

RESOLUTION NO. 2023-R-22

RESOLUTION ESTABLISHING GUIDELINES FOR SOLAR ENERGY FACILITIES  
WITHIN THE COUNTY LIMITS OF SCHUYLER COUNTY, ILLINOIS

**WHEREAS**, Schuyler County is a unit of local government exercising power under the Illinois Counties Code (55 ILCS 5/1-100, *et seq.*); and

**WHEREAS**, Illinois law grants the Schuyler County Board the authority to establish and maintain guidelines for the regulation of solar energy facilities within the County limits; and

**WHEREAS**, the County Board desires to set the standards and guidelines pursuant to statute for a non-zoned county within the statute limitations of the State of Illinois.

**NOW, THEREFORE, BE IT RESOLVED** by the County Board of Schuyler County, effective May 11, 2023, the guidelines for Solar Energy Facilities shall be as follows:

DEFINITIONS

- A. "Applicant" means the entity who submits to the County an application for the siting and operation of any Commercial Solar Energy Facility or Substation. All references to Applicant in this Ordinance shall include Applicant's successors-in-interest and assigns, which includes a Commercial Solar Energy Facility Permittee (as defined herein ),
- B. "Commercial Operation Date" means the calendar date on which the Commercial Solar Energy Facility produces power for commercial sale, not including test power.
- C. "Commercial Solar Energy Facility" or "Commercial Solar Energy 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.
- D. "Commercial Solar Energy Building Permit" means a permit necessary for the commencement of work performed toward the construction, erection or installation of an approved Commercial Solar Energy Facility, Substation, Supporting Facilities, or operations and maintenance building in connection with a Commercial Solar Energy Facility. A Commercial Solar Energy Building Permit may be issued by the county after a Commercial Solar Energy Facility has obtained a Special Use Permit from the County Board and the Energy Facilities Committee determines that all conditions, if any, have been satisfied that are imposed by the Special Use Permit. The Commercial Solar Energy Building Permit shall require the Applicant to deliver a written "Notice to Proceed" for the Commercial Solar Energy Facility to the county prior to commencement of construction of the Commercial Solar Energy 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 Commercial Solar Energy Facility.

- E. "Commercial Solar Energy Facility Permittee" means an Applicant who applies for and receives a Special Use Permit under this Ordinance for the siting and operation of any Commercial Solar Energy Facility or Substation. All references to a Commercial Solar Energy Facility Permittee in this Ordinance shall include a Commercial Solar Energy Facility Permittee's successors-in-interest and assigns.
- F. "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.
- G. "Notice to Proceed" means a written document, named as such, stating that the Applicant expresses an intent to commence construction activities on a Commercial Solar Energy Facility and identifying the date on which the construction activities are scheduled to commence.
- H. "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 Commercial Solar Energy Facility is filed with the county.
- I. "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 Commercial Solar Energy Facility is filed with the county: a school, place of worship, day care facility, public library, or community center.
- J. "Operator" means the person or entity responsible for the day-to-day operation and maintenance of a Commercial Solar Energy 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.
- K. "Owner" means the person or entity or entities with an equity interest in a Commercial Solar Energy 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 Commercial Solar Energy Facility (unless the property owner has an equity interest in a Commercial Solar Energy Facility); or (ii) any person holding a security interest in a Commercial Solar Energy 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 Commercial Solar Energy Facility at the earliest practicable date. This definition includes the definition of Facility Owner as defined in 55 ILCS 5/5-12020.

- L. "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 Commercial Solar Energy Facility or supporting facilities. "Participating property" also includes real property that is owned by a facility owner for the purpose of constructing a Commercial Solar Energy Facility or supporting facilities.
- M. "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 Commercial Solar Energy Facility is filed with the county.
- N. "Professional Engineer" means a qualified individual who is licensed as a professional engineer in any state in the United States. 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.
- O. "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.
- P. "Public Conservation Lands" means land owned in fee title by County, state or federal agencies and managed specifically for conservation purposes, including but not limited to County, state and federal parks, state and federal wildlife management areas, state scientific and natural areas, and federal wildlife refuges 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.
- P. "Special Use Permit" means a permit approved by the County Board, 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 County Board.

- Q. "Substation" means the apparatus that collects and connects the electrical collection system of the Commercial Solar Energy Facility and increases the voltage for connection with the utility's transmission lines.
- R. "Supporting Facilities" means the transmission lines, substations, access roads, storage containers, and equipment associated with the generation and storage of electricity by the Commercial Solar Energy Facility.

#### APPLICABILITY

- A. This Ordinance governs the siting of Commercial Solar Energy Facilities and Substations that generate electricity to be sold to wholesale or retail markets.

#### PROHIBITION

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

#### SPECIAL USE PERMIT APPLICATION

- B. To obtain siting approval, the Applicant must first submit a Special Use Permit application to the County.
- C. The Special Use Permit application shall contain or be accompanied by the following information:
  - 1. A Commercial Solar Energy Facility Summary, including, to the extent available: (a) a general description of the project, including (i) its approximate overall name plate generating capacity, (ii) the potential equipment manufacturer(s), (iii) type(s) of solar panels, cells and modules, (iv) the number of solar panels, cells and modules, (v) the maximum height of the solar panels at full tilt, (vi) the number of Substations, (vii) a project site plan, project phasing plan and project construction timeline plan, and (viii) the general location of the project; and (b) a description of the Applicant, Owner and Operator, including their respective business structures;
  - 2. 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;

3. A site plan for the Commercial Solar Energy Facility showing the planned location of solar panels, including legal descriptions for each site, 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 to the Substation(s), 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 Commercial Solar Energy Facility, and the layout of all structures within the geographical boundaries of any applicable setback;
4. A proposed Decommissioning Plan for the Commercial Solar Energy Facility;
5. All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance;
6. An Agricultural Impact Mitigation Agreement (AIMA) executed between the Applicant and the Illinois Department of Agriculture;
7. The topographic map shall include the Commercial Solar Energy Facility site and the surrounding area;
8. Any other information normally required by the County as part of its permitting requirements for siting buildings or other structures;
9. 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 County Recorder of Deeds Office confirming that the waiver was recorded against title to the affected real property.
10. Results and recommendations from the Illinois Dept. of Natural Resources obtained through the Ecological Compliance Assessment Tool or a comparable successor tool.
11. Results of any United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with any applicable United States Fish and Wildlife Service's solar wildlife guidelines.

12. Information demonstrating that the Commercial Solar Energy Facility will avoid protected lands.
13. Any other information requested by the County or the County consultants that is necessary to evaluate the siting application and operation of the Commercial Solar Energy Facility and to demonstrate that the Commercial Solar Energy Facility meets each of the regulations in this Ordinance, including the Special Use Permit standards set forth below.

D. Material changes to the application are not permitted once the notice of the public hearing has been published, unless requested or permitted by the County; and

E. The Applicant shall submit twelve (12) copies of the Special Use Permit application to the County, and at least one (1) copy in electronic format.

## DESIGN AND INSTALLATION

### A Design Safety Certification

1. Commercial Solar Energy Facilities 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 solar panels, cells and modules; solar panel mounts and racking, including any helical piles, ground screws, ballasts, or other anchoring systems shall be new equipment commercially available; no used or experimental equipment shall be used without the approval of a variance by the County Board.
2. Following the granting of siting approval under this Ordinance, a structural engineer shall certify, as part of the Commercial Solar Energy Facility Building Permit application process that such design of the Commercial Solar Energy Facility is within accepted professional standards, given local soil, subsurface and climate conditions.

### B. Electrical Components

All electrical components of the Commercial Solar Energy Facility shall conform to applicable local, state, and national codes, and relevant national and international standards (e.g. ANSI and International Electrical Commission).

C. Height

- 1.No component of a solar panel, cell or modules may exceed twenty (20) feet in height above the ground at full tilt.

D. Aesthetics and Lighting

- 1.Vegetative Screening: A vegetative screen shall be provided for any part of the Commercial Solar Energy Facility that is visible to Non-participating Residence. 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 screening shall include a continuous line of native evergreen foliage and/or native shrubs and/or native trees and/or any existing wooded area and/or plantings of tall native grasses and other native flowering plants.
- 2.Lighting: If lighting is provided at the Commercial Solar Energy Facility, 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 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.

E. Fencing

- 1.A fence of at least six (6) feet and not more than twenty-five (25) feet in height shall enclose and secure the Commercial Solar Energy Facility.

F. Warnings

- 1.A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and Substations.
- 2.Visible, reflective, colored objects, such as flags, plastic sleeves, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of fifteen (15) feet from the ground.

G. Setback Requirements

1. The Commercial Solar Energy Facility shall be sited as follows, with setback distances measured from the nearest edge of any component of the facility:
  - a. Occupied Community Buildings and Dwellings on Nonparticipating Properties: one hundred fifty (150) feet to the nearest point on the outside wall of the structure.
  - b. Boundary Lines of Participating Property: None.
  - c. Boundary Lines of Nonparticipating Property: fifty (50) feet to the nearest point on the property line of the nonparticipating property.
  - d. Public Road Rights-of-Way: fifty (50) feet the nearest edge of the public road right-of-way.
2. The setback requirements for Nonparticipating properties may be waived by the written consent of the owner(s) of each affected Nonparticipating property.

*The Applicant does not need to obtain a variance from the County upon waiver by the property owner of any of the above setback requirements. Any waiver of any of the above setback requirements shall run with the land and be recorded with the Recorder of Deeds of the County.*

#### H. Compliance with Additional Regulations

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 Commercial Solar Energy Facility or Substation parts and/or equipment for construction, operation, or maintenance of the Commercial Solar Energy Facility or Substation(s), 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 the County, municipality, township or village, the Applicant shall:
  - a. Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage; 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, the 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 Community Solar Energy Facility 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 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.
- c. Enter into a road use agreement with the County and each affected Road District that includes the following provisions, at a minimum:
  - i. Project layout map;
  - ii. Transportation impact analysis;
  - iii. Pre-construction plans'
  - iv. Project traffic map;
  - v. Project scope of repairs;
  - vi. Post-construction repairs;
  - vii. Insurance;
  - viii. Financial Security in forms and amounts acceptable to the County;

The road use agreement shall require Applicant to be responsible for the reasonable cost of improving roads used to construct Commercial Solar Energy Facility and the reasonable cost of repairing roads used by the facility owner during construction of the Community Solar Energy Facility so that those roads are in a condition that is safe for the driving public after the completion of the Commercial Solar Energy Facility construction. Roadways improved in preparation for and during the construction of the Community Solar Energy Facility 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.

3. All repairs and improvements to public roads and roadway appurtenances shall be subject to the prior approval of the County before being made and shall also be subject to inspection and acceptance by the County after such repairs and improvements are completed. The County's road use agreement, and any further agreements contemplated therein, regarding the maintenance and repair of public roads and highways, must be approved by the County Board prior to the Board's approval of any Commercial Solar Energy Facility Building Permit applications related to the construction of the proposed Commercial Solar Energy Facility.

#### J. Site Assessment

To ensure that the subsurface conditions of the site will provide proper support for the Commercial Solar Energy Facility and soil restoration, the Applicant, at its expense, shall provide soil and geotechnical boring reports to the County Engineer as part of its Commercial Solar Energy Facility Building Permit. The Applicant shall follow the guidelines for Conservation Practices Impact Mitigation submitted by the County Soil and Water Conservation District (or equivalent regulatory agency). Also, the Applicant shall submit grading plans for the proposed Substations for review and comment by the County Soil and Water Conservation District prior to the issuance of any Commercial Solar Energy Facility Building Permit for the construction of said substations.

#### K. Noise Levels

Noise levels from Commercial Solar Energy Facilities shall be in compliance with applicable Illinois Pollution Control Board (IPCB) regulations. The Applicant shall submit manufacturer's sound power level characteristics and other relevant data regarding noise characteristics necessary for a competent noise analysis. The Applicant, through the use of a qualified professional, shall appropriately demonstrate compliance with the applicable noise requirements in its Special Use Permit application.

#### 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 Commercial Solar Energy Facility 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 County as part of the Special Use Permit application.

#### O. As-Built Map and Plans

Within sixty (60) calendar days of completion of construction of the Commercial Solar Energy Facility, the Applicant or Operator shall deliver "as-built" maps, site plan and engineering plans

for the Commercial Solar Energy Facility that have been signed and stamped by a Professional Engineer and a licensed surveyor.

**P. Engineer's Certificate**

The Commercial Solar Energy Facility engineer's certificate shall be completed by a structural engineer registered in the State of Illinois or by a Professional Engineer with a certification from a structural engineer registered 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 Commercial Solar Energy Facility engineer's certificate shall be a public record and shall be submitted as part of the Special Use Permit application.

**Q. Conformance with Approved Application and Plans**

The Applicant shall construct and operate the Commercial Solar Energy Facility in substantial conformance with the construction plans contained in a County- approved submitted 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.

**R. 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 structural engineer) for the relevant discipline.
2. The County may retain a qualified, independent code inspector or professional engineer both to make appropriate inspections of the Commercial Solar Energy Facility during and after construction and to consult with the County to confirm that the construction, substantial repair, replacement, repowering and/or decommissioning of the Commercial Solar Energy Facility is performed in compliance with applicable electrical and building codes. The cost and fees so incurred by the County in retaining said inspector or engineer shall be promptly reimbursed by the Applicant of the Commercial Solar Energy Facility.
3. 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 Commercial Solar Energy 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.
4. The Applicant shall provide an executed road use agreement between the Applicant and the appropriate governing road and highway

jurisdictions or the Illinois Department of Transportation, to the County showing approved entrances prior to the issuance of any Commercial Solar Energy Facility Building Permit.

## OPERATION

### A. Maintenance

1. Annual Report. The Applicant must submit, on an annual basis on the anniversary date of the Special Use Permit application, an operation and maintenance report to the County. The report shall contain the following information: (i) a general description of any physical repairs, replacements or modification(s) to the Commercial Solar Energy Facility 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 Commercial Solar Energy Facility and the resolution of such complaints; (iii) calls for emergency services; (iv) status of liability insurance; and (v) a general summary of service calls to the Commercial Solar Energy Facility. Failure to provide the annual report shall be considered a material violation of this Ordinance and subject to Article XI (Remedies).
2. Re-Certification. Any physical modification to the Commercial Solar Energy Facility that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification under Section VI(A)(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 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 Commercial Solar Energy 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 tower site may evaluate and coordinate their emergency response plans with the Applicant of the Commercial Solar Energy Facility.

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 Commercial Solar Energy Facility.
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 Commercial Solar Energy Facility 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 Commercial Solar Energy Facility representative or his/her contact information shall be promptly communicated to the County. The content of the emergency response plan, including the 24-hour contact information, shall be reviewed and updated on an annually basis.
4. Nothing in this section shall alleviate the need to comply with all other applicable life safety, fire / emergency laws and regulations.

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

1. All solid wastes related to the construction, operation and maintenance of the Commercial Solar Energy Facility 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 Commercial Solar Energy Facility shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.
3. The Commercial Solar Energy Facility shall comply with existing septic and well regulations as required by the County Health Department and the State of Illinois Department of Public Health.

#### D. Signage

Signage regulations are to be consistent with ANSI standards. A reasonably visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations, and at all entrances to the Commercial Solar Energy Facility.

#### E. Drainage Systems

The Applicant, at its expense, will repair, in a prompt and timely manner, 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 Commercial Solar Energy Facility in accordance with the Agricultural Impact Mitigation Agreement.

#### LIABILITY INSURANCE AND INDEMNIFICATION

Commencing with the issuance of a Commercial Solar Energy Facility Building Permit, the Applicant 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 in the aggregate; and, shall further maintain the above-stated lines of insurance from delivery of the Notice to Proceed by the Applicant for the Commercial Solar Energy Facility, in 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 Commercial Solar Energy Facility. The Applicant shall file the original certificate of insurance upon commencement of project construction prior to the issuance of a Commercial Solar Energy Facility Building Permit, corresponding policies and endorsements to be provided within sixty (60) days of issuance, and at each subsequent renewal, at least annually thereafter.

The Applicant shall defend, indemnify and hold harmless the 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 Commercial Solar Energy Facility 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, 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 the County's other indemnification rights available under the law.

#### DECOMMISSIONING AND SITE RECLAMATION PLAN REQUIRED

The Applicant must formulate a Decommissioning and Site Reclamation Plan to ensure that the Commercial Solar Energy Facility is properly decommissioned. The Decommissioning and Site Reclamation Plan shall be binding upon the Applicant and its successors-in-interest and assigns and shall apply to all participating parcels in the Commercial Solar Energy Facility, irrespective of the owner of title to such parcels. A signed Decommissioning and Site Reclamation Plan must be submitted to the county prior to the granting of the Special Use Permit. The Applicant shall ensure that the Commercial Solar Energy Facility is properly decommissioned within twelve (12) months of the end of the Commercial Solar Energy Facility life. The Applicant shall include removal of all physical material of the project improvements to a depth of sixty (60) inches

beneath the soil surface and the restoration of the area in accordance with the Agricultural Impact Mitigation Agreement.

A. A Decommissioning and Site Reclamation Plan shall be prepared by an independent Illinois Certified Professional Engineer and shall include:

1. A description of the methodology and cost to remove all above ground and below ground Commercial Solar Energy Facility equipment of the approved Special Use Permit;
2. Provisions for the removal of all above ground and below ground Commercial Solar Energy Facility equipment of the approved Special Use Permit;
3. Methodology and cost to restore all areas used for construction, operation and access to a condition equivalent to the land prior to the Commercial Solar Energy Facility construction;
4. A work schedule and a permit list necessary to accomplish the required work;
5. Methodology to identify and manage any hazardous or special materials.
6. Submission of a draft form of Financial Security to the County in the form of a surety bond (performance and payment bond), irrevocable letter of credit or a cash escrow account that names County as the beneficiary, or other type of Financial Security that is approved by the County. If an irrevocable letter of credit or surety bond (performance and payment bond) is selected, the original of the irrevocable letter of credit or surety bond shall be held by the County. If a cash escrow is selected, the cash escrow shall be held and managed by an independent third party (e.g., escrow agent or Title Company) on behalf of the County, subject to escrow instructions that incorporate the applicable decommissioning and repair / replacement / restoration obligations of this Agreement as executed by the County and the Applicant.
7. The amount of Financial Security shall be equal to the total cost of all decommissioning and restoration work minus the salvage value of the Commercial Solar Energy Facility equipment. To determine that amount, the Applicant shall: (a) obtain bid specifications provided by a professional structural engineer; (b) request estimates from construction / demolition companies capable of completing the decommissioning of the Commercial Solar Energy Facility; and (c) certification of the selected estimate by a professional structural engineer. The County engineer, or an independent engineer of the County's choosing, will review all estimates and make a

recommendation to the County Board for an acceptable estimate. The County reserves the right to pursue other estimates. All costs to secure the estimates will be funded by the Applicant.

8. A provision that the terms of the Decommissioning and Site Reclamation Plan shall be binding upon the Applicant including any of its successors-in-interest and assigns;
9. Confirmation by affidavit that the obligation to decommission the Commercial Solar Energy Facility is included in the lease agreement for every parcel included in the Special Use Permit application. A list of all landowners should be kept current, and affidavits shall be secured from Applicant and landowners stating their financial understanding;
10. A provision that allows for the County to have the legal right to transfer applicable Commercial Solar Energy Facility material to salvage firms;
11. Identification of and procedures for the County to access the Financial Assurances; and
12. A provision that the County shall have access to the site, pursuant to reasonable notice to affect or complete decommissioning. A portion of the Decommission Security will be required to be held for one (1) year past the decommissioning to settle any potential disputes.

B. Provisions triggering the decommissioning of any portion of the Commercial Solar Energy Facility:

1. If Applicant has not paid landowners an amount owed in accordance with their lease agreements for a period of six (6) consecutive months.
2. The Applicant dissolves or abandons the Commercial Solar Energy Facility without first transferring the Commercial Solar Energy Facility to a successor-in-interest or assign.
3. If any part of the Commercial Solar Energy Facility falls into disrepair or creates any other health and safety issue.

C. Provisions for the removal of structures, debris and cabling; both above and below the soil surface:

1. Items required to be removed include but are not limited to: solar panels, cells and modules; solar panel mounts and racking, including any helical piles, ground screws, ballasts, or other anchoring systems; solar panel



foundations, if used, to a depth of 60 inches; transformers, inverters, energy storage facilities, or substations; overhead collection system components; operations/maintenance buildings, spare parts buildings and substations/switching gear buildings; access roads; operation/maintenance yard/staging area; debris and litter; underground cables, fencing, access roads and culverts. A landowner must sign an agreement if they wish for operations/maintenance buildings, spare parts buildings and substations/switching gear buildings; operation/maintenance yard/staging area; access roads or culverts to remain.

D. Provisions for the restoration of soil and vegetation:

1. All affected areas shall be inspected, thoroughly cleaned and all construction related debris shall be removed.
2. All affected areas must be remediated pursuant to the terms of the Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture.
3. Items required to be restored include but are not limited to: windbreaks, waterways, site grading, drainage tile systems and topsoil to former productive levels.
  - a. In work areas involving decommission from widening access roads or any other work areas, the topsoil must be first removed, identified and stored separate from other excavated material for later replacement as applicable.
  - b. The 60-inch below-surface excavation area shall be filled with clean sub-grade material of similar quality to that in the immediate surrounding area.
  - c. All sub-grade material will be compacted to a density similar to surrounding grade material.
  - d. All unexcavated areas compacted by equipment used in decommissioning shall be de-compacted in a manner that adequately restores the topsoil and sub-grade material to the proper density consistent and compatible with the surrounding area.
  - e. Where possible, the topsoil shall be replaced to its original depth and surface contours.

- f. Any topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of the effected site.
  4. Items required to be repaired after decommissioning include but are not limited to: roads, bridges and culverts.
  5. An independent drainage engineer shall be present to ensure drainage tiles, waterways, culverts, etc. are repaired as work progresses.
  6. A soil erosion control plan shall be approved by the County Soil and Water Conservation District.
  7. All applicable storm water management, floodplain and other surface water rules, regulations and ordinances shall be followed.
- E. Estimating the costs of decommissioning:
1. Costs shall include but not be limited to engineering fees, legal fees, accounting fees, insurance costs, decommissioning and site restoration minus the salvage value of the Commercial Solar Energy Facility.
  2. Adjustments to the financial assurance amount that reflect changes in the decommissioning costs shall be submitted every five (5) years after the initial ten (10) years of operation and shall be adjusted for inflation and other factors. The amount of the Decommission Security shall be adjusted accordingly within six (6) months of receiving the updated information as determined by an Illinois professional engineer. Failure to provide financial assurance as outlined herein shall be considered a cessation of operation.
- F. Financial assurance:
1. Financial Security shall be phased in and provided to the County over the first eleven (11) years of the project as follows:
    - a. On or before the first anniversary of the Commercial Operation Date, the Applicant shall provide the County with Financial Security to cover ten (10) percent of the estimated costs of decommissioning the Commercial Solar Energy Facility as determined in the Decommissioning and Site Reclamation Plan.
    - b. On or before the sixth anniversary of the Commercial Operation Date, the Applicant shall provide the County with Financial Security to cover fifty (50) percent of the estimated costs of decommissioning the Commercial Solar Energy Facility as

determined in the Decommissioning and Site Reclamation Plan.

- c. On or before the eleventh anniversary of the Commercial Operation Date, the Applicant shall provide the County with Financial Security to cover one hundred (100) percent of the estimated costs of decommissioning the Commercial Solar Energy Facility as determined in the Decommissioning and Site Reclamation Plan.

2. The County shall have immediate access, upon written notice to the Applicant, to use the Decommission Security if:

- a. After abandonment of the Commercial Solar Energy Facility, the Applicant, upon a reasonable determination by the County Board, fails to address a health and safety issue in a timely manner; or
- b. The Applicant fails to decommission the abandoned Commercial Solar Energy Facility in accordance with the Decommissioning and Site Reclamation Plan.

3. If possible for the type of Decommission Security provided, the Applicant shall grant perfected security in the Decommission Security by use of a control agreement establishing the County as an owner of record pursuant to the Secured Transit Article of the Uniform Commercial Code, 810 ILCS 9/ et seq.

4. The County Board or its escrow agent shall release the Decommission Security when the Applicant has demonstrated and the County concurs that decommissioning has been satisfactorily completed, or upon written approval of the County to implement the decommissioning plan. Ten percent (10%) of the Decommission Security shall be retained one (1) year past the date to settle any outstanding concerns.

5. Any interest accrued on the Decommission Security that is over and above the total value as determined by the Illinois professional structural engineer shall go to the Applicant.

6. The Applicant shall identify procedures for the County to assess the financial assurances, particularly if it is determined that there is a health and/or safety issue with the Commercial Solar Energy Facility and the principal company fails to adequately respond as reasonably determined by the County Board.

7. The County shall be listed as a debtor in connection with any proceeding in insolvency or bankruptcy but shall not be responsible for any claims against the Applicant.
8. The Applicant shall agree that the obligations and liabilities under a Special Use Permit shall be binding upon the Applicant (which, for the avoidance of doubt, includes its successors-in-interest and assignees) and the Operator. The Applicant further shall agree that the sale, assignment in fact or at law, or other transfer of the Applicant's financial interest in the Commercial Solar Energy Facility shall in no way effect or change the Applicant's obligation to continue to comply with the terms, covenants and obligations of a Special Use Permit unless such successor-in-interest or assignee agrees to assume all obligations of the Special Use Permit, including but not limited to the decommissioning obligations associated with the Commercial Solar Energy Facility.
9. The County and its authorized representatives have the right of entry onto the Commercial Solar Energy Facility premises for the purpose of inspecting the methods of reclamation or for performing actual reclamation if necessary.

## REMEDIES

- F. 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 County Board.
- G. Prior to implementation of the applicable County procedures for the resolution of default(s), the County Board 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 pursue a cure, then the Applicant shall receive an additional sixty (60) days to continue to pursue the cure before the 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 County ordinance provisions addressing the resolution of such default(s) shall govern.

## FEE SCHEDULE AND PERMITTING PROCESSES

### 1. Application Fees

- a. Prior to processing any Application for a Commercial Solar Energy Facility, the Applicant must submit a certified check to the County for the Application Fee of \$3000.00. 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, including but not limited to committee costs and document storage fees.
- b. Should the actual costs to the County exceed the submitted Application Fee, the Applicant shall be responsible for those additional costs and shall remit additional funds to the County within 15 days of receipt of a request from the County. No hearings on an Application shall be conducted nor final decisions rendered on an Application if there are Application fees due to the County.
- c. Any unused amounts of the Application Fee shall be refunded to the Applicant within six months of the County Board rendering a final decision on the matter, unless any pending litigation, disputes or negotiations involving the County exist regarding the Commercial Solar Energy 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

- a. After Application approval, Applicant shall be required to obtain a special use building permit in accordance with the terms of this Ordinance. The fee for said Special Use Building Permit shall be \$500.00 per mW.

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

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

## REVIEW AND CONSIDERATION OF SPECIAL USE PERMIT APPLICATION

- A. The Energy Facilities Committee shall review the application for completeness with the requirements of this Ordinance in a preliminary investigation.

- B. The Committee shall include at least 2 County Board members, the Director of the Highway Department, the County Clerk, The State's Attorney, and any other member as deemed appropriate by the current sitting Chair of the County Board.
- C. Upon completion of this preliminary investigation, the Energy Facilities Committee shall make a recommendation to the County Board at large, and a vote shall be taken to approve the Special Use Permit, with a standard majority vote needed for passage.
- D. The Energy Facilities Committee may, at their own discretion, request the applicant either through in-person attendance or virtually submit themselves to an interview process by which the Committee may request clarification or further information, at any time prior to final approval.

#### PERMIT RESTRCITIONS

- 1. Special Use Permit Conditions and Restrictions. The County Board may stipulate conditions, guarantees and restrictions, upon the establishment, location, construction, maintenance, and operation of the Commercial Solar Energy Facility as are deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements of this Ordinance.
- 2. Revocation.
  - a. In any case where a Special Use Permit has been approved for a Commercial Solar Energy Facility, the Applicant shall apply for a Commercial Solar Energy Facility Building Permit from the 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 Commercial Solar Energy Facility Building Permit from the 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 County Board, the Special Use Permit authorizing the construction and operation of the Commercial Solar Energy Facility 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 County Board, 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 Commercial Solar Energy Facility or the Commercial Solar Energy Facility ceases to operate for more than twelve (12) consecutive months for any reason.
  - c. Subject to the provisions of Article XI (Remedies), a Special Use Permit may be revoked by the County Board if the Commercial Solar Energy Facility is not constructed, installed and/or operated in substantial conformance with the County-approved Project plans, the regulations of this Ordinance and the stipulated Special Use Permit conditions and restrictions.
3. Transferability; Owner or Commercial Solar Energy Facility Permittee.  
The Applicant shall provide written notification to the County Board at least thirty (30) days prior to any change in ownership of a Commercial Solar Energy Facility of any such change in ownership. The phrase "change in ownership of a Commercial Solar Energy Facility" includes any kind of assignment, sale; lease, transfer or other conveyance of ownership or operating control of the Applicant, the Commercial Solar Energy Facility 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 County, state and federal laws.
4. Modification. Any modification of a Commercial Solar Energy Facility that alters or changes the essential character or operation of the Commercial Solar Energy Facility 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 Commercial Solar Energy Facility.
5. Permit Effective Date: The Special Use Permit shall become effective upon approval of the ordinance by the County Board.

#### V. 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 Schuyler County. These regulations are not intended to repeal, abrogate, annul or in any manner interfere with existing regulations or laws of the County nor conflict with any statutes of the State of Illinois.

#### VI. 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.

VII. EFFECTIVE DATE

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

**PASSED, APPROVED and ADOPTED**, by the County Board of Schuyler County this 14 day of August, A.D. 2023.

	Yes	No	Absent
WRIGHT	<u>X</u>		
KETTERING	<u>X</u>		
KORSMEYER	<u>X</u>		
ESTHER	<u>X</u>		
MCCLELLAND	<u>X</u>		
ARMSTRONG	<u>X</u>		
BILLINGSLEY			<u>X</u>


AYES: 6

NAYS: 0

ABSENT: 1



CHET ESTHER,  
Schuyler County Board Chairman

ATTEST:   
MINDY D. GARRETT,  
Schuyler County Clerk