing rocks removed from the subsoil areas, topsoil, or from any excavations, shall be removed from the Landowner's premises or disposed of on the Landowner's premises at a location that is mutually acceptable to the Landowner and the Facility Owner.

## **8. Repair of Compaction and Rutting**

- A. Unless the Landowner opts to do the restoration work on compaction and rutting, after the topsoil has been replaced post-Deconstruction, all areas within the boundaries of the Facility that were traversed by vehicles and Construction and/or Deconstruction equipment that exhibit compaction and rutting shall be restored by the Facility Owner. All prior Cropland shall be ripped at least 18 inches deep or to the extent practicable, and all pasture and woodland shall be ripped at least 12 inches deep or to the extent practicable. The existence of drainage tile lines or underground utilities may necessitate less ripping depth. The disturbed area shall then be disked.
- B. All ripping and disking shall be done at a time when the soil is dry enough for normal tillage operations to occur on Cropland adjacent to the Facility.
- C. The Facility Owner shall restore all rutted land to a condition as close as possible to its original condition upon Deconstruction, unless necessary earlier as determined by the Landowner.
- D. If there is any dispute between the Landowner and the Facility Owner as to what areas need to be ripped/disked or the depth at which compacted areas should be ripped/disked, the appropriate County SWCD's opinion shall be considered by the Facility Owner and the Landowner.

## **9. Construction During Wet Weather**

Except as provided below, construction activities are not allowed on agricultural land during times when normal farming operations, such as plowing, disking, planting or harvesting, cannot take place due to excessively wet soils. With input from the landowner, wet weather conditions may be determined on a field by field basis.

- A. Construction activities on prepared surfaces, surfaces where topsoil and subsoil have been removed, heavily compacted in preparation, or otherwise stabilized (e.g. through cement mixing) may occur at the discretion of the Facility Owner in wet weather conditions.

- B. Construction activities on unprepared surfaces will be done only when work will not result in rutting which may mix subsoil and topsoil. Determination as to the potential of subsoil and topsoil mixing will be made in consultation with the underlying Landowner, or, if approved by the Landowner, his/her designated tenant or designee.

#### **10. Prevention of Soil Erosion**

- A. The Facility Owner shall work with Landowners and create and follow a SWPPP to prevent excessive erosion on land that has been disturbed by Construction or Deconstruction of a Facility.
- B. If the Landowner and Facility Owner cannot agree upon a reasonable method to control erosion on the Landowner's property, the Facility Owner shall consider the recommendations of the appropriate County SWCD to resolve the disagreement.
- C. The Facility Owner may, per the requirements of the project SWPPP and in consultation with the Landowner, seed appropriate vegetation around all panels and other facility components to prevent erosion. The Facility Owner must utilize Best Efforts to ensure that all seed mixes will be as free of any noxious weed seeds as possible. The Facility Owner shall consult with the Landowner regarding appropriate varieties to seed.

#### **11. Repair of Damaged Soil Conservation Practices**

Consultation with the appropriate County SWCD by the Facility Owner shall be carried out to determine if there are soil conservation practices (such as terraces, grassed waterways, etc.) that will be damaged by the Construction and/or Deconstruction of the Facility. Those conservation practices shall be restored to their preconstruction condition as close as reasonably practicable following Deconstruction in accordance with USDA NRCS technical standards. All repair costs shall be the responsibility of the Facility Owner.

#### **12. Compensation for Damages to Private Property**

The Facility Owner shall reasonably compensate Landowners for damages caused by the Facility Owner. Damage to Agricultural Land shall be reimbursed to the Landowner as prescribed in the applicable Underlying Agreement.

#### **13. Clearing of Trees and Brush**

- A. If trees are to be removed for the Construction or Deconstruction of a Facility, the Facility Owner shall consult with the Landowner to determine if there are trees of commercial or other value to the Landowner.
- B. If there are trees of commercial or other value to the Landowner, the Facility Owner shall allow the Landowner the right to retain ownership of the trees to be removed and the disposition of the removed trees shall be negotiated prior to the commencement of land clearing.

#### **14. Access Roads**

- A. To the extent practicable, access roads shall be designed to not impede surface drainage and shall be built to minimize soil erosion on or near the access roads.

- B. Access roads may be left intact during Construction, operation or Deconstruction through mutual agreement of the Landowner and the Facility Owner unless otherwise restricted by federal, state, or local regulations.
- C. If the access roads are removed, Best Efforts shall be expended to assure that the land shall be restored to equivalent condition(s) as existed prior to their construction, or as otherwise agreed to by the Facility Owner and the Landowner. All access roads that are removed shall be ripped to a depth of 18 inches. All ripping shall be performed consistent with Section 8.

## **15. Weed/Vegetation Control**

- A. The Facility Owner shall provide for weed control in a manner that prevents the spread of weeds. Chemical control, if used, shall be done by an appropriately licensed pesticide applicator.
- B. The Facility Owner shall be responsible for the reimbursement of all reasonable costs incurred by owners of agricultural land where it has been determined by the appropriate state or county entity that weeds have spread from the Facility to their property. Reimbursement is contingent upon written notice to the Facility Owner. Facility Owner shall reimburse the property owner within 45 days after notice is received.
- C. The Facility Owner shall ensure that all vegetation growing within the perimeter of the Facility is properly and appropriately maintained. Maintenance may include, but not be limited to, mowing, trimming, chemical control, or the use of livestock as agreed to by the Landowner.
- D. The Deconstruction plans must include provisions for the removal of all weed control equipment used in the Facility, including weed-control fabrics or other ground covers.

## **16. Indemnification of Landowners**

The Facility Owner shall indemnify all Landowners, their heirs, successors, legal representatives, and assigns from and against all claims, injuries, suits, damages, costs, losses, and reasonable expenses resulting from or arising out of the Battery Energy Storage Facility, including Construction and Deconstruction thereof, and also including damage to such Facility or any of its appurtenances, except where claims, injuries, suits, damages, costs, losses, and expenses are caused by the negligence or intentional acts, or willful omissions of such Landowners, and/or the Landowners heirs, successors, legal representatives, and assigns.

## **17. Deconstruction Plans and Financial Assurance of Battery Energy Storage Facilities**

- A. Deconstruction of a Facility shall include the removal/disposition of all solar related equipment/facilities, including the following utilized for operation of the Facility and located on Landowner property:
  - 1. Solar panels, cells and modules;
  - 2. Solar panel mounts and racking, including any helical piles, ground screws, ballasts, or other anchoring systems;
  - 3. Solar panel foundations, if used (to depth of 5 feet);

4. Transformers, inverters, energy storage facilities, or substations, including all components and foundations; however, Underground Cables at a depth of 5 feet or greater may be left in place;
  5. Overhead collection system components;
  6. Operations/maintenance buildings, spare parts buildings and substation/switchinggear buildings unless otherwise agreed to by the Landowner;
  7. Access Road(s) unless Landowner requests in writing that the access road is to remain;
  8. Operation/maintenance yard/staging area unless otherwise agreed to by the Landowner; and
  9. Debris and litter generated by Deconstruction and Deconstruction crews.
- B. The Facility Owner shall, at its expense, complete Deconstruction of a Facility within twelve (12) months after the end of the useful life of the Facility.
- C. During the County permit process, or if none, then prior to the commencement of construction, the Facility Owner shall file with the County a Deconstruction Plan. The Facility Owner shall file an updated Deconstruction Plan with the County on or before the end of the tenth year of commercial operation.
- D. The Facility Owner shall provide the County with Financial Assurance to cover the estimated costs of Deconstruction of the Facility. Provision of this Financial Assurance shall be phased in over the first 11 years of the Project's operation as follows:
1. On or before the first anniversary of the Commercial Operation Date, the Facility Owner shall provide the County with Financial Assurance to cover ten (10) percent of the estimated costs of Deconstruction of the Facility as determined in the Deconstruction Plan.
  2. On or before the sixth anniversary of the Commercial Operation Date, the Facility Owner shall provide the County with Financial Assurance to cover fifty (50) percent of the estimated costs of Deconstruction of the Facility as determined in the Deconstruction Plan.
  3. On or before the eleventh anniversary of the Commercial Operation Date, the Facility Owner shall provide the County with Financial Assurance to cover one hundred (100) percent of the estimated costs of Deconstruction of the Facility as determined in the updated Deconstruction Plan provided during the tenth year of commercial operation.

The Financial Assurance shall not release the surety from liability until the Financial Assurance is replaced. The salvage value of the Facility may only be used to reduce the estimated costs of Deconstruction if the County agrees that all interests in the salvage value are subordinate or have been subordinated to that of the County if Abandonment occurs.

- E. The County may, but is not required to, reevaluate the estimated costs of Deconstruction of any Facility after the tenth anniversary, and every five years thereafter, of the Commercial Operation Date. Based on any reevaluation, the County may require changes in the level of Financial Assurance used to calculate the phased Financial Assurance levels described in Section 17.D. required from the Facility Owner. If the County is unable to its satisfaction to perform the investigations necessary to approve the Deconstruction Plan filed by the Facility Owner, then the County and Facility may mutually agree on the selection of a Professional Engineer independent of the Facility Owner to conduct any necessary investigations. The Facility Owner shall be responsible for the cost of any such investigations.
- F. Upon Abandonment, the County may take all appropriate actions for Deconstruction including drawing upon the Financial Assurance.

### Concurrence of the Parties to this AIMA

The Illinois Department of Agriculture and \_\_\_\_\_ concur that this AIMA is the complete AIMA governing the mitigation of agricultural impacts that may result from the Construction and Deconstruction of the solar farm project in \_\_\_\_\_ County within the State of Illinois.

The effective date of this AIMA commences on the date of execution.

STATE OF ILLINOIS  
DEPARTMENT OF AGRICULTURE

\_\_\_\_\_

By: Jerry Costello II, Director

\_\_\_\_\_  
By \_\_\_\_\_

\_\_\_\_\_  
By Tess Feagans, General Counsel

\_\_\_\_\_  
Address

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