

## ENCROACHMENT AGREEMENT

This Agreement made in duplicate this \_\_\_\_ day of \_\_\_\_\_, 2019

**BETWEEN:**

**THE CORPORATION OF THE COUNTY OF GREY**

Hereinafter called the "County"

AND

**EGERTON SOLAR POWER LP (directed by its General Partner, MPI FIT 4 Inc.)**

Hereinafter called the "Company"

**WHEREAS** the Company is the developer of the solar projects known as Madill 01 and Madill 02 (identified on Schedule "A"), situated on private lands described as PT LT 67 CON 1 SWTSR HOLLAND AS IN R368592 LYING NE OF R492290 (THIRTEENTHLY); CHATSWORTH, PIN: 37173-0213 (LT) and PT LT 67 CON 1 SWTSR HOLLAND AS IN R368592 LYING SW OF R492290 (THIRTEENTHLY); CHATSWORTH, PIN 37173-0212 (LT)

**AND WHEREAS** the County is the owner of that portion of the CP Rail Trail identified on Schedule "A" (hereinafter referred to as the "CP Rail Trail") between Madill 01 and Madill 02;

**AND WHEREAS** the Company would like to receive the right to install/maintain Transmission Lines above the CP Rail Trail and to install/maintain an Access Road between Madill 01 and Madill 02 through the CP Rail Trail;

**AND WHEREAS** the County has agreed to permit the installation/maintenance of Transmission Lines above the CP Rail Trail and the construction/maintenance of an Access Road through the CP Rail Trail pursuant to the terms of this Agreement;

**NOW THEREFORE** in consideration of the mutual promises and commitments described below, the receipt and sufficiency of which, is hereby acknowledged and agreed, the Parties hereto agree as follows:

### 1. Definitions

The words or expressions in quotations below shall have the meaning set forth below when used elsewhere in this Agreement:

**"Access Road"** means the portion of the access road between Madill 01 and Madill 02, each as identified in the recitals to this Agreement, which traverses the CP Rail Trail, as depicted on Schedule "A".

**"Agreement"** means this Agreement, including all Schedules, as it may be confirmed, amended, modified, supplemented or restated by written agreement between the Parties.

**"Basic Maintenance"** means repair/replacement of faulty or obsolete Transmission Lines and repair, maintenance of the Access Road;

**"CP Rail Trail"** has the meaning ascribed in the recitals to this Agreement, and is operated by the County as a public multi-use recreational trail;

**"Director"** means the most senior County official employed as staff to manage its Planning and Development Department or his/her designate.

“**Effective Date**” shall be the date of this Agreement.

“**Emergency Repairs**” means such work as may be necessary to repair the Access Road or Transmission Lines which cause a service outage or present a danger to the public or the equipment to which the Transmission Lines are attached.

“**Encroachment Rights**” mean the privileges described in sections 3.1 and 3.2 of this Agreement and license described in section 3.3 of this Agreement.

“**Parties**” means the parties to this Agreement, and “**Party**” means either one of them.

“**Secured Party**” means a lender who holds a security interest or lien against an asset of the Company.

“**Transmission Lines**” means transmission lines installed above the CP Rail Trail, as depicted in Schedule “B”.

“**Work**” means all work performed by or at the direction of the Company on, above, below, or in the vicinity of the CP Rail Trail.

“**Working Days**” means business days, specifically Monday through Friday, but excluding any public holidays recognized in the Province of Ontario.

## **2. Term**

2.1. This Agreement shall be in effect from the Effective Date until the date that is twenty (20) years after the Effective Date, together with such additional time, not to exceed twelve (12) months, as may be reasonably required to complete the decommissioning of the Access Road and Transmission Lines (hereinafter, the “**Term**”). If the Company wishes to renew the Term, the Company shall give the County notice in writing to that effect at least six (6) months prior to the expiration of the initial Term and the Term may be extended by a further term of up to twenty (20) years by mutual agreement in writing between the Parties to be reached prior to the end of the initial Term.

## **3. Permission to Use CP Rail Trail**

3.1. The Company may install, maintain, repair, alter, remove and replace the Transmission Lines over the CP Rail Trail, provided that the Transmission Lines shall not be permitted any closer than 7 metres above the surface of any point on the CP Rail Trail.

3.2. The Company may install, maintain, repair, alter, remove and replace the Access Road through the CP Rail Trail, provided that the Access Road shall not exceed a width of four meters.

3.3. The Company is permitted a license to use the Access Road for vehicular access and the transportation of equipment/materials provided that the weight of loads traversing the Access Road shall not exceed 24 Tonnes.

## **4. Responsibilities of the Company**

4.1. The Company shall ensure that the installation, alteration, removal and/or replacement of the Access Road and Transmission Lines shall be designed and stamped by a Professional Engineer of Ontario (the “**Engineering Plans**”). Construction of the Access Road shall include the installation of two (2) corrugated steel culverts measuring 460 millimetres (18 inches) in diameter. One culvert shall be installed on either side of the trail underneath the Access Road.

4.2. All Work shall be completed in a good and workmanlike manner by personnel experienced in such Work, and shall use materials which will be appropriate for

the use on the CP Rail Trail or in its vicinity. All Work that is specified in the Engineering Plans, shall be carried out in accordance with the provisions of the Engineering plans.

- 4.3. For all Work which requires vehicular access to the site across the CP Rail Trail or which may impact the CP Rail Trail or may cause it to be closed, the Company shall submit a Field Work Request Form (attached as Schedule "C") to the Director no less than five (5) Working Days prior to the intended work commencing, in order to ensure that the intended work does not conflict with any other scheduled work or special events on the CP Rail Trail. Provided there are no issues, the County shall not unnecessarily withhold, condition or delay permission. The format of the Schedule "C" form as required by the County may change from time to time throughout the Term of the Agreement.
- 4.4. In the event the Company needs to complete Emergency Repairs, the Company shall immediately contact the County and provide notification of its need to complete the identified Emergency Repairs. It is understood by the Company that such notification is vitally important, given that the County operates the CP Rail Trail as a public, multi-use recreational trail.

The County's contact information for this purpose is as follows:

During office hours – 519-376-2205 and speak with the Planning and Development Director or his/her designate

Outside of office hours – 519-370-7071

- 4.5. The Company shall be responsible for obtaining all other necessary approvals including but not limited to Federal, Provincial, Conservation Authority, or Municipal approvals required to carry out the Work, specifically including the requirements of the Ontario Underground Infrastructure Notification System Act, 2012. Prior to commencing any Work in the CP Rail Trail, the Company shall ensure that the contractor performing the work shall contact Ontario One Call to obtain information about any existing infrastructure within the CP Rail Trail. The Company shall comply with all applicable laws in making use of the CP Rail Trail pursuant to this Agreement.
- 4.6. To cover all reasonable costs, including reasonable legal fees, the County incurs for the purpose of negotiating this Agreement, the Company shall pay the County One Thousand Five Hundred dollars (\$1,500.00) in Canadian funds within thirty (30) days of the date of execution of this Agreement by both Parties.

## **5. Responsibilities of the Company when Performing Work on the CP Rail Trail**

- 5.1. The Company shall, wherever practicable, use those parts of the CP Rail Trail adjacent to the fence lines, gravel, grass, or outer boundaries of the CP Rail Trail and not the travelled part of the CP Rail Trail.
- 5.2. Whenever the Company carries out Work on the CP Rail Trail under this Agreement, it will be at their own expense and they shall restore the CP Rail Trail to a condition as good as it was in before the Work was carried out or better, including fencing, trees, trail surface, and vegetation, as deemed satisfactory by the County, acting reasonably, in writing within 30 days of completion of such Work.
- 5.3. The Company shall not permit any third party, except for the Company's contractors, to use any portion of the CP Rail Trail occupied or used by the Company under this Agreement, unless the County authorizes the third party to do so in writing and the County provides the Company with such written authorization.

- 5.4. In undertaking any Work, the Company shall use care and diligence to ensure that there will be no unnecessary interference with the travelled portion of the CP Rail Trail or the ditches or drains adjoining it.
- 5.5. The Company shall not cut, trim, or interfere with any trees on the CP Rail Trail without the prior written approval of the Director. If the Director does not respond to such request within fifteen (15) business days, the Company may proceed with such work.
- 5.6. Where written permission has been granted to cut, trim or remove any trees or brush on the CP Rail Trail, all materials and brush are to be removed from the site and disposed of appropriately, and as per the County's conditions of approval.
- 5.7. The Director may complete an inspection to ensure all Work is performed by the Company in accordance with the plans filed pursuant to section 6.1 of this Agreement.

## **6. Responsibilities of the Company to Provide Documents**

- 6.1. Within 180 days after the installation (or any approved relocation or replacement) of the Access Road and Transmission Lines, the Company shall deposit with the County an as-constructed plan in a format acceptable to the County and the date of completion, stamped by a licensed Ontario Professional Engineer or surveyor. The as-constructed plan shall include the location of the Access Road and Transmission Lines. A record and copies of all approvals, plans, and other documentation made pursuant to the terms of this Agreement shall be maintained by the County.

## **7. Notification by County of Work to be Performed**

- 7.1. If for any reason the County requires work to be completed within, or in close proximity to, the Access Road or Transmission Lines, the County shall provide the Company with at least ten (10) days written notice of the required work describing the timing of such work and the County employee to contact about it. In the event of emergency work required to the CP Rail Trail, the County shall endeavour to provide the Company with twenty-four (24) hours' notice, unless the nature of the work requires a shorter notice period, or requires that the work must be performed without prior notice. The Company may send a representative to observe the work undertaken by the County in proximity to the Access Road or Transmission Lines and to request any reasonable precautions for such work in proximity to the Access Road or Transmission Lines.

## **8. Limitations of Permission**

- 8.1. The permission granted in this Agreement to use the CP Rail Trail is subject to the following:
  - a) the right of free use of the CP Rail Trail by all other persons entitled to it;
  - b) the rights of the owners of the property adjoining the CP Rail Trail to have full access to and from the CP Rail Trail and to construct crossings and approaches from their property to the CP Rail Trail;
  - c) the rights and privileges that the County may have previously granted to any utilities or other persons for use or occupation of the CP Rail Trail;
  - d) the rights and privileges that the County may grant to any utilities or other persons for use or occupation of the CP Rail Trail in the future provided such future rights and privileges shall recognize the permissions granted to the Company in this Agreement; and

- e) the restriction that the Company shall not permit any lien to be filed or registered against the CP Rail Trail.
- 8.2. The Company acknowledges that this Agreement does not create an interest in any land, other than as provided by Applicable Laws; and in consideration of the rights and privileges granted herein, the Company does hereby release and revoke any claim to the land, other than as provided by Applicable Laws, against the County, its successors and assigns.

## **9. Relocation of Access Road or Transmission Lines**

- 9.1. In the event that the County, acting reasonably and with diligence, deems it necessary for the Company to modify or change the location of any part of the Access Road or Transmission Lines (the “**Relocation**”), the County shall give the Company prompt notice of same, and the Company shall conduct the required Work within a reasonable period of time in accordance with the terms of this Agreement. If the County provides the Company with notice of such modification or relocation within five (5) years of the Effective Date, the County shall reimburse the Company for 100% of the costs involved in such modifications or relocations. If the County provides such notice on or after the date which is five (5) years after the Effective Date, the County shall reimburse the Company for 50% of the costs involved in such modifications or relocations.

## **10. Notice of Proposed Sales and Closings/Alternative Easement**

- 10.1. The County agrees, in the event of the proposed sale of the CP Rail Trail or any part of the CP Rail Trail containing the Access Road or Transmission Lines, to give the Company a minimum of 180 days’ written notice of such proposed sale. In the event of a sale of the CP Rail Trail or any part of the CP Rail Trail containing the Access Road or Transmission Lines, the County agrees to make reasonable efforts to execute formal documents with the purchaser for the purchaser to assume the obligations of the County under this Agreement. If the County and purchaser cannot execute such formal documents, despite the County’s reasonable efforts, the County shall provide the Company with the option of relocating the affected Access Road and/or Transmission Lines in accordance with Section 9 hereof. In no event will the Company be obligated to cease to operate the Access Road or Transmission Lines should the County sell all or part of the CP Rail Trail.

## **11. Replacement during Term of Agreement**

- 11.1. Where, in the opinion of the Company, replacement of the Access Road or Transmission Lines is required during the Term of this Agreement, the Company may enter onto the CP Rail Trail to replace the Access Road or Transmission Lines and it is agreed that all provisions of this Agreement shall remain in force and the Company shall comply with the requirements of this Agreement that applied to the original installation of the Access Road and Transmission Lines, including but not limited to the relevant requirements under Section 4.

## **12. Repairs**

- 12.1. Upon providing the required notification and receiving written approval as required pursuant to sections 4.2 and/or 4.3 of this Agreement, the Company shall be permitted access to the CP Rail Trail for the purpose of repairing any portion of the Access Road or Transmission Lines which have been installed.
- 12.2. The Company is provided non-vehicular access to the CP Rail Trail at any time to perform inspections of the Access Road and Transmission Lines.
- 12.3. Should any repair carried out by the Company materially affect any plan or other documentation required to be maintained pursuant to this Agreement, the

Company shall file amendments to such plans or documentation with the County.

### **13. Additional Requirements**

- 13.1. The Company shall be required to obtain and comply with any other valid and applicable permits as may be required by the County throughout the Term of this Agreement.
- 13.2. The Company shall provide a certified cheque to the County upon execution of this Agreement in the amount of \$8,000.00 to be cashed upon receipt as security for the Company's completion of their obligations under this Agreement. The amount is to be paid back by the County within thirty (30) days of the completion of all such obligations to the satisfaction of the Director, acting reasonably. The security shall be applied to remedying any default by the Company in complying with its obligations under this Agreement, provided such default is not cured or in the process of being cured with reasonable dispatch within ten (10) days of the County giving notice to the Company with respect thereto.

### **14. Health and Safety and WSIB**

- 14.1. The Company is responsible for all costs associated with their workplace accidents and all premiums or assessments owing to the Workplace Safety and Insurance Board (WSIB) for its own employees.
- 14.2. Throughout the Term of the Agreement, prior to performing any work on the CP Rail Trail, the Company shall provide the County with WSIB Clearance Certificates for itself, its employees, subcontractors and subcontractors' employees under the Workplace Safety and Insurance Act.
- 14.3. The Company shall comply with the Occupational Health and Safety Act (Ontario), the Workplace Safety and Insurance Act (Ontario), the Human Rights Act (Ontario), and applicable regulations under such legislation and all other legal obligations with respect to worker health, safety and treatment.
- 14.4. The Company shall notify the County as soon as practical of any workplace injuries reportable to WSIB or the Ministry of Labour occurring on the County's lands which are the subject of this Agreement.

### **15. Insurance**

- 15.1. The Company shall, during the entire Term of this Agreement and any renewals thereof, at its own cost and expense, take out and keep in full force the following insurance coverage with respect to all activities arising from this Agreement. This insurance shall be primary, non-contributing with and not in excess of any other insurance available to the County. The policies shall be underwritten by an insurer licensed to do business in the Province of Ontario. Such policies shall include but not be limited to the following
  - a) Commercial General liability insurance on a per occurrence basis for an amount of not less than Ten Million Dollars (\$10,000,000); limit may be attained through the purchase of an Excess Umbrella Policy; such policy to include, but not be limited to, non-owned automobile liability; personal injury; broad form property damage; hostile fire; blanket contractual liability; owners and contractors protective liability; products and completed operations liability; contingent employers' liability; and, shall include cross liability and severability of interest clauses. The Corporation of the County of Grey shall be named as an Additional Insured thereunder, with respect to the Company's operations, acts and omissions relating to its obligations under this Agreement. This policy shall not be invalidated as respects the interests

of the County by reason of any breach or violation of any warranties, representations, declarations or conditions.

- b) Automobile Liability insurance for an amount not less than Five Million Dollars (\$5,000,000) on forms meeting statutory requirements covering third party property damage and bodily injury liability (including accident benefits) covering all licensed vehicles used in any manner in connection with the performance of the terms of this Agreement, and/or as may be required by applicable laws; limit may be attained through the purchase of an Excess Umbrella Policy; and
  - c) Insurance upon property of every description owned by the Company, or for which the Company is legally liable or installed by or on behalf of the Company and which are located on, above or within fifty (50) metres of the boundaries of the CP Rail Trail, on an All Risk basis for the full replacement cost thereof, as well as business interruption insurance in such amount as will reimburse the Company for direct or indirect loss of earnings attributable to an insured peril;
  - d) Insurance upon the Access Road and Transmission Lines on an All Risk basis for the full replacement cost thereof, as well as business interruption insurance in such amount as will reimburse the Company for direct or indirect loss of earnings attributable to an insured peril; and
  - e) Any other form or limits of insurance as the County, acting reasonably, may require from time to time throughout the Term of the Agreement in form, in amounts and for insurance risks against which a prudent person would insure.
- 15.2. As evidence of the required policies being in effect, the Company shall provide the County with a Certificate of Insurance thirty (30) days prior to the commencement of the first of any Work, and upon each subsequent renewal period throughout the Term of this Agreement.
- 15.3. The Company shall provide 30 days' prior written notice to the County in the event of any cancellation which reduces or restricts the insurance provided.
- 15.4. The Company agrees that if they fail to take out or keep in force any such insurance referred to in this section, or should any such insurance not be approved by the County, and should the Company not commence and proceed to diligently rectify the situation within forty eight (48) hours after the Company receives written notice from the County, the County has the right without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Company. The County shall be reimbursed as set out under the terms of this Agreement.

## **16. Designated Contact**

- 16.1. The Company shall have a representative on the construction and/or maintenance site or provide the Director with the name of an official of the Company or contractor who may be contacted with respect to any construction or maintenance activities being carried out by the Company.

## **17. Notices**

- 17.1. Any notice required or permitted to be given under this Agreement shall be in writing and may be personally delivered or sent by prepaid registered mail, email or fax to the Party to whom it is directed at the address for service of that Party set out below, or at such other address as either of the Parties may by notice to the other specify.

In the case of the Notice to the County:

County Clerk  
Corporation of the County of Grey,  
595 9th Avenue East, Owen Sound, ON N4K 3E3  
Fax: 519-376-7970  
Email: [countyclerk@grey.ca](mailto:countyclerk@grey.ca)

And in the case of the Notice to the Company:

President  
Osman Sediqi  
Grasshopper Solar  
5935 Airport Road, Suite 210, Mississauga, ON L4V 1W5  
Fax: 1-866-400-7831  
Email: [osman.sediqi@grasshoppersolar.com](mailto:osman.sediqi@grasshoppersolar.com)  
Cell: 1-647-289-3129

Every such notice shall be deemed to have been received if personally delivered, at the time of such delivery; if e-mailed or sent by fax, on the next business day; and if sent by prepaid registered mail, at the end of three (3) business days after the mailing thereof.

## **18. Remedy of Violations**

18.1. If the Company violates any of the conditions of this Agreement, the Company shall commence to remedy the violation as soon as possible but in any event no later than sixty (60) days after receiving notice in writing as prescribed in Section 18 specifying the violation, in accordance with any reasonable direction which the County may give.

## **19. Termination**

19.1. This Agreement may be terminated:

- a) by the County, if at any time an order is made or an effective resolution passed for the winding-up, liquidation or dissolution of the Company which is not immediately stayed by appeal;
- b) by the County, if at any time the Company makes a proposal under, or takes advantage of, any insolvency, restructuring or reorganization legislation, or is declared bankrupt, or if a liquidator, trustee in bankruptcy, custodian or receiver and manager or other officer with similar powers is appointed of the Company or of all or substantially all of the Company's property which is not immediately stayed by appeal;
- c) by either the Company or the County, if the other Party defaults in making a payment when due or in the performance or observance of any of the material terms, covenants or agreements on its part contained in this Agreement and such default continues or the defaulting Party has not commenced to cure the breach for a period of ninety (90) days after notice thereof from the other Party; or
- d) by the Company by providing the County with ninety (90) days written notice thereof.

19.2. In the event of termination of this Agreement, the Company will, at its own expense, remove the Access Road and Transmission Lines from the CP Rail Trail within sixty (60) days, or failing such removal, the Access Road and Transmission Lines will either become the property of the County or will be removed by the County at the expense of the Company, at the discretion of the County.



## **20. Representations and Warranties**

20.1. The County has made no representations or warranties as to the state of repair of the CP Rail Trail or the suitability of same for any business, activity or purpose whatsoever, and the Company hereby agrees to accept the CP Rail Trail on an “as is” basis and that the County is not responsible, either directly or indirectly, for any damage to property or injury to a person, including death, arising from the Company’s use of the CP Rail Trail, unless due to the negligent or intentional acts of the County, its elected officials, employees or authorized agents.

20.2. The Company represents and warrants to the County as follows:

- a) that it is the sole general partner of Egerton Solar Power LP (the “Partnership”);
- b) that it is duly incorporated or registered, as the case may be, in the Province of Ontario and has the ability to own its property and that of the Partnership and to carry on business in the Province of Ontario;
- c) that the Partnership is a limited partnership formed and declared pursuant to the *Limited Partnerships Act*, R.S.O. 1990 c. L.16 and it is not a “extra-provincial limited partnership” within the meaning of that Act;
- d) that it is authorized to enter into this Agreement on behalf of the Partnership; and
- e) that it has the ability and expertise to carry out the Work, whether on its own, through its own employees, or through its contractors and agents,

and confirms that these representations and warranties shall continue in force during the term of this Agreement.

## **21. Payment Terms**

21.1. All charges by the County that are payable by the Company under the terms of this Agreement and the Schedule(s) annexed hereto shall be payable 30 days from the date of the invoice. All invoices that are outstanding for longer than 30 days shall be subject to interest charged at 1.25% per month (equivalent to 16.075% per annum) and shall run from the due date of the invoice until the date payment is received.

## **22. Governing Law**

22.1. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement, and agree that any court proceeding in respect of it shall be brought before the courts sitting at Owen Sound and that any arbitration to be conducted pursuant to its terms shall be conducted at Owen Sound.

## **23. Relationship of the Parties**

23.1. Nothing herein contained shall be deemed to create and the Parties do not intend to create any relationship of partner, agent or joint venture as between the County and the Company.

## **24. Schedules**

24.1. The following schedules annexed to this Agreement are integral to, and form part of, this Agreement:

- a) **“Schedule “A”** Site Plan;
- b) **“Schedule “B”** Transmission Lines Cross Section; and
- c) **“Schedule “C”** Field Work Request Form.

## **25. Indemnity**

25.1. The Company shall indemnify the County, its elected officials, employees and agents from and against any and all liabilities, claims, demands, loss, cost, damages, expenses, causes of action, suits, judgments (including legal fees on a solicitor/client basis and all other costs of defence thereof) or other proceedings made by any person, including but not limited to the Company's own employees, arising out of activities arising under this Agreement or in connection with the use of the CP Rail Trail, the location of Access Road and/or Transmission Lines or the installation thereof by the Company, their agents, servants, employees, or invitees. This clause shall survive the termination or expiration of this Agreement. Notwithstanding the foregoing, the Company shall not be responsible for indemnifying the County, its elected officials, employees and agents in respect of any liabilities, claims, demands, loss, cost, damages, expenses, causes of action, suits, judgments (including legal fees on a solicitor/client basis and all other costs of defence thereof) or other proceedings resulting from the negligence, wilful misconduct or breach of contract by the County. This indemnity shall extend to protect the County from construction liens by contractors, mechanics, material men, and suppliers (which are expressly prohibited), which shall be deemed to include all purchases of expendables, consumables, and other merchandise.

In the event of any claims made or suits filed, the County shall give the Company timely written notice thereof, and the Company shall have the right to defend or settle the same to the extent of its interest hereunder.

The Company agrees to assume all environmental liability relating to its use of the CP Rail Trail (including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around the CP Rail Trail) caused by:

- a) the Work of the Company in, on, under, along or across the CP Rail Trail; or
- b) any products or goods brought in, on, under, along or across the CP Rail Trail by the Company, or by any other person with the express consent of the Company.

For this section, “hazardous substance” means any hazardous substance and includes, but is not limited to, radiation, petroleum products and by-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any statute, regulation, by-law or code, whether federal, provincial or municipal.

EXCEPT AS SET FORTH IN THE PROVISIO HERETO, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO PARTY TO THIS AGREEMENT SHALL BE LIABLE TO OR OTHERWISE RESPONSIBLE TO THE OTHER PARTY OR ANY AFFILIATE OF THE OTHER PARTY OR ANY OTHER INDEMNIFIED PARTY FOR LOST REVENUES OR PROFITS (OR MULTIPLES OF SUCH ITEMS) OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR PUNITIVE, EXEMPLARY, TREBLE OR OTHER DAMAGES BASED ON STATUTORY MULTIPLIERS THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF OR ANY LIABILITY RETAINED OR ASSUMED HEREUNDER.

## **26. Waiver of Claims by Company**

26.1. The Company places its Access Road and Transmission Lines on and across the CP Rail Trail entirely at their own risk. The County, its elected officials, employees and agents shall not be responsible or liable in any way to the Company, its contractors, agents, or its customers for any damage or loss howsoever caused unless such damage or loss is caused by the negligence or intentional acts or omissions of the County, its elected officials, employees or authorized agents. This includes loss of service or loss of use by any customers and the Company shall indemnify and hold the County, its elected officials, employees and agents harmless therefrom in accordance with Section 26.

## **27. Waiver of Compliance with this Agreement**

27.1. No amendment, waiver or modification of any provision of this Agreement shall be binding on a Party unless all Parties consent to same in writing. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver, unless otherwise expressly provided in writing.

## **28. Force Majeure**

28.1. Any delay or failure of a Party to perform its obligations under this Agreement or under any Schedule annexed hereto, except for the obligation to make any payments, shall be excused if, and to the extent, that the delay or failure is caused by an event or occurrence beyond the reasonable control of the Party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, action by any governmental authority (whether valid or invalid), fires, flood, wind storms, explosions, riots, natural disasters, human health emergencies, wars, sabotage, labour problems (including lock-outs, strikes and slowdowns), material failures, delays, shortages or unavailability, or court ordered injunction or order; provided that written notice of delay (including anticipated duration of the delay) shall be given by the affected Party(ies) to the other Party(ies) within five (5) business days of the affected Party(ies) first becoming aware of such event. In the event that force majeure continues for a period of one hundred and eighty (180) days or more, a Party (ies) may terminate this Agreement without liability to the other(s) upon mutual agreement. In the event that force majeure discontinues and the Parties continue work pursuant to this Agreement, then all time-frames by which work is to be completed shall be extended by the length of the delay.

## **29. Assignment**

29.1. This Agreement may not be assigned, sold or transferred by the Company without the prior written consent of the County, such consent not to be unreasonably withheld, delayed or conditioned.

## **30. Entire Agreement**

30.1. This Agreement and Schedules attached hereto contain the entire agreement between the Parties with respect to the matters set out herein and supersede all prior agreements, negotiations, representations and proposals, whether written or oral, dealing with the subject matter of this Agreement. There are no conditions, covenants, representations or warranties, express or implied, statutory or otherwise relating to the subject matter hereof, except as herein expressly provided.

## **31. Miscellaneous**

31.1. Every provision of this Agreement which requires any Party to use its efforts shall be deemed to include the words "reasonable commercial efforts" unless specifically stated otherwise. Every provision of this Agreement which requires

any Party to make a payment of any costs or expenses, such costs and expenses shall be deemed not to exceed an amount which is reasonable in the circumstances, unless specifically stated otherwise. Whenever the provisions of this Agreement require an approval or consent to be given, unless this Agreement expressly states to the contrary, the following rules shall apply:

- a) such approval or consent shall be in writing;
- b) such approval or consent shall not be unreasonably withheld, delayed or conditioned;
- c) the Party whose approval or consent is required shall, within thirty (30) days after the request for approval or consent is received, advise the Party requesting such approval or consent in writing that it consents or approves, or that it wishes to withhold its consent or approval, in which case such Party shall set forth, in reasonable detail, its reasons for withholding such consent or approval; and
- d) any dispute as to whether or not such consent or approval has been unreasonably withheld shall be resolved by arbitration.

31.2. This Agreement may be executed by facsimile or pdf transmission and in one or more counterparts, all of which shall be considered one and the same Agreement.

31.3. The invalidity or unenforceability of any provision or covenant contained in this Agreement shall affect the validity or enforceability of such provision or covenant only and any such invalid provision or covenant shall be deemed to be severable from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF the Parties have executed this Agreement by the signatures of their respective duly authorized officers.

**THE CORPORATION OF THE COUNTY OF GREY**

Per: \_\_\_\_\_  
Selwyn Hicks, Warden

Per: \_\_\_\_\_  
Heather Morrison, Clerk

We, together, have authority to bind the County.

**EGERTON SOLAR POWER LP (directed by its General Partner, MPI FIT 4 Inc.)**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

We have authority to bind the Company.

# Schedule "A" Site Plan

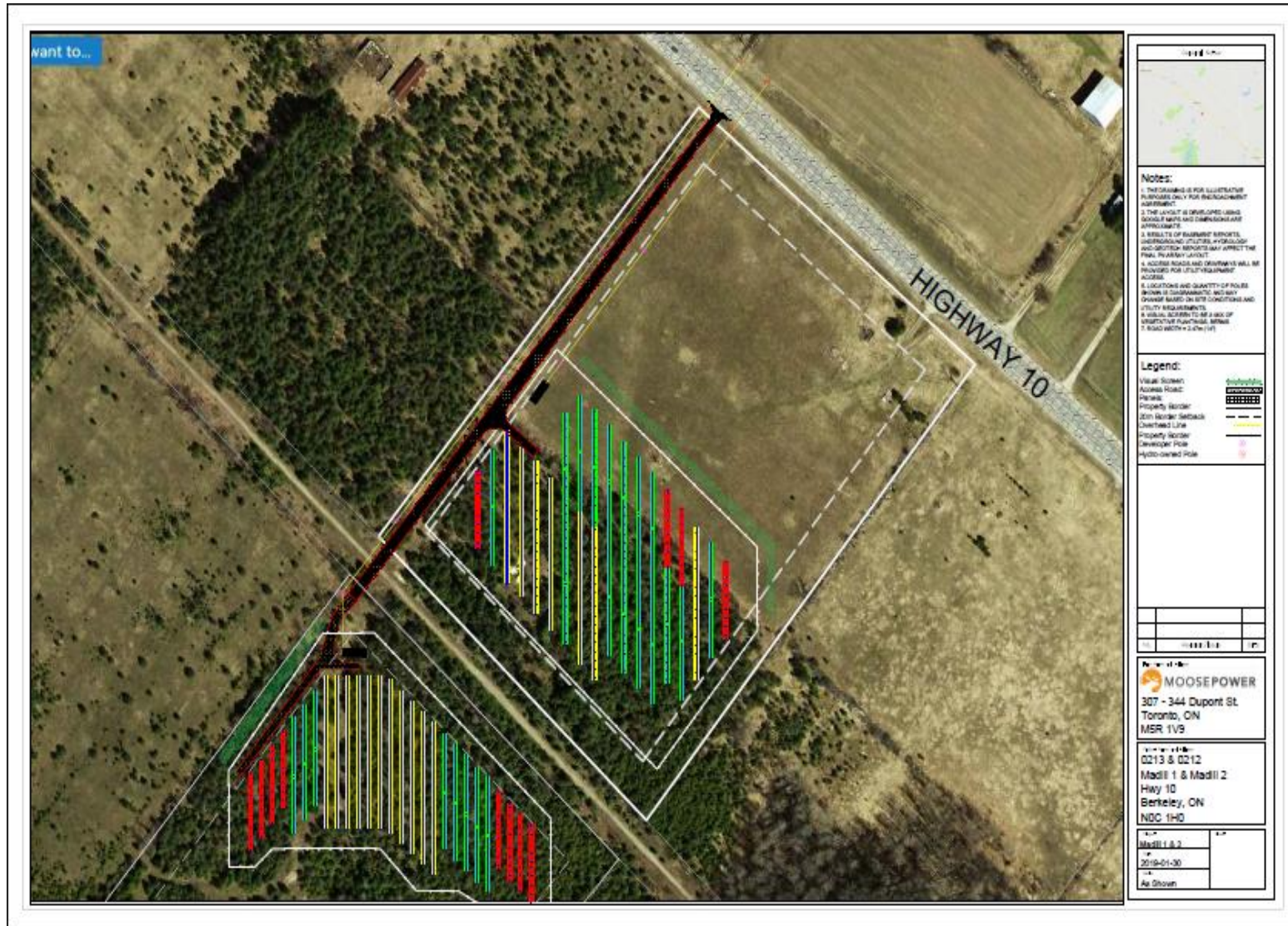


Figure 1 Schedule "A" Site Plan

## Schedule "B" Transmission Line Cross Section

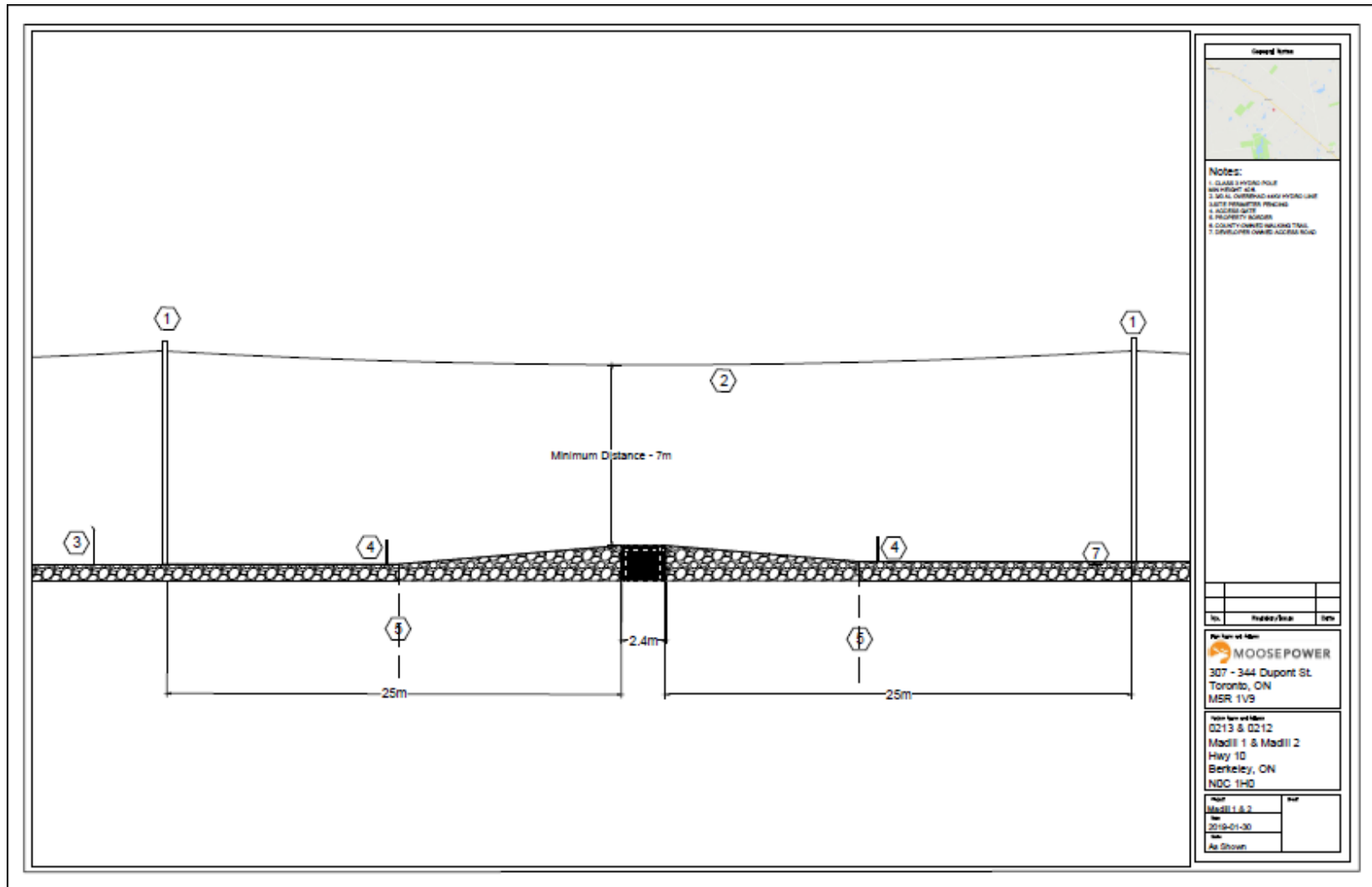


Figure 2 Schedule B Transmission Line Cross Section

Schedule "C" Field Work Request Form



Field Work Request Form

595 9<sup>th</sup> Avenue East  
Owen Sound Ontario N4K 3E3  
Phone: 519-376-2205 / Fax: 519-376-7970

**THIS FORM IS TO BE COMPLETED BY PARTIES WHO ALREADY POSSESS AN ACTIVE ENCROACHMENT AGREEMENT) WITH THE COUNTY OF GREY**

This completed notification must be submitted at least **five (5) Working Days** prior to commencing work on Grey County property by either Fax: 519-376-7970 or email to [trails@grey.ca](mailto:trails@grey.ca)

Company Requiring the Work: \_\_\_\_\_

Contractor Performing Work: \_\_\_\_\_

**Location of Work:** \_\_\_\_\_

Closest Civic Address (if available): \_\_\_\_\_

Township/Municipality: \_\_\_\_\_

Date of Work: \_\_\_\_\_

Printed Name of Applicant: \_\_\_\_\_

Signature of Applicant: \_\_\_\_\_

Contact Phone Number: \_\_\_\_\_

Duration of Work: \_\_\_\_\_

Describe any work which may affect CP Rail Trail users: \_\_\_\_\_

Work Limits: \_\_\_\_\_

Description of Work: \_\_\_\_\_

Approved

Not Approved

Grey County Signature: \_\_\_\_\_