

**ROAD USE AND MAINTENANCE AGREEMENT**

This ROAD USE AND MAINTENANCE AGREEMENT (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and among Delaware County, Oklahoma (the "County"), and \_\_\_\_\_ (the "Developer"). The County and Developer are sometime 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 \_\_\_\_\_ (the "Project") in Delaware County, Oklahoma; and

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

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; and

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 Project sites, the number and location of which may from time to time change in Developer' 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"); and

WHEREAS, attached hereto as Exhibit B is a preliminary site layout plan for the project identifying turbine locations, site access point, Road crossings (for which Developer will obtain a permit from the County), and 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 Obligations. Developer will undertake the following activities in accordance with the terms of this Agreement:

- A. Designate a Developer's Representative with authority to represent the Developer. As of the date of the Agreement, the Developer's Representative is \_\_\_\_\_.
- 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. Additionally, Developer shall pay for any damage to Roads or persons caused by such modifications. At the conclusion of construction, Developer shall remove any such improvements as the County directs and restore the affected property to its original condition;
- 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 over, across or along any Road;
- 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, Developer will provide no less than forty-eight (48) hours notice when reasonably practicable.
- G. Provide signage of all road closures and work zones in compliance with the Manual on Uniform Traffic Control Devices as may be required by the County Sheriff's Department (or Emergency Medical Services).
- H. Provide reasonable advance notice to the County and Sheriff's Department (or Emergency Medical Services) and will provide all materials necessary to close the Roads.
- I. 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.

- J. Provide reasonable oversight of Developer's Representatives to comply with usage of Primary Roads as outlined in Exhibits A & B.
- K. 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.
- L. File the Delaware County Permit Application for Public Service/Pipeline Crossing for all transmission lines utilizing County right-of-way.
- M. Obtain County approval and the approval of the adjacent landowner for any utility encroachments on County rights of way.
- N. Purchase and deliver applicable road materials for repairs to Roads that are damaged by Developer during the hauling of materials and/or construction of the Project and bear the reasonable costs to restore any Roads that are damaged by Developer during the hauling of materials and/or construction of the Project to the condition enjoyed immediately prior to such damage occurring.

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

- A. Designate a County representative with authority to represent the County (the "County Representative") within fifteen (15) days following the Effective Date of this Agreement. The County Representative shall be authorized 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.
- B. Perform reasonable routine and regular maintenance of the Primary Roads including: grading, snow removal, striping, routine signage, and regularly scheduled maintenance and repair. During the construction of the project, Developer shall perform daily maintenance of the Roads, as necessary.
- C. 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 Section 5(C), County agrees in such event it shall not unreasonably deny Developer's use of such roads;
- D. 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. Planning Inventory, Routing and Access.

- A. Pre-Construction Inventory. No later than \_\_\_\_\_ 1, 2025, the Parties shall jointly perform a survey to record the condition of the pavement surface of the Roads which will be used in the transport of equipment to the Project. During this survey, the entire length of the roads shall be videotaped and if deemed necessary by the parties, photographs may also be taken. In addition, the County will provide Developer, if available, with copies of any plans, cross- sections and specifications relevant to the existing Roads structure. Copies of all pre- construction documentation shall be provided to each of the Parties. Developer will pay the County for all costs associated with the Pre-Construction Inventory.
- B. Post-Construction Inventory. Upon completion of construction of each phase of the Project, representatives of the County and Developer will perform a post-construction inventory, the methods of which shall be similar to those of the Pre-Construction Inventory described above. The two sets of pre and post-construction data will be compared and if there is any damage in excess of the original survey, the County and Developer will determine the extent of the repairs or improvements needed to return the roads to a pre-construction condition. All costs associated with the Post-Construction Inventory shall be borne solely by Developer. Developer shall be obligated to, make any or all repairs necessary to return the roads to a pre-construction condition within one hundred twenty (120) days of completion of the Project. Within five (5) calendar days following the completion of the Post-Construction Inventory, Developer shall provide notice to the County identifying those repairs and the expected date by which such repairs shall be completed.
- C. Routing and Access Approval. As soon as practical after execution of this Agreement and as necessary throughout the construction of the Project, Developer and County shall meet to discuss routing for the transportation of equipment to the Project, Project- related access points, road crossings and Cable locations and the County shall review and approve the same in accordance with Sections 2.

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 influence 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 as follows:
- i. \$750,000 per paved road mile
  - ii. \$500,000 per chip and seal mile
  - iii. \$350,000 per dirt road mile
- B. The total amount of compensation under Section 5(A) shall be paid to the County prior to any transportation of the Roads by the Developer in connection with the Project.
- C. In the event the Parties agree to amend Exhibit A, and designate additional Roads as Primary Roads under this Agreement, Developer shall pay County the amounts specified in 5(A) prior to any transportation of the new Roads designated as a Primary Road.

## Section 6. Mutual Indemnification/Hold Harmless and Liability Insurance Provisions

- A. Indemnity. Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and such other Party's mortgagees, lenders, officers, employees and agents (the "**Indemnified Party**") against any and all losses, direct or indirect damages (including consequential damages), claims, expenses, and other liabilities, including, without limitation, attorneys' fees, resulting from or arising out of (i) any negligent act or negligent failure to act on the part of the Indemnifying Party or anyone else engaged in doing work for the Indemnifying Party, or (ii) any breach of this Agreement by the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by any negligent or willful act or omission on the part of the Indemnified Party.
- B. Limitations of Liability. In no event shall Developer or any of its members, officers, directors or employees or the County or any of its Boards, officers or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to any other Party or their contractors, suppliers, employees, members, and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, non-performance or delay in performance under this Agreement.
- C. Required Insurance. Developer shall upon commencement of construction of the Project and for the period of construction of the Project, maintain in full force and effect commercial general liability insurance, in the aggregate amount equal to Three Million Dollars (\$3,000,000). Developer may utilize any combination of primary and/or excess insurance to satisfy this requirement and may satisfy this requirement under existing insurance policies for the Project.

Section 7. 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:

Delaware County Commissioners Office  
PO Box 309  
Jay, Oklahoma 74346  
ATTN: Chairman  
Phone: (918) 253-4520  
Email: [delcoclerk@grand.net](mailto:delcoclerk@grand.net)

- F. Assignment. 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. If the Developer sells or agrees to sell all of the project, as a condition of said sale, Developer shall require any potential purchaser of the Project to enter into an identical agreement to this Agreement with the County.
- 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
- 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 law's 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 Delaware 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 counterpart to this Agreement

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on this 22nd day of Oct, 2024.

**DEVELOPER**

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

**COUNTY:**

By: David Poindexter  
Name: David Poindexter  
Title: Chairman

By: Jake Callihan  
Name: Jake Callihan  
Title: District 2 Commissioner

By: David Beck  
Name: David Beck  
Title: District 3 Commissioner

By: Barbara Barnes  
Name: Barbara Barnes  
Title: County Clerk







BOARD OF COMMISSIONERS  
DELAWARE COUNTY

DAVID POINDEXTER, DISTRICT ONE  
JAKE CALLIHAN, DISTRICT TWO  
DAVID BECK, DISTRICT THREE

DRAWER 550

JAY, OK 74346

#14

MOTION MADE BY Callihan SECONDED BY Beck

TO DISCUSS WITH POSSIBLE ACTION ROAD USE AND MAINTENANCE AGREEMENT.

POINDEXTER y CALLIHAN y BECK y

MOTION CARRIED.

WITNESS OUR HANDS THIS 22ND DAY OF OCTOBER, 2024.

*Motion to accept Road  
Use Agreement for Delaware  
County*

BOARD OF COMMISSIONERS  
DELAWARE COUNTY, OKLAHOMA

*[Signature]*  
DAVID POINDEXTER, CHAIRMAN

*[Signature]*  
JAKE CALLIHAN, MEMBER

*[Signature]*  
DAVID BECK, MEMBER

Callihan Beck

ATTEST: *[Signature]*  
BARBARA BARNES- COUNTY CLERK

y  
D.P.

y  
J.C.

y  
D.B.

