

RESOLUTION NO. 18-10

**A RESOLUTION APPROVING A ROAD USE AGREEMENT  
BETWEEN RICH COUNTY AND SAGE SOLAR I, LLC,  
SAGE SOLAR II, LLC, AND SAGE SOLAR III, LLC**

**WHEREAS**, Sage Solar I, LLC, Sage Solar II, LLC, and Sage Solar III, LLC (“Sage Solar”) plan to construct a large solar power facility in Rich County; and

**WHEREAS**, Sage Solar will use Mine Road to access the land where the solar power facility will be constructed; and

**WHEREAS**, construction of the solar facility may negatively impact Mine Road; and

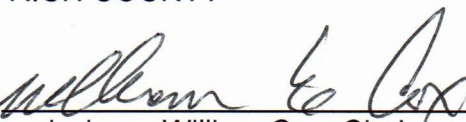
**WHEREAS**, Sage Solar has proposed entering into a non-exclusive road use agreement to repair and remediate any damages Sage Solar may cause to Mine Road; and

**WHEREAS**, the County desires to support Sage Solar’s project;

**NOW THEREFORE**, the Board of County Commissioners of Rich County hereby resolves to enter into the attached Road Use Agreement. The Chair of the Board of County Commissioners of Rich County is authorized and directed to execute the Interlocal Agreement for and on behalf of Rich County.

DATED this 6<sup>th</sup> day of August, 2018.

BOARD OF COUNTY COMMISSIONERS  
OF RICH COUNTY

By:   
Commissioner William Cox, Chair

Commissioner William Cox voted	<u>X</u>
Commissioner Norman Weston voted	<u>X</u>
Commissioner Thomas Weston voted	<u>X</u>

ATTEST:

  
Rebecca Peart, Rich County Clerk/Auditor

When recorded, return to:

Holland & Hart LLP  
222 South Main Street, Suite 2200  
Salt Lake City, Utah 84101  
Attention: Adrienne Bell

## ROAD USE AGREEMENT

This Road Use Agreement (“Agreement”) is made and entered this \_\_\_ day of August, 2018 (“Effective Date”), by and between the Board of Commissioners of the County of Rich, Utah, a body corporate and political subdivision of the State of Utah (“Grantor”); and Sage Solar I, LLC, a Utah limited liability; Sage Solar II, LLC, a Utah limited liability company; and Sage Solar III, LLC, a Utah limited liability company (collectively, “Grantee”).

### RECITALS

**WHEREAS**, Grantee desires to use the section of that certain county road known as Mine Road depicted in attached **Exhibit A** (the “Road”) to access, construct, operate, maintain, and service a solar power facility (the “Facility”) that Grantee intends to construct on certain real property described in attached **Exhibit B** (the “Solar Facility Site”);

**WHEREAS**, the Road subject to this Agreement is a publicly dedicated easement or right of way owned and maintained by the County, except for such section of Mine Road located across portions of federally owned land managed by the Bureau of Land Management in Lincoln County, Wyoming (the “Wyoming Section of Mine Road”);

**WHEREAS**, Grantor has historically maintained the Wyoming Section of the Mine Road for and on behalf of Lincoln County, and intends to continue to do so, and the Wyoming Section of Mine Road is included within the definition of Road for purposes of this Agreement;

**WHEREAS**, Grantee's agents, representatives, employees, affiliates, contractors, subcontractors, workforce and related service companies, as well as the agents, representatives, employees, affiliates, contractors, subcontractors, workforce and related service companies of Grantee's affiliates and of any entity providing debt or equity financing to Grantee (all, collectively, “Grantee Agents”) may utilize the Road for access to the Solar Facility Site and as a haul route to deliver materials and components necessary to erect and construct the Facility;

**WHEREAS**, Grantee's use of the Road may cause impacts which require mitigation to ensure the public's continued ability to use the Road;

**WHEREAS**, Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, a non-exclusive right to utilize the Road for the purposes described herein in exchange for Grantee's reasonable maintenance and mitigation of impacts caused by Grantee's use of the Road, subject to the terms set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. **GRANT:** Grantor hereby grants to Grantee and Grantee's Agents, subject to the terms of this Agreement, a non-exclusive right of way to enter upon and utilize the Road for the purposes of accessing the Facility during the construction thereof with construction equipment and other heavy machinery (the "Use of Road"). Grantor further grants to Grantee the right to repair, modify, maintain and expand the Road, or any portions thereof, as Grantee deems necessary (in each instance, a "Road Modification"). Grantee's Road Modifications, including any routine maintenance and repair performed by Grantee pursuant to this Agreement, shall comply with Grantor's construction standards and regulations applicable to County roads and on file in the office of the County Roads Supervisor. If Grantee desires to use any additional county roads for the purposes set forth herein, Grantee shall provide written notice to Grantor specifying such road that Grantee intends to use at least ten (10) days prior to such use. Grantor and Grantee shall amend this Agreement accordingly to include such road within the definition of "Road" hereunder.

2. **CONSIDERATION FOR USE:** As consideration for the Use of Road and Road Modification, Grantee shall, at its own cost and expense, as of the Commencement Date (defined below) and during the Term of this Agreement, unless sooner terminated, comply with the requirements of Article 5 herein. Grantor shall not allow the condition of the Road to deteriorate in anticipation of Grantee's Use of Road and shall maintain the Road under its current maintenance schedule, except as set forth herein.

3. **DOCUMENTATION OF ROAD CONDITION:** Prior to the execution of this Agreement, Grantor has made a record of the condition of the Road. The Effective Date of this Agreement shall be considered as the "Commencement Date" of Grantee's Use of Road or Road Modification for purposes of this Agreement. Within ten (10) business days following any termination of this Agreement, Grantor shall document the condition of the Road. Should Grantor determine the Road to be substantially in the same condition as the Road on the Commencement Date for the Use of Road, Grantee shall have no further responsibility for the Road under this Agreement. Should Grantor determine that further repair of the Road is required, Grantor shall notify Grantee in writing within ten (10) business days of the final inspection date of any required repairs. Grantee may dispute Grantor's request for repairs within ten (10) business days of receipt of such notification, and if disputed, Grantee and Grantor agree to work in good faith to negotiate a resolution within thirty (30) day. If the parties are unable to resolve a dispute under this agreement, the parties agree to attempt mediation in good faith. If Grantor fails to notify Grantee of any required repairs within the time period set forth above, Grantee shall have no further responsibility for the Road under this Agreement.

4. **TERM:** This Agreement shall commence upon the Effective Date and shall remain in full force and effect until construction of the Facility is completed ("Term"). Grantee shall have the right at any time during the Term to terminate this Agreement for any reason effective upon ten (10) days written notice to Grantor. Grantor shall have the right to terminate this Agreement if a material default in the performance of Grantee's obligations under this Agreement shall have

occurred and remains uncured sixty (60) days after Grantor delivered written notice thereof to Grantee pursuant to Article 10 of this Agreement and such notice sets forth in reasonable detail the facts pertaining to the default; provided, however, if such cure requires more than 60 days to complete, Grantee shall have such additional time as needed to cure such default so long as Grantee commences such cure with such 60-day period and diligently prosecutes the same to completion.

**5. REQUIREMENTS OF ROAD USE:**

a. During the Term of the Agreement, unless sooner terminated, Grantee shall perform or will otherwise be responsible for costs associated with any Road Modification, including routine maintenance and repair of the Road required due to the Use of Road, for the conduct of Grantee's construction and operations related to the Facility as authorized herein. Grantee may, but is not required, to plow the Road to remove snow if deemed necessary by Grantee in order to access the Solar Facility Site.

b. All cattle guards on the Road shall be kept in clean condition and in good repair.

c. Grantee shall not construct any structures or obstructions over or across the Road. If a fence gate is located on or across any Road, Grantee shall secure and close all gates, either temporary or permanent, and shall use reasonable efforts to prevent any livestock from straying or escaping through such gates at any time during Grantee's Use of Road.

d. Grantee shall replace, at its sole cost and expense, any signs, markers, fence or other such improvements that Grantee removes to facilitate its Use of Road, or which are damaged by the activities of Grantee or Grantee Agents in connection with the Use of Road.

e. Grantee shall report in writing to Grantor any material damage or change in condition of Road or material repair and maintenance work completed on the Road during the Term of this Agreement.

f. Throughout the Term of this Agreement, unless terminated sooner, Grantor may inspect the Road from time to time and shall report, in writing, necessary repairs to the Road to Grantee. Grantee shall have the right to dispute such repairs by utilizing the appeal process set forth in Article 3 herein.

**6. GRANTOR'S USE OF ROAD:** So long as it does not interfere with the rights granted to Grantee herein, Grantor shall retain for the public and itself, the right to fully use and enjoy the Road and Grantor's right to perform maintenance of the Road for Grantor's purposes. Grantor reserves the right to grant successive nonexclusive road rights of way or licenses on the Road or access to the Road on such terms and conditions as Grantor deems necessary or advisable, provided that use of the Road for any other development or access to that development shall be subject to payment of a proportionate cost of maintenance of the Road by Grantor. Grantor shall notify Grantee if additional rights of way or licenses are granted to others for use of

the Road for any other development or access to another development during the Term of this Agreement.

7. **INDEMNITY:** GRANTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS GRANTEE AND ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "INDEMNIFIED PARTIES") FROM ANY CAUSE OF ACTION OR CLAIMS OR DEMANDS ARISING FROM ANY ACTION OF GRANTOR OR ITS AGENTS IN THEIR PERFORMANCE OF THIS AGREEMENT. GRANTEE SHALL ALSO INDEMNIFY, DEFEND, AND HOLD HARMLESS GRANTOR AND ITS OFFICERS AGENTS, AND EMPLOYEES FROM ANY CAUSE OF ACTION OR CLAIMS OR DEMANDS ARISING FROM ANY ACTION OF GRANTEE OR ITS AGENTS IN THEIR PERFORMANCE OF THIS AGREEMENT.

8. **DAMAGES LIMITATION:** Any damages awarded to either party under this agreement shall be limited to only the actual damages incurred by such party and neither party shall be liable for consequential, incidental, punitive, exemplary or indirect damages in tort or in contract, or under any legal theory, and all such damages are hereby excluded and waived by the parties hereto with respect to this agreement and/or the exercise of rights hereunder.

9. **COVENANT RUNNING WITH THE LAND/ASSIGNMENT:** The rights granted in this Agreement are appurtenant to and covenants running with the land and shall extend to and be binding upon, and inure to the benefit of, Grantor and Grantee and each of their respective successors and assigns for the Term of this Agreement. Any sale, transfer, conveyance or other disposition of Road or any interest therein by Grantor shall be subject to the rights granted herein. Grantee may assign to any other party the rights herein granted, either in whole or in part, without Grantor's consent, as long as either (i) such assignee agrees to be bound by the terms of this Agreement, or (ii) such assignment is part of a security package delivered by Grantee to one or more entities providing debt or equity financing to Grantee in connection with Grantee's construction of the Facility.

10. **NOTICES:** All notices required or permitted hereunder shall be given by certified mail, postage prepaid, return receipt requested, by overnight express delivery by a nationally recognized overnight courier, or by electronic mail (receipt confirmed) directed as follows:

If intended for Grantor, to:

Rich County Road Department Supervisor  
Attn: Dale Wilson  
87 W. Big Creek Road  
Randolph, Utah 84064  
(435) 793-5585  
Fax: (435) 793-4210  
richroads@allwest.net

with a copy to:

Becky Peart  
Rich County Clerk  
20 S. Main St.  
Randolph, Utah 84064  
bpeart@richcountyut.org

If intended for Grantee, to:

Sage Solar I, LLC/ Sage Solar II, LLC / Sage Solar, III LLC  
c/o Copenhagen Infrastructure Partners  
Langelinie Allé 43  
DK-2100 Copenhagen Ø  
Denmark  
Attn: Nikos Samaritis  
Email: [nsa@cip.dk](mailto:nsa@cip.dk)

with a copy to:

Holland & Hart LLP  
222 South Main Street, Suite 2200  
Salt Lake City, Utah 84101  
Attn: Adrienne Bell  
Email: [ajbell@hollandhart.com](mailto:ajbell@hollandhart.com)

Such notice delivered by (i) certified mail in accordance with the foregoing procedures shall be deemed to have been duly given three (3) business days after such notice is deposited with the United States Post Office, (ii) overnight express delivery by a nationally recognized overnight courier shall be deemed to have been duly given one (1) business day after such notice is deposited with such overnight courier with instructions to deliver such notice the next following business day, or (iii) electronic mail shall be deemed to have been duly given on the date sent. Business day as used in this Agreement means any calendar day other than a Saturday, Sunday, or official holiday of the State of Utah.

11. **SEVERABILITY:** If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law. This Agreement shall not be construed against either party in the event of an ambiguity or other form of dispute as to its interpretation.

12. **FORCE MAJEURE:** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the

problem, limits delay in performance to that required by the event, and takes commercially reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party

13. **GRANTOR'S REPRESENTATION:** Grantor represents and warrants that (i) there are no undisclosed encumbrances, leases, easements or other rights granted to third parties relating to the Road, or any interest therein, that could materially interfere with Grantee's use and enjoyment of the rights granted herein, except those that have been disclosed to Grantee as of the Effective Date, and (ii) Grantor currently holds all necessary easements or other real property rights to permit Grantee's modification, use and maintenance of the Road as set forth herein

14. **THIRD PARTY BENEFICIARY RIGHTS:** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties, and shall be solely to the benefits of the parties. The parties intend and expressly agree that only parties signatory to this document shall have any legal or equitable right to seek to enforcement, to seek any remedy arising out of a party's performance or failure to perform the terms of this Agreement, or to bring an action for the breach of this Agreement.

15. **EMERGENCIES:** The Grantee may, in emergency situations, and acting reasonably, and without giving any notice to Grantor as required elsewhere in this Agreement, take immediate and all action necessary to complete repairs to the Road that Grantor deems necessary for public safety

16. **CHOICE OF LAWS/ENTIRE AGREEMENT:** This Agreement shall be governed by the laws of the State of Utah without regard to choice of law principles and constitutes the entire Agreement between Grantor and Grantee relating to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations, representations, statements, and discussions between the parties, whether oral or written. This Agreement may be modified or amended only by a writing signed by each of the parties hereto.

17. **AUTHORITY:** Grantor and Grantee each respectively have the power and authority to execute and deliver this Agreement and to perform their respective obligations under this Agreement, this Agreement has been duly authorized by all actions of each such party, and the person or persons signing for each party has been duly authorized by such party to do so.

18. **ATTORNEYS FEES:** If any action or proceeding is instituted by either party for enforcement or interpretation of any term of this Agreement, the primarily prevailing party shall be entitled to recover from the other party all reasonable costs and expenses incurred by the prevailing party in said action and any appeal therefrom, including court costs, reasonable attorneys' fees and costs of suit as determined by the court.

19. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall constitute an original and together which shall constitute one and the same document.

[SIGNATURE PAGES TO FOLLOW]



**GRANTEE:**

SAGE SOLAR I, LLC  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

SAGE SOLAR II, LLC  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

SAGE SOLAR III, LLC  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the Authorized Person of Sage Solar I, LLC, a Utah limited liability company, Sage Solar II, LLC, a Utah limited liability company, and Sage Solar III, LLC, a Utah limited liability company.

\_\_\_\_\_  
Notary Public

[affix seal]

**EXHIBIT A**

(Depiction of the Road)

(attached)



RRC POWER & ENERGY, LLC  
 1401 OVA MOUNTAIN RD.  
 TUALATIN, OR 97092  
 PHONE: (503) 342-4064  
 www.RRCpower.com

**CONFIDENTIAL**  
 THIS DRAWING IS THE PROPERTY  
 OF RRC POWER & ENERGY, LLC  
 AND IS NOT TO BE REPRODUCED OR  
 COPIED IN ANY MANNER WITHOUT  
 WRITTEN CONSENT.

PREPARED FOR:



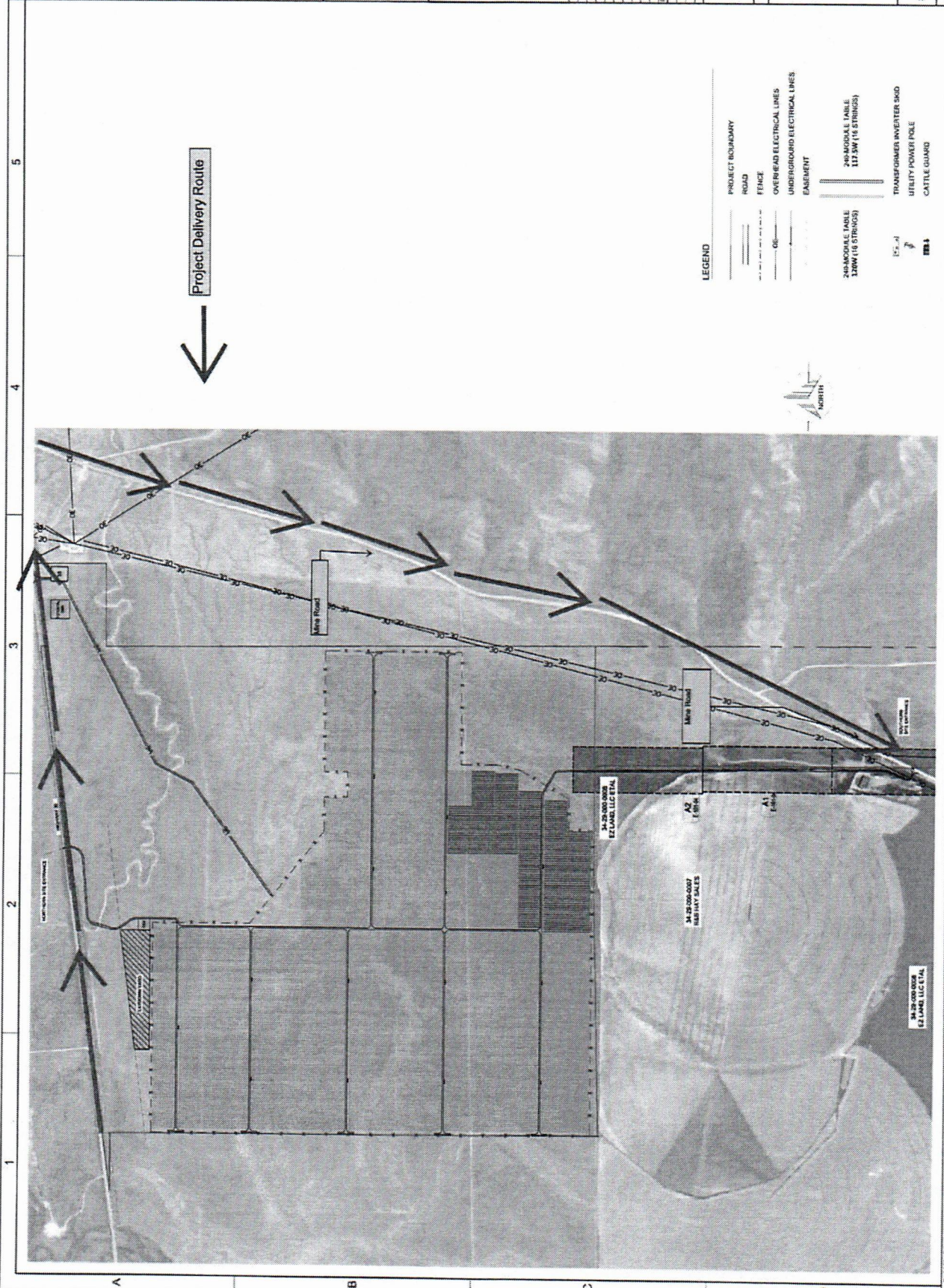
**PRELIMINARY**  
 NOT FOR CONSTRUCTION

REV	DATE	ISSUE DESCRIPTION
B	07/20/21	REVISED FOR REVIEW
A	07/20/21	ISSUED FOR REVIEW
1		ISSUE DESCRIPTION
2		ISSUE DESCRIPTION
3		ISSUE DESCRIPTION
4		ISSUE DESCRIPTION
5		ISSUE DESCRIPTION
6		ISSUE DESCRIPTION
7		ISSUE DESCRIPTION
8		ISSUE DESCRIPTION
9		ISSUE DESCRIPTION
10		ISSUE DESCRIPTION

BY: [Signature]  
 DATE: 7/20/21  
 PROJECT: SAGE  
 DRAWING: SITE PLAN

**SAGE**  
**SOLAR PROJECT**  
**SITE PLAN**

SCSPE-101-05 2 of 2  
 SCSPE-101-01-ROADS.TEMPLATE



REVISIONS: 1. 07/20/21: INITIAL DESIGN  
 2. 07/20/21: INITIAL DESIGN  
 3. 07/20/21: INITIAL DESIGN  
 4. 07/20/21: INITIAL DESIGN  
 5. 07/20/21: INITIAL DESIGN  
 6. 07/20/21: INITIAL DESIGN  
 7. 07/20/21: INITIAL DESIGN  
 8. 07/20/21: INITIAL DESIGN  
 9. 07/20/21: INITIAL DESIGN  
 10. 07/20/21: INITIAL DESIGN

## EXHIBIT B

(Description of the Solar Facility Site)

That certain real property located in Rich County, Utah, more particularly described as follows:

PARCEL 1: The following described property lying in Section 17 and 20, Township 12 North, Range 8 East of the Salt Lake Base Meridian:

Beginning at the Southeast Corner of the Section 20, and proceeding thence South  $89^{\circ}51'$  West 8,180.6 feet, more or less along the South boundary of Section 20, and Section 19, to the South Quarter Corner of Section 19; thence North 4,066 feet, more or less to the Southwest Corner of the Northwest Quarter of the Northeast Quarter of Section 19; thence East 1,397 feet, more or less to the Southeast Corner of the Northwest Quarter of the Northeast Quarter of Section 19; thence North along the East boundary of the Northwest Quarter of the Northeast Quarter of Section 19, 1,210.8 feet more or less to the South right of way line of Utah State Highway No. 51; thence North  $82^{\circ}49'$  East 303 feet along said right of way line; thence South  $7^{\circ}11'$  East 50 feet along said right of way line; thence North  $82^{\circ}49'$  East 3,834 feet along said right of way line; thence North  $7^{\circ}11'$  East 50 feet along said right of way line; thence North  $82^{\circ}49'$  East 2,734.4 feet, more or less along said right of way line to the East boundary line of Section 17; thence South  $00^{\circ}14'$  East 665.3 feet, more or less to the Southeast Corner of Section 17; thence South  $00^{\circ}06'$  East 5,425.2 feet, more or less along the East boundary of Section 20, to the point of beginning. Also, the South half of said Utah State Highway No. 51, abutting the above described property.

LESS AND EXCEPTING THEREFROM, any portion of the above described property lying within Section 19, Township 12 North, Range 8 East of the Salt Lake Base and Meridian.

ALSO, Less and Excepting therefrom any portion of the above described property deeded to the State Road Commission of Utah in Book U, Page 417 in the office of the Recorder of Rich County, Utah.

Tax Parcel Nos. 34-20-00-001 and 34-17-00-002

PARCEL 2: That portion of Lot 4, Section 16, Township 12 North, Range 8 East of the Salt Lake Base and Meridian, described as follows:

Beginning at the Southwest Corner of said Lot 4, and running thence North 665.3 feet, more or less, to the South right of way line of the State Highway; thence Northeasterly in the said right of way line to the Highway to the East line of said Lot 4; thence South to the Southeast Corner of said Lot 4; thence West 913.4 feet, more or less, to the Southwest corner of said Lot 4, and the place of beginning.

Tax Parcel No. 34-16-00-002