

**Road Use Agreement**

Posey Solar, LLC or its permitted assigns  
Company Name

Posey County Commissioners  
126 E. 3rd Street, #220  
Mount Vernon, IN 47620

\_\_\_\_\_  
Company Address

AND

With a copy to:  
Joseph H. Harrison, Jr., Esq.  
Harrison Law Firm, LLC  
Curtis Building – Suite 205  
915 Main Street  
P.O. Box 3526  
Evansville, IN 47734-3526

\_\_\_\_\_  
Company Phone Number

**ROAD USE AGREEMENT NUMBER 2022 - (to be executed no later than 90 days prior to the start of construction)**

Roads Bonded (with map to identify specified Roads and Haul Routes attached hereto as Exhibit 1):

See Exhibit 2 attached hereto for Roads Bonded

WHEREAS, Posey Solar, LLC, a limited liability company authorized to do business in the State of Indiana (herein after called the “Company”), desires to utilize the Posey County Roads identified on Exhibit 2 attached hereto (collectively the “Roads”) for a length of approximately \_\_\_\_\_ miles to haul “Heavy Equipment” (defined as use of vehicles with a gross vehicle weight in excess of 80,000 lbs. or exceeding 20,000 lbs. per single axle or 34,000 lbs. per tandem axle) and materials necessary to complete the construction of a commercial scale solar project (the “Project”), as well as to utilize the Roads generally with other motor vehicles;

WHEREAS, there is the possibility that the Roads, including, but not limited to the surface, base, drainage ditches, berms, bridges, culverts, drains, public tiles, driveways, and other improvements, may be damaged by the Heavy Equipment that the Company desires to haul over the Roads; and

WHEREAS, Company desires to operate and maintain utility facilities and appurtenances related thereto (collectively, the “Facilities”) in, on, under, over and across the Roads.

NOW THEREFORE, the Company and the Board of Commissioners of Posey County (hereinafter called “Commissioners”) AGREE as follows:

1. The Commissioners grant to the Company the non-exclusive right to use said sections of the Roads for use by licensed motor vehicles, without restriction as to size, weight, and volume of loads, to haul Heavy Equipment and other items or materials to the Project job site except during winter months when chip and seal County Roads shall be restricted to 10 tons (see Haul Routes on Exhibit 1 attached hereto).
2. County agrees that Company may install driveways or entrances from the Roads under a single form of County permit, with such typical detail for an access drive being attached hereto as Exhibit 3.
3. County agrees that Company shall have the right to use Road rights-of-way for transmission, electric and communication poles and lines (above ground or underground) based upon a plan

presented by Company and approved by County. Company shall also be allowed to install underground crossings under a single County permit form subject to compliance with the specifications set forth in this Agreement. The Road right-of-way uses are approved based on this Agreement and do not require further review or bonding when the permit form is submitted.

- a. If needed, when crossing Roads, Company shall cut an “open trench” only on County gravel Roads, but Company must first obtain approval from the County Highway Superintendent or his representative. See Exhibit 4 attached hereto for County standards for open trenching.
- b. If needed when crossing paved Roads, Company may direct bore only on County paved Roads with Road surface restoration and approval per Section 3(d) below.
- c. Company may also install overhead transmission line crossings across the Roads so long as the same are designed, constructed, installed, maintained, operated and removed in accordance with the National Electric Safety Code and other applicable state or federal rules, regulations or guidelines governing the clearance requirements above the Roads.
- d. The Posey County Highway Superintendent or his representative shall have the right to approve Company’s plan for use of the Roads for the Facilities (including a plan for use of Road right-of-way for transmission, electric and communication poles and lines), which approval shall not be unreasonably withheld, conditioned or delayed.
- e. Company’s right to use the Roads for the Facilities shall be irrevocable for the life of the Project. Company further agrees to move or relocate any structures installed under this Agreement at Company’s own expense, should future road improvement necessitate and as determined by the County Highway Superintendent and approved by the Commissioners.
- f. County will execute and deliver on request any and all instruments and documents which may reasonably be requested by Company in order to confirm and assure Company’s rights hereunder.
- g. Any newly constructed access roads shall not impede the flow of water and shall comply with the County drainage ordinance.
- h. At the expense of Company, the County may retain the services of a qualified project inspector and or engineer on behalf of the County for the duration of Project construction and thereafter as necessary. The County shall bill the Company for such services under separate invoice.
- i. Company shall designate a single point of contact who is employed onsite in responsible charge of construction activities. The contact information for this agent shall be provided to the County Highway Superintendent. The point of contact shall be available 24-hours a day in case of emergency. Company shall also provide a secondary point of contact when the primary agent is unavailable.
- j. In the event of issues noted during construction, the Company shall provide the following responses:

- i. Emergency or Need for Public Emergency Service – Immediate response.
  - ii. Detour or Signage Issues – Corrected by end of day in which notified.
  - iii. Cleanliness or Construction Debris – By the end of the day of notification. Debris or materials should not be left on roadways overnight.
  - iv. Driveway or access issues – By the end of the next day after notification in the event of a non-emergency and/or commercial driveway—otherwise by the end of the same day for a residential driveway.
  - v. Drainage issues caused by Project work which prevents use of public or private drives must be mitigated within 48 hours or as soon as reasonably possible using best construction practices (as determined in coordination with Highway Superintendent or his representatives) regardless of workday or weekend in order to allow the use of the roads or private drives until permanent fixes can be completed prior to the end of construction.
  - vi. Potholes – Will be filled with gravel within 48 hours regardless of workday or weekend, unless the work is undertaken by the County pursuant to Section 4 below.
  
4. The County shall set out to the Company written procedures which shall provide for the County performing certain road repairs and maintenance on the Roads both during and after construction of the Project (and prior to Approval as defined in Section 10 hereof) with the presumption that such repairs and maintenance shall be performed by County (except as noted in Section 3 above and Section 5 below) by its own County Highway Department work crew or by its contractors pursuant to public bidding statutes as may be required (the “Procedure”).

The Procedure shall address:

- The written request of the County to Company that it shall undertake certain repairs during construction caused by Company’s use of the Roads, including any necessary repairs to damaged drainage ditches, drains, public tiles, bridges, signage and transportation structures.
- A process for the parties to address emergency repairs so that duplicate effort and expense is avoided.
- Road improvements to be made pre-construction which shall provide for coordination of the work to reasonably move forward in a timeline that supports the construction schedule.
- Routine maintenance and repairs during construction and prior to the Approval (as set out in Section 10).
- The process for draws on the Escrow where appropriate.
- An acknowledgement by the County that the scope of its work shall provide for the Roads to be restored or repaired to a similar condition as existed prior to the Project.
- Procurement of contractors by the County in accordance with statutory bid requirements based on a scope providing for restoration or repair to a condition as existed prior to the Project. A scope and bid or budget for any work (not required to be bid) shall be provided to the Company fifteen (15) business days prior to the initiation of any work by the County.
- A process for the County should it elect to improve the Roads beyond the condition as existed prior to the Project, with the County being financially responsible for any and all costs beyond those set out in the initial scope and bid or budget for Project related restoration or repair. To that end, and so that appropriate cost responsibility can be determined, County shall obtain bids as required by law which shall identify the difference

in cost to restore roads to original condition compared to improving roads beyond the condition as existed prior to the Project.

5. The Company shall maintain any damaged facility, such as potholes or roadway failures, until a permanent repair can be made. Temporary repairs shall be of sufficient quality so as to keep the roadway operational. The County Highway Superintendent or his representatives may elect, pursuant to the Procedure, to have work completed by the County Highway Department work crew or by County contractors based on bids received in lieu of Company completing the work. Roads shall be repaired to the reasonably same condition as existed prior to construction based on the Video Narrative as set out in Section 7. For repairs which are not deemed to be immediately necessary to keep the Roads in a safe working condition by the County Highway Superintendent or his representatives, the parties may agree that such repairs may be delayed until the end of Project construction if no further impact from construction traffic is expected. The County shall assume its maintenance obligations at the completion of Project construction.
6. In the event of an unforeseen closure or the need for flagging operations, the Company shall notify the County Highway Superintendent with a plan in advance of said closure. Company shall be responsible for any signing for flagging operations in compliance with the publication "Work Zone Traffic Control Guidelines" published by the Indiana Department of Transportation, latest edition.
7. The Company agrees to use the Roads (as shown on Exhibit 1 attached hereto) in a reasonable and prudent manner, using reasonable care sharing the Roads with other public traffic in a normal manner. Company shall provide to the County, for approval, a video survey (the "Video Narrative") of the Roads proposed to be bonded prior to the initiation of Project construction. County shall approve the Video Narrative prior to acceptance and the commencement of construction activities.

In conjunction with the pre-construction and post-construction testing described below, the Company and the Highway Superintendent shall agree on the testing locations in advance of the work.

Thereafter, Company shall conduct the following pre-construction testing:

- Direct Push soil sampling (referred to as "soil borings") to a depth of approximately 4 feet along Project Roads.
- Falling Weight Deflectometer ("FWD") testing of the Project Roads.
- Ground Penetrating Radar testing.
- Video Narrative (as set out in this Section) and categorize.
- Engineering evaluation of Project Roads using DVL, GPR, FWD, and soil boring to determine Equivalent Single Axle Loads ("ESAL") which will allow the Company to evaluate which Roads should have improvements completed during construction and minimize costs to repair later.

Post-construction Company shall:

- Complete testing again, at reduced locations to evaluate road health.
- Compare to pre-post construction condition.

The above is the "Post-Construction Testing".

The Procedure shall provide that Company reasonably maintain the entire section of the Roads, including all above individual specified parts thereof, to the same condition as exists on the date of the Video Narrative and in consultation with the Posey County Highway Superintendent.

8. In the event there is any damage to drainage infrastructure which requires a third-party permit from another jurisdiction, such as the Posey County Surveyor or the Indiana Department of Natural Resources, the Company shall be responsible for all permits, design, and plans required to procure the required permits, unless County Highway Superintendent or his representatives elect upon written notice to Company to have their own contractors complete work, in which case those contractors shall be responsible pursuant to the Procedure.
9. In the event a bridge or cross culvert failure occurs which is a result of loading from construction traffic, blanket bond values for individual occurrences are provided for those items on Exhibit 2.
10. A. **SECURITY**: In order to protect the interests of the Commissioners of Posey County and its residents, the Company is required to provide for the Commissioners regarding Heavy Equipment use (but not to apply to ordinary truck or vehicle traffic) a surety bond (in a form mutually agreeable to the County and Company) in an amount to be determined in accordance with Exhibit 2 (approximately \$[5,400,000]) (Surety Bond) and an escrow payment in the amount of \$[100,000] (Escrow) to be submitted to the Auditor of Posey County and credited to the Posey County Highway Department account (collectively the "Security"). The Security shall remain in full force and effect until the Project provides Post-Construction Testing, a Video Narrative and survey report (the "Report") to the County and receives County approval of the Report, which approval shall not be unreasonably withheld (the "Approval"). The County will provide its response within 30 days of receipt of the Report and shall set out in writing its reasons for any objection thereto. The lack of response to the Report shall be deemed an Approval and the Security shall be reduced as set forth below.
- B. **REPAIRS**: Additionally, should the Company fail to make reasonable repairs and restoration to the Roads, drainage ditches, drains and public tiles, bridges, signage, or other transportation structures as required by this Agreement during or upon completion of Project construction, the Commissioners, based on the Video Narrative, shall provide written notice of such to the Company specifying any deficiency and its location.
- C. **DRAW ON SECURITY**: If work is deemed to be the Company's responsibility to complete and cannot be delayed until the end of construction, and such reasonable repairs and restoration is not started by Company with fifteen (15) business days after written notice from the County, weather permitting, upon thirty (30) days' written notice by the County as set out in the following Sections 10D and 21, the Security may be drawn upon (as a "proof" bond with no further evidence of default by Company to be required) payable to Posey County, State of Indiana to the extent necessary to restore and/or repair the Roads or any part thereof and any damaged drainage ditches, bridges, signage, and other transportation structures and County may use the Security (to the extent necessary) to perform any required repairs. For work which the County Highway Superintendent or his representatives have agreed is not needed until end of construction, that work shall be started within sixty (60) days after the end of construction. The Company shall remain liable, however, for any damages caused during construction and as a result of negligence, in excess of the Security.

- D. PAYMENT TO COUNTY: County agrees that it shall provide an invoice for amounts alleged to be owed pursuant to the above and allow Company thirty (30) days to pay off an invoice prior to the County drawing on the Security provided to the benefit of the County. In cases where immediate repairs are needed for the safety of the public, the County may use the Escrow to fund repairs. The parties shall during such thirty (30) day period pursue and abide by the process outlined in Section 21 hereof.
- E. SECURITY POST APPROVAL: At the time of the Approval, the Surety Bond shall be reduced for a period of three (3) years to the amount equal to fifteen percent (15%) of the posted Surety Bond. Any unused Escrow above \$50,000 shall be returned by the County to the Project. If the Escrow is less than \$50,000, it shall be replenished to such amount (the "Replacement Escrow"). Company agrees to provide a new surety bond to the County at a mutually agreeable time and in a mutually agreeable amount to the extent of any major maintenance projects or technology upgrades for panels or equipment during the life of the Project (regarding which prior written notice shall be provided to the County).
11. The Security amount is provided for estimating purposes only. In the event that damages by the Company exceed the Security, the Company shall be responsible for the repair of all damaged facilities to the reasonable satisfaction of the County or reimbursement to the County from the Escrow for the cost of repairs completed by its contractor pursuant to the Procedure. If there is damage in excess of the Security after the County makes a draw on the Security, the County reserves the right to terminate work and pursue the recuperation of any additional costs by appropriate legal remedies including, but not limited to, suit against Company and collection of any judgment. The Company shall also be responsible for repairing any damage to other public infrastructure, such as signage, which shall also be covered by the Security.
  12. During construction by Company, should any other entity desire to utilize all or a portion of the Road route for Heavy Equipment, and no other reasonable alternative road route is available, County shall require said entity to enter into a similar agreement, and the Company, the County and the other entity shall negotiate in good faith for the apportionment between the Company and the other entity as to the possible costs of repair. This restriction shall not apply to residential construction.
  13. Company shall be responsible under the terms of this Agreement for the actions of all third-party contractor and subcontractor assigned to work under this Agreement by the Company.
  14. In the event that any other route or roadway not identified as a Haul Route is used and damaged by the Company, due to any circumstance, such as detour, wrong turn, or lost driver by the contractor, or subcontractor completing work as part of this agreement, the repair of said roadway or other damage shall be as set forth in the Procedure.
  15. In the event that personal property is damaged by any Project contractor or delivery vehicle, the Company shall be responsible for the reasonable repair or compensation for damages.
  16. The Security provided by the Company for the Project shall remain in place as set forth in Section 10. Release of the Security in advance of expiration by their terms shall be approved by the Posey County Commissioners.

17. Except as set forth in Section 1, to apply solely during the construction period, the Project shall observe legal load limits either posted or established by County Code and State Statute during the completion of all Project work activities.
18. The repair of any and all damaged roadways will be completed in accordance with INDOT Standards and Specifications. In the event of roadway base failure, the appropriate subgrade treatment and compaction shall be determined based on pre-construction conditions to treat and compact subgrade prior to paving repairs.
19. All road repairs shall match the pavement section for the existing roadway.
20. Company will work with the MSD School District to identify school bus stops and reduce the traffic near bus stops to the extent reasonably possible.
21. If the County believes that there are continuing and material defaults by Company during the construction or operations period under this Agreement, it shall provide Company written notice via certified mail of the same to the following address: Posey Solar, LLC, c/o Arevon Energy, Inc., 8800 North Gainey Center Drive, Suite 250, Scottsdale, AZ 85258, Attn: General Counsel with a copy to Mary Solada (via email) at [Mary.Solada@Dentons.com](mailto:Mary.Solada@Dentons.com). The notice shall set out the nature of the defaults and the requested remedies. Company shall have a reasonable period of time to cure under the factual circumstances but no less than thirty (30) days unless the notice states an eminent threat to public safety exists, in which case Company shall respond as timely as possible. Company may by written notice to the County provide documentation disputing that a default exists (such as providing video evidence of a pre-existing condition or otherwise disputing in good faith the factual accuracy of an alleged default) in which case the parties shall agree to informally mediate the alleged default within a reasonable period of time. Absent Company's cooperation with effectuating a cure by the end of the periods described in the prior sentence, unless Company provides written notice disputing the default (as also set out in the prior sentence), County may, by subsequent written notice as set forth above, provide notice of termination of all provisions hereof (with the exception of Section 3(e) through (f) hereof) and accordingly the parties shall have no further rights and responsibilities hereunder.

22. This Agreement shall be binding upon the parties, their successors, and assigns, expressly including any party purchasing the assets of the Company.

**Agreement dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.**

POSEY SOLAR, LLC

By: \_\_\_\_\_  
Aron Branam, Authorized Person

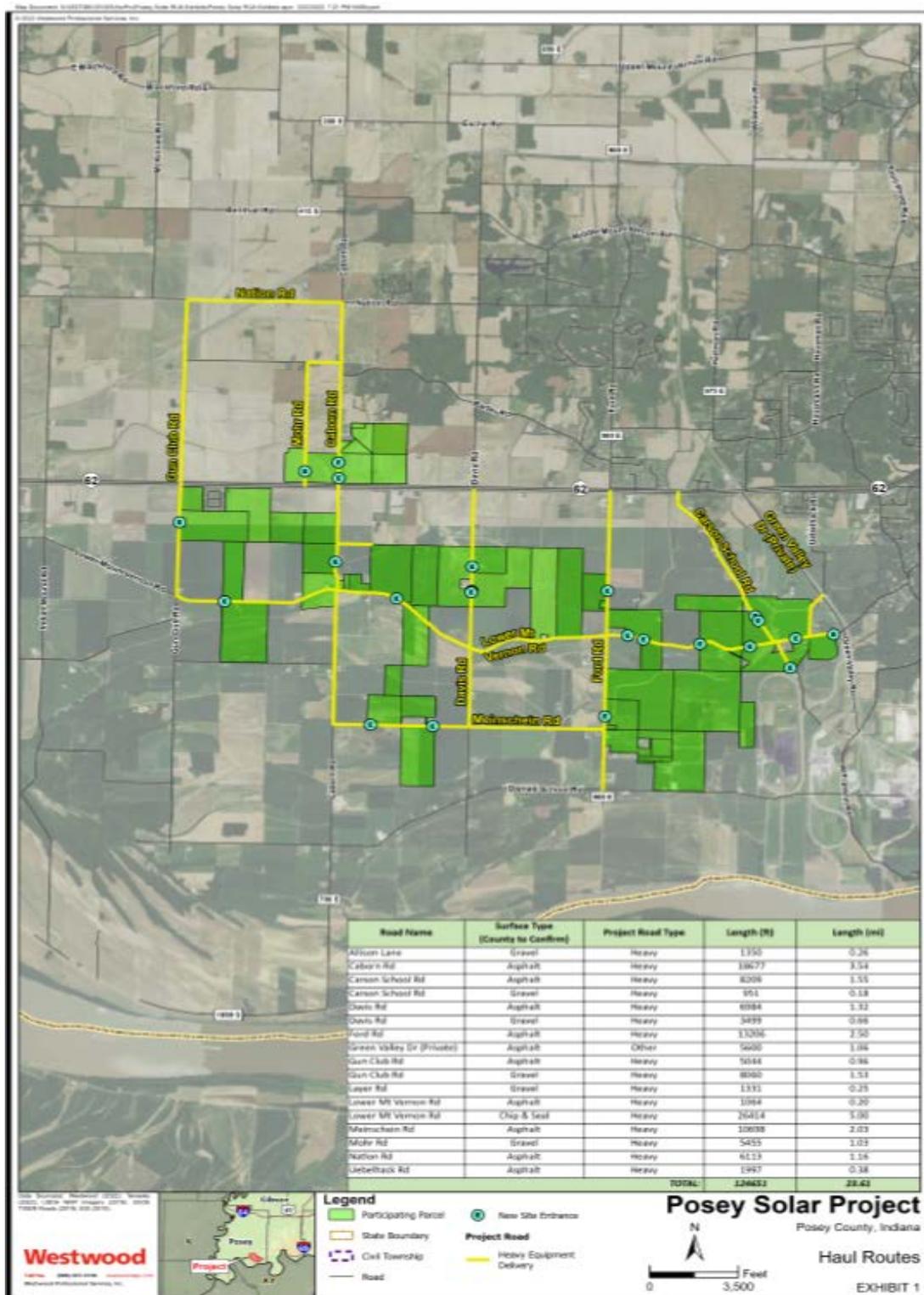
**POSEY COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Printed: \_\_\_\_\_, Commissioner

By: \_\_\_\_\_  
Printed: \_\_\_\_\_, Commissioner

By: \_\_\_\_\_  
Printed: \_\_\_\_\_, Commissioner

# Exhibit 1 Roads



This Exhibit shall be updated prior to execution of the Road Use Agreement.

**Exhibit 2  
Roads Bonded**

<b>Exhibit 2: Summary Table for Pavement and Structure Costs per Roadway Section</b>							
<b>Road Name</b>	<b>From</b>	<b>To</b>	<b>Length (Miles)</b>	<b>Length (Feet)</b>	<b>Average Width (Feet)</b>	<b>Pavement Type</b>	<b>Bond Amount</b>
Allison Lane	Caborn Rd	Davis Rd	1.00	5,280	12	Gravel	\$104,500
Caborn Rd	Lower Mt Vernon Rd	SR 62	0.87	4,574	18	Asphalt	\$123,200
Caborn Rd	Meinschein Rd	Lower Mt Vernon Rd	1.12	5,921	18	Asphalt	\$159,500
Caborn Rd	SR 62	Layer Rd	1.04	5,505	20	Asphalt	\$198,900
Carson School Rd	Lower Mt Vernon Rd	SR 62	1.49	7,856	18	Asphalt	\$211,600
Carson School Rd	Lower Mt Vernon Rd	New Driveway	0.28	1,478	18	Asphalt	\$39,800
Davis Rd	Meinschein Rd	Lower Mt Vernon Rd	0.67	3,517	18	Gravel	\$114,900
Davis Rd	Lower Mt Vernon Rd	SR 62	1.33	6,996	18	Chip Seal	\$228,600
Ford Rd	Lower Mt Vernon Rd	SR 62	1.21	6,384	20	Asphalt	\$191,000
Ford Rd	Darnell School Rd	Lower Mt Vernon Rd	1.29	6,791	20	Asphalt	\$184,700
Green Valley Dr	SR 62	Uebelhack Rd	1.07	5,650	24	Asphalt	\$202,900
Gun Club Rd	Lower Mt Vernon Rd	SR 62	0.98	5,174	20	Asphalt	\$154,800
Gun Club Rd	SR 62	Nation Rd	1.55	8,172	20	Gravel	\$296,700
Layer Rd	Mohr Rd	Caborn Rd	0.26	1,348	15	Gravel	\$53,800
Lower Mt Vernon Rd	Caborn Rd	Davis Rd	1.15	6,072	18	Chip Seal	\$198,400
Lower Mt Vernon Rd	Davis Rd	Ford Rd	1.07	5,654	18	Chip Seal	\$184,800
Lower Mt Vernon Rd	Gun Club Rd	Caborn Rd	1.22	6,443	18	Chip Seal	\$210,500
Lower Mt Vernon Rd	Uebelhack Rd	New Driveway	0.23	1,214	18	Asphalt	\$32,700
Lower Mt Vernon Rd	Ford Rd	Lower Mt Vernon Rd	0.90	4,773	18	Chip Seal	\$156,000
Lower Mt Vernon Rd	Lower Mt Vernon Rd	Uebelhack Rd	0.65	3,448	18	Asphalt	\$92,900
Meinschein Rd	Caborn Rd	Davis Rd	1.01	5,353	18	Asphalt	\$144,200
Meinschein Rd	Davis Rd	Ford Rd	1.01	5,341	18	Asphalt	\$143,800
Mohr Rd	SR 62	Layer Rd	1.04	5,505	15	Gravel	\$149,900
Nation Rd	Gun Club Rd	Caborn Rd	1.16	6,125	20	Asphalt	\$183,300
Uebelhack Rd	Lower Mt Vernon Rd	Vectren	0.32	1,690	18	Asphalt	\$45,500
Uebelhack Rd	Vectren	Green Valley Rd	0.10	528	18	Asphalt	\$20,000
			<b>23.01</b>	<b>TOTAL COST</b>			<b>\$3,722,400</b>

Lump Sum Bridge Bond (Includes Construction, Design, and Permitting) per occurrence	<b>\$ 1,000,000</b>
Lump Sum Culvert and Pipe Crossing Bond (Includes Construction, Design, and Permitting) per occurrence	<b>\$ 750,000</b>
Lump Sum Drains, Ditches and Public Tiles (if within the public right-of-way)	<b>\$ 50,000</b>

This Exhibit shall be updated prior to execution of the Road Use Agreement to address final engineering.

Exhibit 3  
Access Drive Detail

Exhibit 4

County to Provide Standards for Open Trench