

ROAD MAINTENANCE AND REPAIR AGREEMENT

THIS ROAD MAINTENANCE AGREEMENT (This "Agreement") is made as of the ~~29th~~ day of June, 2018, by and among Solomon Forks Wind Project, LLC ("Company") and the County of Thomas County, Kansas ("County" and together with the Company, the "Parties" and each, individually, a "Party").

RECITALS:

- A. **WHEREAS**, Company desires to evaluate, develop and construct a wind-powered electrical generation facility to be located in Thomas County (the "Project") together with all necessary access roads (the "Project Transportation Routes") as more particularly described in that certain Development Agreement between the Company and the County of Thomas, Kansas dated as of October 29, 2010 (as amended or replaced from time to time, the "Development Agreement"), and as more particularly described in that Conditional Use Permit issued by the County of Thomas, Kansas, to the Company pursuant to the Resolutions Approving a Conditional Use Permit and the Wind Energy District for Solomon Forks Wind Project to Develop, Construct, Own, and Operate the Solomon Forks Wind Project, Resolution No. 2016-25, approved by the Board of County Commissioners of Thomas County, Kansas December 22, 2016 (the "CUP").
- B. **WHEREAS**, the Parties agree that the construction and operation of the Project will generate an increase in heavy-vehicle traffic on the Project Transportation Routes and that the Project Transportation Routes may require increased maintenance and improvement due to the increase in heavy-vehicle traffic.
- C. **WHEREAS**, as part of the development of the Project, the Company and the County entered into the Development Agreement and the Company obtained the CUP.
- D. **WHEREAS**, it is a requirement under the CUP that a Road Maintenance and Repair Agreement be entered and approved before construction begins, and Section IV.D of the Development Agreement requires Developer to repair any damage caused to the County (Township) roads and/or rights-of-way resulting from Developer's use in connection with the construction of the Project, decommissioning or operation and maintenance activity related thereto.
- E. **WHEREAS**, the Parties agree that it is in the best interests of each to memorialize in this Agreement the rights, obligations and responsibilities of the Parties in Section IV.D of the Development Agreement with respect to Company's use of the Project Transportation Routes.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and

adequacy of which are hereby acknowledged, the Parties to this Agreement hereby stipulate and agree as follows:

1. **Obligations of Company**

Company shall be responsible for the maintenance and repair of the Project Transportation Routes to the extent such maintenance and repair is required as a direct result of extra wear and tear due to transportation of equipment and turbine components during construction and operation of the Project. For the avoidance of doubt, it is understood and agreed that such obligation does not extend to or override the maintenance and repair obligations that the County holds with respect to such Project Transportation Routes that do not arise from Company's activities on such Project Transportation Routes. The Parties recognize that there are other heavy users of the Project Transportation Routes, such as trucks used in dairy farming and quarry operations, and the Parties agree that Company shall not be required to pay or reimburse the County (Township) for any road repairs attributable to such use of the Project Transportation Routes by others or attributable to ordinary wear and tear. Except as provided in Section 1.a.iv hereof, Company shall not be required to pay for the costs of improving load maximums, expanding or adding lanes, or otherwise upgrading a Project Transportation Route above its existing standards.

During any type of road construction, maintenance or repair of the Project Transportation Route, Company will utilize appropriate signage for construction or repair zones and crossings in accordance with the *Manual on Uniform Traffic Control Devices*, or MUTCD. Company will not close any Project Transportation Route without advance notice and permission from the County and County emergency services.

a. **Preconstruction**

- i. Company will identify all proposed Project Transportation Routes for the Project and provide such information to the County Road Supervisor or other designated representative.
- ii. Company will provide the County Road Supervisor or other designated representative with videotape documentation of the pre-construction condition of all proposed Project Transportation Routes.
- iii. The County Road Supervisor or other designated representative shall inspect the proposed Project Transportation Routes for the Project for load paths and restrictions on the respective roads and bridges and, within thirty (30) days of receiving the same, inform the Company if certain roads or bridges included in the Project Transportation Route are not suitable for the Company's use. Company, after consultation with the County Road Supervisor or

other designated representative, may then choose in its sole discretion to either make necessary improvements to such unsuitable road or bridge to accommodate the utilization of the proposed Project Transportation Route or, if such proposed Project Transportation Routes require major improvements, Company may revise Project Transportation Routes to include alternative routes.

- iv. If Company elects to improve any Project Transportation Routes, Company, after consultation with the County Road Supervisor or other designated representative or a qualified contractor, will make such improvements in accordance with the construction requirements for such roads published in the current Standard Road and Bridge Construction Manual issued by the Kansas Department of Transportation.

b. Post Construction

- i. Company will contract with qualified contractors or the County (Township) to make any repairs to the Project Transportation Routes directly resulting from Company's transportation of equipment and Project components during the construction of the Project. The Company must complete its final road repair obligation to the reasonable satisfaction of the County's designated representative or the County Commission within six (6) months after Company completes construction of the Project, or as soon thereafter as weather conditions permit. If Company fails to repair the Project Transportation Routes within the period required by this paragraph, then the County (Township) may cause such repairs to be made with qualified contractors and Company shall, within sixty (60) days after receipt of an itemized invoice, reimburse the County for reasonable out-of-pocket expenses for repairs to the Project Transportation Routes directly caused by Company's transportation of equipment and Project components (and not the result of ordinary wear and tear or use of Project Transportation Routes by others).
- ii. Company's obligations to make repairs or reimburse the County for out-of-pocket reasonable expenses for repairs to the Project Transportation Routes directly resulting from Company's transportation of equipment and Project components will continue during the operational period of the Project.

c. Emergency Repair

Company will promptly notify the County (Township) of any road or bridge emergency condition on any Project Transportation Route discovered by Company or its contractors. In the event such hazardous

road or bridge condition results directly from Company's use thereof, and is not corrected by Company within a reasonable time after the discovery of such hazardous road or bridge condition, the County may perform such emergency road or bridge repair or cause such emergency road or bridge to be performed by qualified contractors and Company shall, upon receipt of an itemized invoice therefore, reimburse County for the reasonable out-of-pocket- repair costs incurred by the County (Township) for such emergency repair.

2. Obligations of County

a. Emergency Conditions

County will promptly notify the Company of any road or bridge emergency condition on any Project Transportation Route discovered by County that gives rise to an obligation of Company under Section 1(c) above. If Company agrees that the emergency conditions were caused by Company's transportation of Project equipment or components, and the condition is not corrected by Company within a reasonable time after receiving notification from the County, the County may perform such emergency repair or cause such emergency repair to be performed on such Project Transportation Route by qualified contractors, and Company shall, upon receipt of an itemized invoice therefore, reimburse County for the reasonable out-of-pocket repair costs incurred by the County for such emergency repair.

b. Cooperation

County agrees to communicate and cooperate with Company in good faith concerning the safe implementation of the Project, including, but not limited to, the performance of Company's obligations hereunder. County agrees that it will cooperate with Company in connection with, and will issue in a timely manner, any licenses or permits necessary or desirable for Company to proceed with its rights and obligations under this Agreement. No bond, security, letter of credit or cash security shall be required in connection with any of Company's repair or improvement work on Project Transportation Routes provided that the County is provided with reasonable evidence of Company's ability to finance the same. In any event, a letter of credit or performance bond in the amount of the estimated cost of such work shall comprise adequate security.

c. Costs of Repairs and Improvements

Where Company performs any repairs or improvements pursuant to this Agreement, County agrees to reimburse Company for the reasonable costs of repairs and improvements of Project Transportation Routes to the extent such costs are not the direct result of Company's transportation of

equipment and Project components within sixty (60) days after County's receipt of an itemized invoice. Prior to Company undertaking any work on Project Transportation Routes, Company and the County shall meet and agree in good faith to determine what portion of the estimated cost of such repairs and improvements shall be the responsibility of Company and what portion shall be the responsibility of the County.

3. **Indemnification**

Company agrees to defend, indemnify and hold harmless County and its commissioners, administrators, employees and representatives (collectively the "Indemnified Party") against any and all losses, damages, claims, expenses and liabilities for physical damage to the Project Transportation Routes, including physical injury to any person, including, without limitation, reasonable attorney's fees, to the extent resulting from or arising out of any negligence or willful misconduct on the part of Company. Notwithstanding the foregoing, Company's obligations under this Section 3 shall not apply to the extent any such losses, damages, claims or injuries arise out of the negligence or willful misconduct of the County or its commissioners, administrators, employees, or representatives. This indemnification obligation shall survive the termination of this Agreement.

4. **Insurance**

Company shall at all times during construction and operation of the Project, carry: (i) commercial general liability insurance with minimum limits of \$2,000,000.00 per occurrence, and (ii) automobile liability insurance. Certificates of insurance shall be provided to County upon written request to Company.

5. **Compliance with Laws**

Company shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Company's activities associated with the Project and shall obtain all permits, licenses and orders required to conduct any and all such activities.

6. **Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between the Parties hereto and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representations or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

7. **Default**

Any failure by a Party to this Agreement to perform a material obligation hereunder which is not remedied within thirty (30) days after receipt by the defaulting Party of written notice of such failure shall be deemed a default under this Agreement and allow the non-defaulting Party to terminate this Agreement. Notwithstanding the foregoing, so long as the defaulting Party has initiated and is diligently attempting to affect a cure, the defaulting Party's cure period shall extend for a time period reasonably sufficient for the default to be remedied.

8. **Relationship of the Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between the Parties hereto or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. The Parties hereto shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

9. **Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

10. **Miscellaneous**

- a. **Savings Clause**: In the event any provisions of this Agreement shall be adjudicated invalid under applicable laws, such invalid provisions shall automatically be considered reformed and amended as to conform to all applicable legal requirements, or if such invalidity cannot be cured by reaffirmation or amendment, the same shall be considered stricken and deleted, but in neither such event, or events, shall the validity or enforceability of the remaining valid portions hereof be effected thereby.
- b. **No Waiver**: The failure of either Party to insist in any one or more instances on the performance of any of the obligations required by the other under this Agreement shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.
- c. **Headings**: The headings used in this Agreement are for ease of reference only and shall not be construed to limit or alter the meanings of any provision thereafter.

- d. Interpretation: This Agreement was prepared with substantial input from both Parties and their respective legal counsel, and the fact that counsel for one Party or the other acted as the scrivener of any provision of this Agreement shall not be considered as a basis for interpreting or construing such provision against such Party.
- e. Successors and Assigns: The covenants, terms and conditions of this Agreement shall extend to and be binding upon the successors, assigns, trustees, and/or receivers of the respective parties hereto.
- f. No Third-Party Beneficiaries; No Warranty: This Agreement does not provide any rights or claims to anyone other than the Parties, and is not enforceable by anyone that is not a signatory to this Agreement. By entering into this Agreement, (i) Company is not insuring or warranting the condition of any road, and (ii) Company does not assume any obligation or create any rights with respect to the Company's standard of care or negligence, other than the rights and obligations explicitly set forth herein with respect to the County.

[Signatures follow on next page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written.

THOMAS COUNTY, KANSAS
BY: BOARD OF COUNTY COMMISSIONERS

Mike Baughn
Mike Baughn, Chairman

Byron Sowers
Byron Sowers, Commissioner

Francis Britton
Francis Britton, Commissioner

Attest:

Shelly A. Harms
Shelly A. Harms, County Clerk



ACCEPTED AND AGREED BY:

SOLOMON FORKS WIND PROJECT, LLC

By: _____
Name: _____
Title: _____

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THOMAS COUNTY, KANSAS
BY: BOARD OF COUNTY COMMISSIONERS

Mike Baughn
Mike Baughn, Chairman

Byron Sowers
Byron Sowers, Commissioner

Francis Britton
Francis Britton, Commissioner

Attest:

Shelly A. Harms
Shelly A. Harms, County Clerk



ACCEPTED AND AGREED BY:

SOLOMON FORKS WIND PROJECT, LLC

By: Derek M. Harding
Name: Derek M. Harding
Title: Vice President

DK

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Barbara)

On July 9, 2018 before me, Katherine A. Dowling, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Derek M. Harding
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Katherine A. Dowling
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

