

ROAD USE AND MAINTENANCE AGREEMENT

This ROAD USE AND MAINTENANCE AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, _____ by and among Woodward County, Oklahoma (the "County"), and _____ (the "Developer"). The County and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties". The term "Developer's Representative(s)" shall include Developer's contractors, subcontractors, agents, employees, representatives, suppliers and designees.

WHEREAS, Developer is in the process of developing a wind-powered electric energy generating facility (the "Project") in Woodward County, Oklahoma:

WHEREAS, Developer proposes to construct the Project in one or more phases;

WHEREAS, in connection with the construction, operation and maintenance of the Project, the Parties desire to address certain issues relating to the roads owned, operated and maintained by the County (collectively, the "Roads") over which it will be necessary for Developer and Developer's Representative(s) to, among other things: (i) transport heavy equipment and materials which may be in excess of local design limits of certain Roads, (ii) transport locally sourced materials, such as concrete and gravel on the Roads; (iii) make specific modifications and improvements (both temporary and permanent) to the Roads (including to various culverts, bridges, road shoulders and other related fixtures) to permit such equipment and materials to pass; and (iv) place electrical and communications cables (collectively "Cables") for the Project adjacent to, along, under, or across Roads, and (v) place electric transmission poles and lines within County right-of-way;

WHEREAS, attached hereto as Exhibit A is a preliminary site layout plan for the project that shows (a) the primary County roads (both soil asphalt roads and non-soil asphalt roads (gravel) over which the Parties agree the Developer and its representative will travel in connection with development of the Project (the "Primary Roads"), and (b) proposed tower sites, the number and location of which may from time to time change in Developer's sole and exclusive discretion;

WHEREAS, Developer and County have agreed that _____ () miles of the Primary Roads, specifically that portion of _____ highlighted in yellow on Exhibit A attached hereto, are soil asphalt roads (the "Soil Asphalt Roads");

WHEREAS, attached hereto as Exhibit B is a preliminary site layout plan for the project that shows the planned transmission routing over which the Parties agree that Developer and its representatives may utilize the County right of way, and install the electric transmission poles and line in connection with development of the Project;

WHEREAS, the County is willing to (a) provide an oversize vehicle exemption to Developer and allow use of the Primary Roads, and (b) enforce the County right of way to facilitate transmission poles and line installation, in exchange for certain payments and work to be performed by the County as described below;

WHEREAS, it is in the best interest of the public health, safety and welfare that the Developer and the County reach an agreement to address the issues that will arise in and near the Project; and

WHEREAS, the Developer and the County wish to set forth their understanding and agreement relating to the use of Roads during the construction and operation of the Project.

NOW, THEREFORE, in consideration of the mutual promise and covenants herein set forth, the Parties, intending to be legally bound, agree as follows:

Section 1. Developer will undertake the following activities in accordance with the terms of this Agreement:

- A. Designate a company representative with authority to represent the Developer;
- B. Provide plans to the County for the widening of any corner radius necessary to facilitate the turning movements of the transport trucks used by the Developer, and during construction of the Project, make any necessary improvements, said work to be completed by Developer at Developer's expense;
- C. Erect permanent markers indicating the presence of the Cables and install marker tape in any trench in which Developer has placed or will place Cables in a County right-of-way;
- D. Notify the County Commissioners in advance of all oversize moves and crane crossings;
- E. Transport or cause to be transported the tower segments and other oversize loads in a reasonable effort to minimize adverse impact on the local traffic;

- F. Provide as much advance notice as is reasonable to County when it is necessary for a road to be closed due to a crane crossing or for any other reason relating to the construction of the Project. Notwithstanding the generality of the aforementioned, Developer will provide no less than twenty-four (24) hours notice when reasonably practicable;
- G. Provide signage of all road closures and work zones as may be required by the County;
- H. Design transmission lines efficiently so as to minimize the width of right of way used to greatest extent possible, and keep all electrical poles within 2 foot of the landowners fence;
- I. Provide reasonable oversight of Developer's Representatives to comply with usage of Primary Roads as outlined in Exhibit A & B;
- J. Make all necessary upgrades and improvements, at the Developer's sole expense, of the non-soil asphalt Primary roads as designated in Exhibit A, to facilitate the movement of transport trucks and heavy equipment in connection with the construction of the Project. These non-soil asphalt Primary Roads will be upgraded to achieve site access road requirements for weight bearing and stability, which include a thirty three foot (33') by eight inch (8") gravel bed;
- K. File the Woodward County Permit Application for Public Service/Pipeline Crossing for all transmission lines utilizing County right-of-way.

Section 2. The County, in accordance with the terms of this Agreement, agrees to:

- A. Designate a County representative with authority to represent the County;
- B. Perform reasonable routine and regular maintenance of the Primary Roads including: grading, snow removal, striping, routine signage, and regularly scheduled maintenance and repair.
- C. Repair to a reasonable state any Roads damaged by Developer in connection with the Project;

- D. Authorize the designated County representative to agree on behalf of County to revisions to Exhibit A and the final location of Road crossings, access points, and utility encroachments as revisions are submitted to the County by or on behalf of the Developer.
- E. County acknowledges that from time to time during the term of this agreement, Developer transportation plans in connection with development of the Project may change and travel over roads other than Primary Roads with loads exceeding the weight limits set by the County may be required. Subject to paragraph 5 ©, County agrees in such event it shall not unreasonably deny Developer's use of such roads;
- F. Following completion of the Project, except as set forth in Section 5©, County shall be responsible, at its sole cost and expense, to repair the County Roads, as necessary;
- G. County agrees to enforce Developer's rights within the sixty-six foot (66') County right of way, and to allow Developer to install its electric transmission poles and lines within the County right-of-way in accordance with the layout on Exhibit B, as may be amended from time to time, in Developer's sole and exclusive discretion. Developer agrees to construct poles in the County right-of-way as close as possible to a distance of twenty-five feet (25') to thirty-three feet (33') from the centerline of the existing County Road. To the extent that Developer is required to locate utility or transmission structures within that portion of the County right-of-way that is located beyond a private fence, then, to the extent required by applicable law, Developer agrees to make appropriate arrangements with the adjacent landowner.

Section 3. Routing and Access Approval:

It may be necessary to modify Exhibits A and B, as development of the Project is finalized. Developer shall provide revised Exhibits A and B to County, and County review and approval shall not be unreasonably withheld.

Section 4. Construction Cooperation:

A. With Others:

Prior to the commencement of construction of any phase of the Project, Developer shall hold a meeting and shall invite applicable County Commissioners and Public Safety officials to discuss plans for the construction of the Project. County shall compile a list of contact persons that will need to be notified of any temporary road closures that may have an effect on the daily routine or routing of those agencies. A copy of this list shall be furnished by the county to the Developer.

B. Between the County and Developer:

During construction of any phase of the Project, the County and Developer shall meet regularly to discuss Project activities, including anticipated material and equipment deliveries.

Section 5. Compensation; Payments

A. As compensation for the damage that may occur to Primary Roads in connection with development of the Project and in consideration of Developer's use of County right-of-way for installation of Developer's transmission lines associated with the Project as outlined in Exhibit A & B, Developer agrees to pay County an aggregate amount of _____ \$() to be paid in installments as follows:

- i. Developer shall pay County an aggregate amount of _____ (\$) within fifteen (15) days following commencement of construction of the Project;
- ii. Developer shall pay County an aggregate amount of _____ (\$) upon commercial operation of the Project.

B. Except as set forth in Section 5 (C), the Parties agree that the payments set forth in section 5(A) shall be the sole and exclusive compensation paid by Developer to County for distruction, maintance and repair on County Roads relating to the development and construction of the Project.

- C. In the event the Parties agree to amend Exhibit A, and designate additional Soil Asphalt Roads as Primary Roads under this Agreement, Developer shall pay County _____ (\$ _____) per mile of additional Soil Asphalt Road designated as a Primary Road.

Section 6. Miscellaneous

- A. Remedies and Enforcement. Each of the parties hereto covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any party (the "Defaulting Party"), which default is not caused by the party seeking to enforce said provisions (the "Non-Defaulting Party") and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right of specific performance. The remedy of specific performance and injunctive relief shall be exclusive of any other remedy available at law or in equity.
- B. Due Authorization. Developer hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Developer. The County hereby represents, and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County.
- C. Severability. If any provision of this Agreement proves to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected by such finding, and in lieu of each provision of this Agreement that is illegal, invalid, or unenforceable a provision shall be deemed added as a part of this Agreement as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- D. Amendments. Other than specifically permitted herein, no amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by both Parties to this Agreement.
- E. Notices. All notices shall be in writing and sent (including via facsimile transmission) to the Parties hereto at their respective addresses or fax numbers (or to such other address or fax number as either such Party shall designate in writing to the other Party at any time).

Developer:

County:

County Commissioners Office
1600 Main Street, Suite # 9
Woodward, OK 73801
ATTN: County Commissioners
Phone: 580-256-8097
Fax: 580-256-9870
Email address: commissioner@woodwardcountv.org

- F. This Agreement may be assigned by either Party provided that the assigning party provides the non-assigning party with written notice thereof and receives written consent from non-assigning party, provided that consent is not unreasonably withheld; however, the Developer may assign the Agreement to an affiliate or special purpose entity of the Developer, or collaterally assign this Agreement to a lender or guarantor, without such written consent. If the Developer sells or agrees to sell a phase or phases of the Project, whether by asset sale, a sale of equity interests, or by merger (but, after giving effect to such sale, the Developer or any of its affiliates retains or will retain one or more phases of the Project), upon proper prior notice to the County and the written consent from the County provided that consent is not unreasonably withheld, then the County agrees to enter into an identical agreement to this Agreement with the Developer or its affiliate, as applicable, with respect to the phase or phases of the Project that the Developer or its affiliate retains or will retain.
- G. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

- H. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oklahoma, including, but not limited to, 69 O.S. § 1401, 1402 and 1403, irrespective of any conflict of laws provisions. Venue for any action arising under the term of this Agreement or concerning the provisions of service of the Agreement shall be exclusively in the District Court of Woodward County, Oklahoma.
- I. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors, assignees and legal representatives.
- J. Effective Date. This Agreement shall become effective once Developer commences construction of the Project.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on this _____ day of _____, 20_____.

Woodward County:

By: _____

By: _____

Name: _____

Name: Troy White

Title: _____

Title: Commissioner District #1

By: _____

Name: Randy Johnson

Title: Commissioner District #2

By: _____

Name: Vernie Matt

Title: Commissioner District #3

(SEAL)

ATTEST: _____