

**ROAD USE AND MAINTENANCE AGREEMENT**

THIS ROAD USE AND MAINTENANCE AGREEMENT (“Agreement”), dated as of October\_\_\_\_, 2022 (the “Effective Date”), is entered into by and between High Banks Wind, LLC, a Delaware limited liability company (“Developer”) and Republic County, Kansas, a governmental entity in the State of Kansas (“County”). County and Developer may each be referred to herein individually as a “Party”, and collectively as the “Parties”.

**RECITALS**

WHEREAS, Developer is developing a wind turbine (meaning with three blades) electrical generation facility project commonly referred to as the High Banks Wind Project, with an approximate size of 559 megawatts of installed nameplate capacity in the County, to be located on privately owned rural farmland or public right of way located within the County land area as shown on Exhibit A to the Development Agreement between Developer and County dated the Effective Date (“Development Agreement”), consisting of wind turbine generators, meteorological towers, substations, above-ground transmission lines, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (all such types of infrastructure, plus any other directly ancillary Developer infrastructure located within the land area shown on Exhibit A to the Development Agreement, collectively the “Wind Project”) on a site located in Republic County, Kansas; and

WHEREAS, Developer intends to obtain the necessary approvals to build, operate and maintain the Wind Project; and

WHEREAS, in connection with the construction, operation and maintenance of the Wind Project, it will be necessary for Developer and its Representatives to: (i) transport heavy equipment and materials over the Roads, which may in certain cases be in excess of the design limits of the Roads; (ii) transport certain locally sourced materials, such as concrete and gravel, on the Roads; (iii) widen certain Roads and make certain modifications (including to certain culverts, bridges, road shoulders and other related fixtures) to permit such equipment and materials to pass; and (iv) place certain underground cables under certain Roads or Right of Ways for the purpose of carrying electrical current from the Wind Project to the a substation located at on private property within Republic County, Kansas; and

WHEREAS, it is in the best interest of the County that Developer and the County reach an agreement to address the issues pertaining to the Roads and Right of Ways that will arise in and near the Wind Project; and

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

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## TERMS AND CONDITIONS

### Section 1. Defined Terms.

“Commencement of Construction” (a) for initial Wind Project construction shall be the date that Developer provides notice to the County that: a Notice to Proceed has been issued pursuant to the primary engineering, procurement, and construction agreement (“EPC Agreement”); and (b) for all other proposed use of any County road or Right of Way for Regulated Road Use, it is the date of first access for the Regulated Road Use.

“County Designee” means Ken Robbins, 702 K St., Belleville KS 66935, krobbins@republiccounty.org.

“Developer Designee” means William Wilkins, 700 Universe Boulevard, FEW-JB, Juno Beach, FL 33408, William.Wilkins@nexteraenergy.com.

“Non-Project Roads” means roads located within the County that are not Roads, and includes all associated culverts, drainage structures, bridges, road shoulders, ditches and other fixtures and related appurtenances.

“Representatives” means Developers’ agents, employees, contractors, subcontractors, designees and permitted assigns.

“Right of Ways” means any right of way adjacent to or under the Roads or roads which are owned by the County.

“Roads” means the roads to be identified on the Haul Route, and includes all associated culverts, drainage structures, bridges, road shoulders, ditches and other fixtures and related appurtenances.

### Section 2. Grants.

A. Roads. Developer will coordinate with the County Designee to develop a proposed transportation route for Regulated Road Use, except for Standard Road Use, for the Project (the “Haul Route”) and an itemized list of improvements made to the Roads (e.g. bridge and culvert replacement) (the “Developer Improvements”). For the avoidance of doubt, this Agreement shall not restrict the use of the Roads with respect to any Standard Road Use vehicle activity, including but not limited to geo-tech surveys, surveying, and tree clearing activities, and Developer shall be entitled to use of the Roads for such activities.

Prior to Commencement of Construction, Developer will provide the County Designee with a draft of the Haul Route and Developer Improvements. The Haul Route and Developer Improvements will be promptly reviewed by the County Designee. The submitted Haul Route and Developer Improvements will include: (i) the Developer’s proposal of the routes for all Regulated Road Use, (ii) a description of any potential impact to County roads due to any Wind Project change to drainage or erosion or due to any new Wind Project access drive, (iii) a description of all specific Developer Improvements (including proposed road materials and sources) along with any additional proposed modifications and improvements to Roads and other County roads (both temporary and permanent, including various associated culverts, bridges, road shoulders and other

fixtures and, if permanent, including the plan for ongoing maintenance as needed to maintain the permanent change) to permit such equipment and materials to pass, and also to further accommodate any anticipated increased traffic or use of the Roads by employees or contractors, and also to avoid any drainage, erosion or use of new access drives due to the Wind Project to negatively affecting any County road; and (iv) such additional information as County Designee may reasonably require to fully evaluate the potential impact of the Wind Project on any County road or Right of Ways.

Developer shall not begin Regulated Road Use and shall not exercise any right under this Agreement until such Haul Route is approved, or deemed to have been approved, by the County Designee, and such approval not to be unreasonably withheld. In the event that the County has not approved or denied such Haul Route and Developer Improvements within 30 days after the date that is the later of the Effective Date or the submission date from Developer, such Haul Route and Developer Improvements shall be deemed approved. Any route, modification, or improvement set forth in the Haul Route may be subject to amendment by the Parties, and the approval of such amended Haul Route shall not be unreasonably withheld.

Subject to the approval of the County of the Haul Route and Developer Improvements, County hereby grants to Developer and its Representatives a non-exclusive road right of way to enter upon and utilize any road within the County, including the Roads, with vehicles or combined vehicles less than 50,000 pounds, or to have any road within the County, including the Roads, utilized by third-party courier or delivery services with vehicles or combined vehicles less than 50,000 pounds or vehicles involved in tree clearing activities (“Standard Road Use”). Unless expressly stated otherwise herein, Standard Road Use shall not be subject to the terms and conditions of this Agreement.

County additionally hereby grants to Developer and its Representatives, subject to the terms of this Agreement, a non-exclusive road right of way to enter upon and utilize the portion of the Roads that will be identified in the Haul Route as “Construction Road Use” with vehicles or combined vehicles equal to or greater than 50,000 pounds but less than 80,000 pounds (“Construction Road Use”). County also hereby grants to Developer and its Representatives, subject to the terms of this Agreement, a non-exclusive road right of way to enter upon and utilize the portion of the Roads that will be identified in the Haul Route as “Oversize Road Use” with vehicles or combined vehicles equal to or greater than 80,000 pounds (“Oversize Road Use” and, together with Construction Road Use, the “Regulated Road Use”). Developer’s use of the Roads for Regulated Road Use shall occur between the hours of 6:00 am and 10:00 pm, 7 days a week (the “Period of Use”). The County agrees to use reasonable efforts to accommodate requests for Regulated Road Use outside the Period of Use or on roads not identified on the Haul Route during construction of the Wind Project, including but not limited to the pouring of concrete and operation of cranes. Developer shall submit all such requests for accommodations to the County Designee at least 48 hours in advance, which request must include all information regarding the proposed weight, size, volume, and use timeframe of that traffic, along with a licensed engineer’s certification expressly evaluating the current condition of the affected road and infrastructure and proposed traffic impact upon it. Any requested road use approved obligates Developer to all pre-construction and post-construction condition improvement, repair, insurance and bond requirements imposed on Developer for Roads.

B. Right of Ways. Subject to the terms of this Agreement, County grants to Developer and its Representatives, subject to the terms of this Agreement, a non-exclusive license to use the Right of Ways for the limited purposes of installing Cables below the ground, and constructing, modifying, removing, or repairing Road improvements, access points, or turn radii, or performing any other activities required of Developer in this Agreement. Developer acknowledges and agrees that County has no legal right to grant rights to private property beyond County's existing legal rights to that private property.

C. Non-Exclusive Grants. The grants in this Section from County to Developer are not exclusive and County reserves the right for itself and the public (as applicable) to continue to use the Roads and the Right of Ways in a manner that does not impede the rights granted to Developer herein. This Agreement does not grant to Developer any rights or priority to County roads or Right of Ways to disturb or damage infrastructure within or uses of County roads or Right of Ways existing prior to Developer's actual installation of infrastructure, except any approved Cable Installation Route for six months after its approval.

D. Standard Permits. The execution of this Agreement shall serve as the County's master approval of the use, modification, repair, and restoration of the Roads and County Right-of-Way. This Agreement shall serve as, and the County hereby waives, all other permit issuances that the County would otherwise require or grant for the use, modification, repair, and restoration of the Roads or County Right-of-Way, including but not limited to driveway permits, permits for ingress or egress onto Roads, oversize or overweight permits, utility permits, or permits to install cabling, poles, or infrastructure on Roads or in Rights-of-Way. Any roads or Right of Ways shared with Washington County are subject to an agreement between the two counties allocating obligations and rights, and any rights granted by this Agreement are subject to all Washington County and pertinent Washington County township rights as to those shared roads and Right of Ways.

**Section 3. Consideration for Grants.**

A. Obligation to Repair Non-Project Roads and Roads. In the event that any of the (i) Roads, (ii) modifications and improvements made pursuant to this Agreement, or (iii) Non-Project Roads, are damaged as a result of the use by Developer or its Representatives (expressly including without limitation due to Standard Road Use), Developer agrees to repair (or cause to be repaired) such damage and to restore such Non-Project Road, Road or related appurtenance to the condition they were in prior to the use under this Agreement. The Parties shall rely upon the Pre-Construction Inventory pursuant to Section 5(B), and as to Non-Project Roads the Parties shall rely upon County Designee's records and knowledge, for purposes of determining whether the repair has been performed in accordance with the standard set forth in this Section. Any repair and restoration will be promptly performed at such times as the County Designee and Developer may reasonably determine or, in the absence of such agreement, within 6 months. Following completion of such repair, the County Designee and Developer shall jointly inspect the repair to determine that it has been satisfactorily completed.

B. Repairs of Roads and Non-Project Roads at the Request of County Designee. The County Designee may request in writing that Developer repair damage shown to be caused by Developer or its Representatives to the Roads and Non-Project Roads and related appurtenances and return such roads and appurtenances to the condition such roads and appurtenances were in

prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, the County Representative and Developer shall meet to review the damage in relation to the Pre-Construction Inventory. Developer may demonstrate to County Designee that the damage was not caused by Developer or its Representatives. Any repair and restoration will be promptly performed at such times as the County Designee and Developer may reasonably determine or, in the absence of such agreement, within 90 days, weather permitting. Following completion of such repair, the County Designee and Developer shall jointly inspect the repair to determine that it has been satisfactorily completed.

C. Developer Maintenance Obligations. During any Regulated Road Use, Developer at its cost is solely obligated to maintain the Haul Route pursuant to the standard described in Section 4(A) below, and County has no such maintenance obligation. In the event that Developer improved any road and Developer desires that the road be maintained in a condition improved from the condition of the road as of the Effective Date, then, for a period of ten (10) years following completion of construction, and during any other period of time that property taxes are not due on all of the Wind Project property, Developer shall be obligated to reimburse County for the actual material and labor costs incurred by County for the maintenance of such improved road. County shall perform such maintenance and will invoice Developer for the costs incurred by the County in connection with such maintenance, and Developer will pay such invoiced amounts within 90 days following receipt of such invoice.

D. Failure to Repair or Maintain Roads. If Developer fails to repair or maintain the Roads or Non-Project Roads and related appurtenances as set forth in Section 3(A), 3(B) and 3(C), or if at any time County prefers to perform a repair or maintenance obligation that is Developer's pursuant to this Agreement, the County may perform such repairs and maintenance and will invoice Developer for the costs incurred by the County in connection with the repair or maintenance. Developer will pay such invoiced amounts within 90 days following receipt of the invoice.

E. Improvements and Modifications to Roads. The Parties acknowledge and agree that certain modifications and improvements to the Roads and related appurtenant structures are necessary to accommodate the use of the Roads, including (without limitation) the approved Developer Improvements, and the widening of certain Roads, strengthening or replacement of bridges, replacement of culverts and the like. A schedule of final "as built" modifications and improvements shall be provided to the County Designee on or before the date that Developer provides notice to the County of COD ("COD" means the first date that the Wind Project has entered commercial operation). Developer shall, upon the earlier to occur of completion of construction of the Wind Project or termination of this Agreement, restore the Roads to a level at least consistent with the conditions of the Roads prior to Commencement of Construction.

F. Collection System Cabling. The Parties acknowledge that Developer will route certain underground wires, cables, conduits and/or lines (and their associated equipment) related to the transmission of electricity at a voltage of up to 34.5 kV for the purpose of carrying electrical current and communications within the Wind Project ("Cables"), including some Cables at a location adjacent to, under, or across the Roads or the Right of Ways (the "Cable Installation"). A diagram of the Cable Installations located within the County Right of Ways ("Cable Installation Route") shall be provided to the County prior to the Commencement of Construction, and

Developer shall not begin Cable Installations, until such Cable Installation Route is approved, or deemed to have been approved, by the County Designee.

Cable Installations shall not negatively impact existing improvements within the Right of Ways or anticipated future development of the Right of Ways which have been previously approved by the County. Cable Installations on County Right of Ways will be buried at a minimum depth of 48 inches below ground level, unless otherwise approved by the County Designee and will be encased in high density polyethylene pipe (minimum of 15.5 SDR for 8-inch pipe; any other pipe used is subject to County Designee pre-approval) and (if crossing a road or other improvement) the Road or other improvement shall be restored promptly to its pre-construction condition. A schedule of final “as built” Cables Installations shall be provided to the County Designee as provided in the Development Agreement.

G. Removal of Road and Right of Way Improvements. Unless the County Designee or County Designee reasonably determines there is an engineering necessity otherwise, it is understood that the best practice is for the underground Cables to be abandoned in place. Upon the expiration or termination of this Agreement, Developer may leave in place such improvements and Developer’s obligations related to those requested improvements shall cease and be of no further force and effect regarding removal, maintenance, or damage related thereto. If Developer is required to remove such Right of Way improvements, it shall do so within twelve months of the termination or expiration of this Agreement, or within a reasonable time of such determination by the County Designee. In the event Developer fails to remove the improvements from the Roads and Right of Ways, the County may remove such improvements and Developer will reimburse the County for the costs of removal. Any improvements removed by the County shall be owned by the County and Developer does hereby abandon any and all rights and ownership in improvements removed by the County pursuant to this Section.

H. Use of Roads Generally. Developer and its Representatives will: (i) hold meetings in compliance with Section 6; (ii) perform Regulated Road Uses and Standard Road Uses in a reasonable effort to minimize adverse impact on the local traffic, including without limitation coordinate traffic and schedules as much as reasonably possible to assist County to manage local traffic needs, requests and complaints; (iii) provide 48 hour advance notice to the County when it is necessary for a Road to be closed for a period exceeding one hour for any reason relating to the construction of the Wind Project and provide all materials and pay for all costs necessary to close the Road; (iv) provide signage of all Road closures and work zones in compliance with the most current manual on Uniform Traffic Control Devices adopted by the State of Kansas, including but not limited to MUTCD; (v) keep the Roads free from litter and debris created by Developer or its Representatives; (vi) honor the posted speed limits and other traffic control signs on the Roads and in the County in general; (vii) maintain cattle guards, fences and gates in clean condition and in good repair; (viii) employ dust control measures approved by the County Designee that are appropriate for the conditions for any portion of the Haul Route that is adjacent to an occupied residence for 528 feet (1/10<sup>th</sup> of a mile) along the frontage of the occupied residence; (ix) install metal signage reading “No Wind Farm Traffic,” or language materially similar thereto, on Non-Project Roads near intersections with the main Roads used for Construction Road Use and Oversize Road Use; (x) use commercially reasonable efforts to include an identifying marker visible from outside the vehicle on Wind Project vehicles that are being used for Construction Road Use and Oversize Road Use; (xi) issue maps, subject to advance review and approval by the County

Delegate and amended as required, to drivers of Wind Project vehicles that are being used for Construction Road Use and Oversize Road Use that clearly identify the Roads that must be used for Construction Road Use and Oversize Road Use; and (xii) participate in all reasonable communications, or complaint resolution, plans proposed by County. Developer will cause its applicable Representatives to review and understand the applicable provisions of this Agreement to minimize time incurred by County Designee to educate or negotiate with said Representatives.

I. Use of Non-Project Roads; Outside of Period of Use; Adverse Weather.

i. Developer's use of a Non-Project Road for Regulated Road Use is strictly prohibited without the written permission of the County Designee (email is sufficient) and in compliance with this Agreement.

ii. The Period of Use for Regulated Road Use is 6:00 am to 10:00 pm and any Regulated Road Use of the Roads outside of the Period of Use is strictly prohibited without the written permission (email is sufficient) of the County Designee and in compliance with this Agreement.

iii. If applicable, County will provide Developer seven notices of documented days in which there were violations of Section 3(I)(i) or 3(I)(ii) related to the construction of the Wind Project. Following such notices, Developer agrees to pay (within 30 days of written demand) a penalty in the amount of \$5,000.00 for each subsequent day with an undisputed documented occurrence of a violation of Section 3(I)(i) or 3(I)(ii) related to the construction of the Wind Project. This penalty is in addition to any other remedies the County may be entitled to under this Agreement. The County shall provide notice of any potential violations promptly, and shall invoice Developer for any accrued fines on a weekly basis.

iv. Developer shall use commercially reasonable efforts to identify the drivers responsible for documented violations of Section 3(I)(i) or 3(I)(ii). In the event that Developer determines that the same driver is responsible for three violations for which Developer has received notice from the County, Developer shall take commercially reasonable efforts to ensure that such driver is no longer utilized for work related to the Wind Project.

v. No violations or penalties pursuant to Section 3(I)(i), 3(I)(ii), or 3(I)(iii) above shall accrue or be assessed for a period of seven calendar days after the Commencement of Construction, in order to provide Developer sufficient time to coordinate Road use and inform Wind Project vehicle drivers of the restrictions and obligations set forth herein. Additionally, no violations or penalties pursuant to Section 3(I)(i), 3(I)(ii), or 3(I)(iii) above shall accrue or be assessed in the event that such occurrence is related to a severe weather event or other imminent safety concern.

vi. Both the Developer Designee and County Designee may notify the other that the use of the Roads may result in excessive damage due to weather conditions. The designees will meet (remote meetings may be required under the circumstances) and develop a plan to mitigate or prevent such damage.

J. Right of Ways with Existing Utilities. Before commencing digging in any Right of Way, Developer or an agent of Developer shall contact Kansas One-Call to mark existing utilities and service lines including natural gas, fiber or copper communication and electrical cables; and

the water and irrigation districts in the area to locate water and irrigation lines. In the event that Developer or an agent of Developer damages any existing utilities or service lines, notice shall be provided to the applicable utility or service provider of such event, and the applicable utility or service provider shall be given an opportunity to be present during the repair of such utilities or service line. All utilities or service line repairs conducted by Developer or any agent of Developer shall be made in compliance with applicable law.

K. Post-Initial Construction Obligation to Repair. After initial construction is complete, in addition to Developer’s general obligation to repair as set forth in Sections 3(A), 3(B) and 3(C), Developer shall provide the County Designee with at least seven days’ notice, for approval prior to Developer commencing any such Regulated Road Use, following the same process pursuant to Section 2(A) of: (1) any proposed additional Commencement of Construction or Regulated Road Use during the remainder of the Term of this Agreement, (2) the Haul Route, (3) any Developer Improvements, (4) copy of the insurance proof pursuant to Section 9(A), (5) copy of the bond pursuant to Section 9(B), and otherwise comply with all relevant Agreement terms. In the event that such Regulated Road Use causes damage to a Road or Non-Project Road, at County’s election, Developer will either repair such damage or reimburse the County for the reasonable cost to repair such damage and to restore such Road or Non-Project Road to the condition it was in prior to the Regulated Road Use.

L. Emergencies. In the event of an emergency situation on the Roads or Non-Project Roads related to the Wind Project or to Developer, the County and Developer agree to: (i) inform the other party of the emergency taking place; (ii) place regulatory and warning signs informing others of the impending danger; (iii) work in good faith to resolve the emergency; and (iv) Developer will comply with the Manual on Uniform Traffic Control Devices (“MUTCD”). In the case of a condition that creates a hazard to public travel, such condition will be repaired within 24 hours of notice from the County Designee, weather permitting.

M. Source of Materials. Materials used by Developer on roads and Right of Ways are subject to County Designee’s prior written approval, not to be unreasonably withheld. Developer shall utilize commercially reasonable efforts to utilize locally sourced materials, provided that sourcing such material locally is on commercially reasonable terms, satisfies the logistical and technical requirements for such material, and will not cause Developer construction delay.

**Section 4.** County Requirements. The County, in accordance with the terms of the Agreement, agrees that it shall:

A. During times that no Work is pending or in process, perform reasonable routine and regular maintenance of the Roads including: grading, snow removal, and scheduled maintenance and repair; but, the Parties agree that “reasonable routine and regular” means consistent with maintenance and repair by the County of other similar County roads, which includes subject to available funding and staffing.

B. Authorize the County Designee to act on behalf of the County concerning enforcement of this Agreement.

**Section 5.** Planning Inventory.



A. County Designee. The County may utilize the services of a person or business with knowledge or abilities commensurate with the role (the “County Designee”) to assist County with the performance and management of this Agreement, and also evaluating and monitoring Developer’s obligation to materially return any land disturbed or changed as a result of the Wind Project to its pre-construction condition or the then-existing condition of the contiguous lands or roads, and completing all Developer obligations pursuant to the Decommissioning Agreement between Developer and County dated the Effective Date (collectively, the “Decommissioning Services”), and certifying that the Decommissioning Services have been completed consistent with the terms of the Decommissioning Agreement. Developer shall be responsible for paying the reasonable documented fees and costs related to such County Designee services related to this Agreement on behalf of the County. Such County Designee fees, costs, availability, and practices shall be commercially reasonable under the circumstances from time-to-time, Developer acknowledging that County may incur limitations with sourcing County Designee services. The County Designee may be an employee of the County, in which event the County’s employment costs allocable to performance of the County Designee role will be reimbursed by Developer. The County Designee may delegate some of the County Designee duties (subject to the same standard that the delegee is a person or business with knowledge or abilities commensurate with the role), and the fees and costs related to those delegated duties will also be reimbursed by Developer.

The Parties agree that the initial County Designee for purposes of this Agreement shall be Ken Robbins, Highway Administrator (785) 527-2235. Should the County desire to change the County Designee, it will select: (A) one of the engineering firms set forth on Exhibit A attached hereto or as mutually agreed to by the parties regarding initial Wind Project construction occurring on or before December 31, 2023; and (B) otherwise County may change the County Designee once or more in County’s reasonable discretion (subject to the same standard that the delegee is a person or business with knowledge or abilities commensurate with the role).

B. Road Inventory.

i. Pre-Construction Inventory: Prior to the Commencement of Construction, Developer and the County Designee shall perform a survey to record the condition of the pavements and any other surface of all Roads which will be used in the transport of equipment of the Wind Project (the “Pre-Construction Inventory”). During this survey, the entire length and components of the Roads shall be videotaped and photographs taken. In addition, the County will provide Developer, if available, with copies of any plans, cross-sections and specifications relevant to the existing Road's structure. Copies of the Pre-Construction Inventory shall be provided to the County. All costs associated with the Pre-Construction Inventory shall be borne solely by Developer.

ii. Post-Construction Inventory: Upon completion of construction of the Wind Project, the County and Developer will perform a post-construction inventory (the “Post-Construction Inventory”), the method of which shall be similar to that of the Pre-Construction Inventory described above. The 2 sets of pre- and post-construction data will be compared to identify wheel lane rutting, cracking or other damage in excess of the Pre-Construction Inventory. The Road will be repaired in accordance with Section 3 above. All costs associated with the Post-Construction Inventory shall be borne solely by Developer.

**Section 6.** Construction.

A. Pre-Construction Meeting. Prior to the Commencement of Construction, the County Designee or an agent thereof shall be invited to meet with Developer to discuss the plans for the Roads and Right of Ways and Developer's and County's requirements pursuant to this Agreement.

B. Construction Period Meetings. Beginning with the Commencement of Construction, County Designee will be given notice and an opportunity to attend Developer's regularly-scheduled construction meetings that involve the use of Roads and Right of Ways.

C. Workmanship and Material Warranties.

i. Developer's engineering responsibility, including selection of material and equipment suitable for the repair of, and modifications and improvements to, the Roads, Right of Ways and Non-Project Roads (if applicable) shall be carried out in accordance with generally accepted engineering practices. Developer warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner and free of liens.

ii. Developer further warrants that all repairs, modifications and improvements shall be free from defects in material and workmanship. Developer will remedy any defects in the repairs, modifications and improvements performed pursuant to this Agreement whether performed by Developer or its Representatives which are discovered during the Applicable Warranty Period. A "defect" means any and all design, engineering, construction, manufacturing, installation, materials, equipment, repairs, modifications or improvements which (i) does not conform to the terms of this Agreement or (ii) fails to comply with the standards set forth in Section 6(C)(i). As used herein, "Applicable Warranty Period" means 12 months following the completion of any repair, modification or improvement of any existing County asset by Developer or its Representatives, or 24 months for any new bridge constructed, repaired, improved or installed by Developer or its Representatives.

iii. During the Applicable Warranty Period, the County may notify Developer in writing of any defect in the repairs, modifications or improvements. At no cost to the County, Developer shall promptly proceed to correct such defect. Developer shall appoint a representative that is available for update regarding warranty corrections until such time as the County confirms the warranty defect is corrected.

**Section 7. Indemnification and Limitation of Liability.**

A. Limitation of Liability. In no event shall Developer or any of its members, officers, directors or employees or the County or any of its boards, elected officials, officers or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to the other Party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, nonperformance or delay in performance under this Agreement.

**Section 8. Indemnification.** Developer hereby releases and agrees to indemnify and hold harmless County and its respective officers, employees and agents (the "County Parties") from: (a) any and all actions, causes of actions, suits, claims, expenses (including reasonable attorney fees) and demands made by third parties against County Parties arising out of or relating to, directly or indirectly, the negligence, or willful or wanton act or omission, of Developer related to any of the

Definitive Agreements or the Wind Project, including without limitation use of any County roads or Right of Ways, and for any Developer Default of any of the Definitive Agreements; and (b) any and all claims made by a claimant other than County, arising out of or relating to this Agreement, including but not limited to claims relating to the enforceability of any term, claims alleging the County should have imposed additional requirements on Developer, or that the County was not authorized to enter into this Agreement, except for any County Default of any of the Definitive Agreements other than enforceability or County authority.

**Section 9. Insurance and Bond.**

A. Required Insurance. Developer will at all times throughout the Term of this Agreement maintain in full force and effect worker's compensation insurance in an amount required by applicable law and general liability insurance, naming the County as an additional insured, in the amount of \$6,000,000 in the aggregate. Developer will cause its contractors and other Representatives to maintain workers compensation insurance (if required by the State of Kansas) and general liability insurance in the aggregate amount of \$1,000,000. Additionally, Developer will at all times throughout the Term of this Agreement maintain in full force and effect an umbrella insurance policy, issued by an insurer, and on terms, acceptable to County in its reasonable discretion, naming the County as an additional insured, in the amount of \$6,000,000 in the aggregate. Prior to the Commencement of Construction, Developer will deliver to County a certificate of insurance meeting the requirements of this Section naming the County as an additional insured.

B. Bond. As to each occurrence of Commencement of Construction during the Term, for the period commencing on the date that Developer starts Regulated Road Use (and as to initial Commencement of Construction when Developer starts use of the Right of Ways), and expiring 24 months after the later of COD or the date Developer completes all Roads and Right of Ways repair, maintenance and improvement required related to that construction or work ("Work"), Developer shall maintain a payment and performance bond with a surety, and on terms, acceptable to County in its reasonable discretion, in an amount equal to \$5,000,000, naming County as a beneficiary of such bond to insure (i) the repair, maintenance and improvement obligations as set forth in this Agreement, (ii) the payment of any lien that attaches to the Roads or Right of Ways for labor or services to the Wind Project, (iii) any other payment or penalty payment required of Developer to the County, and (iv) guaranty of Developer's full and faithful performance of this Agreement. Proof of the bond will be provided to the County prior to Developer's use of the Roads.

**Section 10. Term; Default and Remedies.**

A. Term. This Agreement is effective as of the Effective Date and shall remain in effect, unless terminated earlier in accordance with this Agreement, until the date that is 30 days after the date of completion of full Decommissioning Services regarding the Wind Project (the "Term").

A. Events of Default. The occurrence of any one or more of the following events will constitute a "Default" under this Agreement:

i. Failure of Developer to make any undisputed payment or reimbursement or penalty due under the terms of this Agreement when due and payable, and such failure continues for 30 days after receipt by Developer of written notice of such failure from the County.

ii. Failure of Developer to comply with any covenant, agreement or obligation contained in this Agreement, and such failure continues for 30 days (or such longer period as needed if such failure is not reasonably susceptible of cure within 30 days and provided Developer is in the process of curing such failure) after receipt of Developer of written notice of such failure from the County.

iii. Developer (1) files for a petition seeking to take advantage of any law related to bankruptcy (including a voluntary petition for bankruptcy), (2) applies for or consents to the appointment of or the taking of possession by a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, or (3) fails to contest a petition for involuntary bankruptcy.

iv. The institution of a case or proceeding against Developer in any court of competent jurisdiction seeking (1) the liquidation, reorganization, dissolution, winding-up or composition or readjustment of debts of Developer or (2) the appointment of a trustee, receiver, custodian, liquidator or the like of Developer or of all or any substantial part of its assets, unless such proceeding or case is dismissed within 60 days thereafter.

v. Additionally, a Default under any Definitive Agreement is a Default under this Agreement.

B. Remedies Upon Default. Whenever a Default occurs, the County shall have the right to take any or all of the following actions:

i. Seek immediate payment of any amount due hereunder from any surety guaranteeing Developer's full and faithful performance hereunder, such payment to be immediately due and payable. Any payment not paid when due, accrues interest from the date due at the rate of the lower of the maximum interest rate allowed by applicable law or 15% per annum. Said interest is due at the time the payment is actually made for the payment to be considered paid in full. Additionally, Developer shall pay to County the County's reasonable attorney and professional fees and other costs with respect to the County's pursuit and implementation of any and all remedies.

ii. Perform Developer's obligation and seek immediate reimbursement upon proof of reasonable costs incurred. For clarity: County may elect at any time, without providing Developer any notice or cure period, or without waiting for a Default to occur, to maintain, repair or otherwise exercise County's police powers and other legal rights regarding roads and Right of Ways.

iii. Take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due.

iv. Invoke the police powers of the County and remove Developer and its Cables from the Roads (including cessation of all Wind Project Regulated Road Use), Right of Ways (or elect for Cables to be abandoned in place but terminate Developer's use of the Cables), and from Non-Project Roads (if applicable).

v. Seek an immediate injunction against the Wind Project, including without limitation ceasing all Wind Project Regulated Road Use, or rights to improve, maintain or repair any roads or Right of Ways.

**Section 11. Miscellaneous.**

A. Engineering Disputes. In the event that Developer disputes any recommendation, requirement, action, omission, or decision of the County Designee, Developer shall notify the County and the County Designee within 30 days of such recommendation, requirement, action, omission, or decision, and shall retain at its own expense a third-party engineer licensed in the State of Kansas (the “Appealing Engineer”) to review such recommendation, requirement, action, omission, or decision. The County Designee and the Appealing Engineer shall meet within 30 days of such notice and shall employ good faith efforts to try to resolve such dispute. If the County Designee and the Appealing Engineer are unable to resolve such dispute within 60 days of such notice, the County Designee and the Appealing Engineer shall agree upon a third engineer licensed in the State of Kansas (the “Deciding Engineer”), to be paid for by Developer. The Deciding Engineer shall have a maximum of 60 days to review such recommendation, requirement, action, omission, or decision and render a decision which shall be binding upon the Parties.

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 the current County Commission and Commissioners signing this Agreement (i) have not taken any action on behalf of the County, and (ii) do not have actual knowledge (without any duty to investigate or inquire) that a prior County Commission took any action on behalf of the County, to restrict the signing Commissioners’ authority to execute and deliver this Agreement on behalf of the County. Except for the express terms of the immediately preceding sentence: Developer agrees to rely solely on its own interpretation, with the assistance of legal counsel, regarding whether this Agreement is valid and enforceable under Kansas and applicable law. Additionally, Developer agrees to not challenge the validity or enforceability of any term of this Agreement.

C. 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.

D. Remedies Cumulative. The rights and remedies of the Parties under this Agreement are cumulative and shall not exclude any other rights or remedies that the Party may have in law or in equity, except Developer does not have the right to terminate this Agreement, and County has a reasonable amount of time under the circumstances to cure any default claimed by Developer.

E. Notices. All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given or made in writing via the methods allowed by the notice party below (including by telecopy) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by

electronic mail with confirmation of receipt received, personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein. Notice is accomplished when as provided to a Party by this Section 11, a copy provided to a Party's legal counsel is merely a courtesy copy.

To Developer:

Business Manager  
High Banks Wind, LLC  
700 Universe Boulevard, FEW-JB  
Juno Beach, FL 33408

Courtesy copy to:

Alan Claus Anderson  
Polsinelli PC, 900 W 48<sup>th</sup> Place, Suite 900  
Kansas City, MO 64112  
Phone Number: (816) 572-4761  
aanderson@polsinelli.com

To County:

County Clerk  
Republic County, Kansas  
1815 M Street  
Belleville, KS 66935

Courtesy copy to:

County Counselor  
Republic County, Kansas  
1815 M Street  
Belleville, KS 66935

F. Amendments. This Agreement may not be modified or amended or waived on behalf of a Party, except by an instrument in writing referring specifically to this Agreement executed by all of the parties to this Agreement as of the time of the modification or amendment. Any oral or verbal agreements between the Parties different from or in conflict with the provisions of this Agreement shall be null and void and of no force or effect where they are in conflict with the written provisions of this document.

G. Successors and Assigns. This Agreement may be assigned by Developer upon written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed; except Developer may assign this Agreement without written consent to an affiliate, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. But, Developer may only assign this Agreement if the assignee: (A) assumes, agrees and acknowledges in writing that such assignee shall be bound by all terms and Developer obligations of and pursuant to all the Definitive Agreements, and (B) delivers to County replacement insurance evidence and financial security, and updated notice information; with copies of the proposed assignment, insurance evidence and financial security provided to

County for review at least 30 days prior to the assignment effectiveness; the replacement insurance evidence and financial security delivered to County by the effective date of the assignment; and a copy of the assignment within 10 days of its effectiveness. Upon such assignment all of Developer's rights and obligations shall inure to the benefit of and shall be binding upon the Developer's assignee and its respective successors, assignees and legal representative.

G. Counterparts; Effectiveness. 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 of this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

H. Severability. If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by applicable law: (a) the other provisions hereof shall remain in full force and effect in such jurisdiction in order to carry out the intentions of the Parties as nearly as may be possible; and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction; and (c) the Parties will promptly and continuously work reasonably and in good faith to amend the Definitive Agreements to implement the invalid or unenforceable provision as closely as possible to carry out the intentions of the Parties regarding the Definitive Agreements.

I. Headings; Terms. Headings appearing herein are used solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

J. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to conflicts of laws provisions. Venue is only proper in Kansas state district court located in Republic County, Kansas, or federal district court located in Wichita, Kansas.

K. Entire Agreement. The initial effectiveness of this Agreement is contingent upon both Parties fully and concurrently executing and delivering this Agreement, plus a Development Agreement, Decommissioning Agreement, and Contribution Agreement (collectively, the "Definitive Agreements"), which together collectively constitute the entire agreement between the Parties regarding the Wind Project, and supersede all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth in the Definitive Agreements.

L. Interpretation. This Agreement was prepared with substantial input from both Parties and their respective legal counsel; no phrase, sentence, clause, provision or section of this Agreement shall be construed against a Party as a result of such Party's legal counsel having acted as the primary drafter thereof

M. Time is of the Essence. Time is of the essence of this Agreement, and of each and every provision hereof, and the Parties shall make every reasonable effort to expedite the subject matters hereof and to perform their respective obligations.

N. Recitals. The recitals set forth above constitute a material part of this Agreement, and are incorporated herein. The Parties confirm the accuracy, truth and validity of said recitals.

**[REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK; SIGNATURE  
PAGES FOLLOW.]**



*draft version 10.5.2022*

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement to be effective as of the Effective Date.

**DEVELOPER:**

HIGH BANKS WIND, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Anthony Pedroni, Vice President

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement to be effective as of the Effective Date.

**THE COUNTY:**

THE BOARD OF COUNTY COMMISSIONERS OF REPUBLIC COUNTY, KANSAS

By: \_\_\_\_\_  
Doug Garman, County Commissioner -- Chairman

By: \_\_\_\_\_  
Edwin G. Splichal, County Commissioner

By: \_\_\_\_\_  
Melvin Jeardoe, County Commissioner

ATTEST:

By: \_\_\_\_\_  
Kathleen Marsicek, County Clerk

*Reviewed and approved by:*

\_\_\_\_\_  
Justin Ferrell, County Counselor

**[SIGNATURE PAGE OF DEVELOPER AND COUNTY TO ROAD USE AGREEMENT.]**

**EXHIBIT A**  
**Approved County Designee Firms**

Kirkham Michael  
Black & Veatch  
Burns & McDonnell  
BG Consultants