

(North Bend)

AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS

This AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS (“**Agreement**”) is made and entered into this Friday, June 10, 2022 (“**Effective Date**”), between North Bend Wind Project, LLC (the “**Developer**”), a Delaware limited liability company with offices at 1360 Post Oak Blvd., Suite 400, Houston, Texas 77056, and Hughes County, South Dakota (“**County**”) with offices at 104 E Capitol Avenue, Pierre, SD 57501. Developer and the County may be referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties.**”

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RECITALS

1. Developer has been developing a wind-powered electric generating facility with a planned nameplate capacity of up to approximately 200 MW, located in Hyde and Hughes Counties, South Dakota (the “**Project**”).
2. The County is responsible for the maintenance of certain roads within Hughes County, and the intent of this language is to help safeguard the existing condition of the County highway system including the roads, bridges and culverts. The County has limited resources and cannot afford to repair any damage to the highway system caused by large scale industrial development. The increased frequency of heavy loads associated with a large-scale industrial development will shorten the life span of the highway system whether or not there are visible signs of damage.
3. In connection with the development, construction, operation, maintenance, and decommissioning of the Project, it will be necessary for Developer and its contractors and subcontractors or designees to: (i) transport heavy equipment and materials over designated haul routes located in the County, which may in certain cases be in excess of the design limits of such roads; (ii) transport personnel, equipment, and materials on such roads using vehicles weighing 5 tons or more in gross vehicle weight; (iii) widen such roads and make certain modifications and improvements (both temporary and permanent) to such roads to permit such equipment and materials to pass; and (iv) place certain electrical cables for the Project adjacent to, or under, or across certain roads for the purposes of the collection, distribution, and transmission of electricity to and from, and between and among various parts of, the Project (“**Project Activities**”).
4. The County and Developer wish to enter into an agreement for the use, repair and improvement of the Designated Roads, all in accordance with the terms and conditions set forth herein. Appendix B shall include a detailed Project Area Map that includes the following information:
 - i. Limits of the Project area
 - ii. Areas where construction is taking place
 - iii. Areas of all staging yards, portable concrete plants, etc.
 - iv. Highlight all county roads designated as haul roads within the Project area, including but not limited to proposed access roads, alternate access roads, aggregate delivery routes, miscellaneous delivery routes and turbine delivery routes
 - v. Highlight all county roads designated as haul roads from state highways or interstate to the Project area

- vi. Highlight all structures on county and township roads within the Project area that meet the National Bridge Inspection Standards length (longer than 20 feet)
- vii. Beginning and ending dates for construction

The structures located on county and township roads within the project area that meet the National Bridge Inspection Standards length shall be considered part of the Designated roads and subject to the terms of this agreement. The Designated Roads shall be subject to written approval by the County. Any changes to the map after submission to the County shall require written approval by the County, which approval shall not be unreasonably withheld, conditioned or delayed. All information provided in Appendix B shall be shown on a single sheet that is sized and scaled to show all information clearly and legibly. Four hard copies and one PDF copy of Appendix B shall be submitted with this agreement.

- 5. For road improvement on unimproved section lines or unmaintained township roads that are currently not maintained by Hughes County, for which Developer deems continued improvement necessary after Project Construction, the standards for improvement shall be provided by Developer as set forth in Article III hereof through supervision and approval of Hughes County. For the purposes of this agreement, an unimproved section line or unmaintained township road is considered as any section line which is not on the Hughes County Highway system and has not been improved by any private entity.

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS AND GENERAL TERMS

1.1 Definitions. Capitalized terms used in this Agreement and not otherwise defined shall have the meanings assigned to them in Appendix A.

1.2 Preliminary and Final Approval. The Plans and other information supplied by Developer incorporated in Appendix B, Appendix F and Appendix G to this Agreement are indicative based upon the best information available at the time this Agreement is executed and are subject to revision when the design for the Project is finalized. Initial approval by the County of this Agreement shall be preliminary only. Prior to commencement of any Project Activities Developer shall submit to the County the final version of the Plans and information referenced in Appendix B, Appendix F and Appendix G for review and approval. The revised Plans and other information submitted that is approved by the County shall be substituted for and replace the corresponding information contained in the relevant attached appendices hereto and the provisions of this Agreement that are subject to such approval shall thereupon be satisfied. To evidence such approval, the Developer and the County shall execute the form of Supplement to this Agreement attached hereto as Appendix I upon submission by Developer and approval by the County of the final version of the Plans and Appendix B, Appendix F and Appendix G pursuant to this Section 1.2.

ARTICLE II USE OF DESIGNATED ROADS BY DEVELOPER

2.1 Use of Designated Roads by Developer. Developer hereby acknowledges and agrees that, in connection with the conduct of any Project Activities for the development, construction, operation, maintenance, and decommissioning of the Project, Developer Parties may use, non-exclusively, only Designated Roads. When using a vehicle weighing less than 5 tons gross vehicle weight, Developer may use non-Designated Roads to access the Project. Use of Designated Roads shall be restricted by all applicable limitations and regulations concerning their use, including abiding by all posted bridge and roadway load limits, whether federal, state, County, or those of any other governmental entity or agency having jurisdiction over such roads, subject to overweight and oversized loads usage of the Designated Roads as provided herein. The Developer Parties shall abide by the County's posted spring load limit restrictions on all Designated Roads, for the entire time frame the spring load limits are in effect. All loads in excess of legal loads and/or size shall be subject to the County's overweight and/or Oversize permit restrictions. The Developer Parties may use the Designated Roads at any time, seven (7) days a week, 365 days a year, subject to the provisions of the General "Non-Frost" Overweight Permit. The Developer Parties agree to refrain from using roads or to limit hauling when road conditions are such that Developer Parties' use of them will result in significant damage to the road. A list of Project Construction Equipment shall be included in Appendix B. The Project Construction Equipment list shall include all anticipated equipment to be used on the Designated Roads, including the crossing of Designated Roads. The list shall also include the following descriptions: 1) Equipment type, total weight, number of axels and individual axel weights. 2) For any tracked equipment, provide total weight and length and width of tracks. 3) Total anticipated trips on each haul road for each equipment type. The information in Appendix B is subject to revision in accordance with Section 1.2.

Developer may request that additional roads be included as Designated Roads by (A) submitting such a request, and the basis for the request, to the County in writing, accompanied by an updated version of Appendix B that includes such additional roads, (B) allowing the County a reasonable opportunity of not less than seven (7) days to review the request, including the basis for the request, and to make a decision as to whether to include the road as a Designated Road in the County's reasonable discretion, and (C) allowing the County to perform an Initial Evaluation on such additional roads if use of the updated roads is approved by the County. County will be allowed forty-five (45) days to perform any additional initial evaluations of Designated Roads. The County is not required to perform evaluations when the ground is frozen. Upon Developer's submission of such a request, the County shall, within a reasonable period of time, review such request. The County may deny any request should it determine that the use of said Designated Roads would cause a safety issue to the traveling public that would not be mitigated by the safety measures required to be utilized by Developer pursuant to the terms of this Agreement applicable to use of Designated Roads unless the County requires that Developer implement additional safety measures to address such safety issues. If approved by the County, Appendix B shall be deemed automatically amended and restated as such updated version of Appendix B without any further action required by either Party.

2.2 Incidental Use. The Parties recognize that, while Developer does not currently anticipate use of roads within Hughes County during the conduct of any Project Activities for the development, construction, operation, maintenance, and decommissioning of the Project other than Designated Roads (except for access to the Project by vehicles weighing less than 5 tons gross vehicle weight as provided in Section 2.1 above) and certain federal and state highways, the Developer Parties may, nevertheless, make some incidental use of roads other than Designated Roads. All Repairs of damage caused by such incidental use shall be dealt with by the performance of Repairs to such road in accordance with Section 3.2 as if such road had been a Designated Road when such damage occurred. Developer shall provide the County with thirty (30) days-notice prior to using such road unless the County Designee provides written approval to Developer for any such incidental use.

2.3 County Designee; Commencement of Construction; Construction Period Meetings. The County Designee shall have authority to act on behalf of the County. Developer shall provide to the County Designee forty-eight (48) hours prior written notice of the commencement of construction on Designated Roads. Beginning with commencement of construction of the Project, Developer and the County Designee shall meet from time to time upon the reasonable request of either Party to discuss the expected use of the Designated Roads, including the construction schedule and haul routes to be used.

2.4 Evaluation of Designated Roads Prior to Construction. The County shall conduct an Initial Evaluation of Designated Roads no more than 60 days prior to commencement of construction of the Project. Developer will provide County reasonable notice, not less than 45 days, of the commencement of construction to allow County sufficient time to obtain an evaluator and have the evaluation conducted. Should the County be unable to secure an appropriate entity to conduct the Initial Evaluation of Designated Roads within the timeframe designated above, commencement of construction may be delayed at the County's sole discretion to allow time for an appropriate entity to be secured and for the Initial Evaluation to be performed. The evaluation shall include the existing condition of the roadways, bridges and culverts along the Designated Roads. The evaluation may include, but is not limited to, the following: 1) Profilometer, video, pictures, roadway borings, level and tape measurements, calculations, etc. and/or 2) services of civil, structural and geotechnical consultants. The County shall provide a copy of the results of the Initial Evaluation of Designated Roads to the Developer not less than ten (10) days before commencement of construction or as soon as the report is available. The costs of all Initial Evaluations will be borne by Developer. The County shall provide the Developer in writing with a maximum limiting fee per mile for the inspections and reports. The fee per mile of Designated Roads shall include the inspection of the existing condition of the roadways, bridges and culverts along the Designated Roads as well as producing the Evaluation Reports.

2.4a Evaluation of Designated Roads During Construction. If, pursuant to Section 2.1, Developer submits to the County an updated version of Appendix B that designates an additional road as a Designated Road, the County shall perform an Evaluation with respect to such additional Designated Road in accordance with Section 2.4. County is not required to perform evaluations when the ground is frozen. The Developer will be charged the actual cost for the inspection and report for any additional inspections completed.

2.4b Evaluation of Designated Roads After Construction. The Developer shall provide the County with not less than 30 days' written notice before construction is completed. The County shall then perform an inspection of the Designated Roads, similar to the Initial Evaluation of Designated Roads described above, in coordination with and permitting input from the Developer, as soon as reasonably possible and in any event not more than 60 days after construction is completed. Should the County be unable to secure an appropriate entity to conduct the inspection within the timeframe designated above, the deadline for the After Construction Evaluation of Designated Roads may be delayed at the County's sole discretion to allow reasonable time for an appropriate entity to be secured and for the inspection to be performed. The Developer may request the County to inspect individual segments of the Designated Roads (not less than a mile in length) within the Project area if the Designated Road is no longer needed during construction. The Developer shall submit sufficient evidence to the County that construction traffic has ended on the Designated Road segment. The approval or denial of the request shall be at the sole discretion of the County. The results of the inspection shall be documented in the After Construction Evaluation of Designated Roads. The inspection shall be completed in accordance with Section 2.4 of this Agreement. The After Construction Evaluation report shall report on the then-existing conditions of the Designated Roads and include the results of the post-construction evaluation, itemization of any restoration needed, and estimated costs to bring the roadways, bridges and culverts along the Designated Roads back to the condition recorded in the Initial Evaluation of Designated Roads. A copy of the After Construction Evaluation report shall be submitted to the Developer not more than 15 days after the completion of the evaluation. All costs associated with the After Construction Evaluation and report shall be paid for by the Developer. The Developer will be charged the same fee per mile of Designated Roads for the inspection and report as enumerated by the County for the Initial Evaluation.

2.4c Acceptance of Repairs and Restoration, and Release of Roads. Following the After Construction Evaluation, the Developer, at its sole expense, shall restore Designated Roads in accordance with Section 3.2 of this Agreement to a condition not less than the condition that existed as demonstrated by the Initial Evaluation of Designated Roads. Once the repairs are made and the County is satisfied that the roads have been returned to the same, or better, condition as they were prior to the commencement of the Project, the County shall accept the road conditions and release the Developer from their construction phase road maintenance responsibilities, except with respect to warranty of the Repair work. Developer agrees to obtain a warranty of all Repair work performed by contractors and enforce such warranties for the benefit of the County. To the extent any Repairs are self-performed by Developer or the warranty obtained from its contractor for Repairs does not cover such work, Developer shall be responsible for any defects in Repair work, including those first appearing after the next winter freeze and thaw cycle that were caused by Project Activities, in accordance with the terms of Section 3.2.

The Developer may request the County to inspect the final restoration and repairs of individual Designated Road segments and release those segments (not less than a mile in length) within the Project area if the Designated Road is no longer needed during construction. The Developer shall submit sufficient evidence to the County that construction traffic has ended on the Designated Road segment. The approval or denial of the request shall be at the sole discretion of the County. Any other evaluations not previously specified by this agreement may be conducted upon mutual agreement of the Parties.

2.5 Fugitive Dust. Developer shall be responsible for addressing Significant Fugitive Dust created by the Developer Parties. When requested by the County, Developer shall reasonably address or minimize Significant Fugitive Dust using water, calcium chloride, or appropriate other commercially available reasonable means in Developer's reasonable discretion. The Developer shall inform the County of the methods used and dates control measures are applied to County roads.

2.6 Road Closures. Developer shall use reasonable efforts to avoid the closure of any County road. Nevertheless, Developer shall be permitted to close Designated Roads for brief periods in the interest of safety and to permit the passage of large loads and the installation of Improvements; *provided*, that Developer shall have provided the County with seventy-two (72) hours' prior notice of any planned road closure and obtained the County Designee's approval thereof, which approval shall not be withheld except for reasons of public safety or substantial and unavoidable public inconvenience. Notice to the County Designee shall satisfy such requirement, provided that such notice is given by both telephone and either fax or e-mail. When road closure cannot be avoided, (i) Developer shall be responsible for all public notices (such as newspaper and radio announcements), (ii) the County will facilitate Developer's dissemination of such public notices by providing any required approvals, and (iii) Developer shall be responsible for traffic control, and signage necessary to safely administer said closure.

2.7 Security. Developer shall maintain a form of financial assurance as authorized by SDCL 31-12-43 for damage to roads and bridges caused by construction of the Project. The terms and conditions of such financial assurance shall be as agreed upon by the County and Developer. Developer shall cause to be delivered to County, no later than sixty (60) days prior to commencement of construction, payment security (the "**Payment Security**"), in the form of a surety bond or other financial assurance acceptable to the County. The Payment Security shall be calculated on a per mile of Designated Road basis as set forth in Appendix H. The Payment Security shall be maintained until substantial completion of construction of the Project.

- a) Rights of Developer. In the event the Developer puts in place the Payment Security, but does not commence Project construction, the County shall return the Payment Security in full. If Developer has performed under this Agreement and met its payment obligations, the County shall return the Payment Security no later than ninety (90) days following substantial completion, inspection, final approval, and release by County that all final road repairs have been completed or reimbursed by Developer.
- b) Rights of County. In the event that the Developer fails to make a required repair or payment under the terms of this Agreement, the County may make a claim upon the surety bond or draw upon the other financial assurance, as applicable.

2.8 Bridges. Developer hereby acknowledges and agrees that the Developer Parties will not use any bridges on County roads listed in Appendix C in connection with conduct of any Project Activities for the development, construction, operation, maintenance and decommissioning of the Project, except that the Developer Parties shall be permitted to use such bridges other than the bridges identified on the map attached to Appendix C during the period of operation and maintenance of the Project for vehicles 5 tons GVW or less. Notwithstanding the foregoing, if

Developer desires to use any of the bridges on County roads listed in Appendix C for other uses in connection with conduct of any Project Activities for the development, construction, operation, maintenance and decommissioning of the Project and Developer is willing to make any upgrades as required by the County to permit such use, then County agrees to permit such use provided Developer makes the required modifications to permit use and obtains approval of the completed modifications by the County prior to initial use. The Developer shall be responsible for any damage caused to bridges by unauthorized use of said bridges on County roads by Developer Parties. The location of bridges on County roads from 317th Avenue east to the County line is included in Appendix C. Use of any bridges on County roads by Developer in violation of this section will constitute a Material Breach of this agreement as defined in Section 6.3 of this agreement and will be treated as such pursuant to the provisions of Section 6.3.

ARTICLE III MAINTENANCE AND REPAIR OF DESIGNATED ROADS

3.1 Maintenance of Designated Roads. The County shall in a timely fashion maintain Designated Roads in accordance with the County's standard practices for road maintenance, having due regard for safety, prevailing and predicted weather conditions, and the presence of emergency conditions, including without limitation the removal or plowing of snow. The County shall have no responsibility to care for or maintain additional road segments added or constructed as a part of the construction, operation, maintenance, or decommissioning of the Project, including, but not limited to, any widened or added curves.

The Developer shall be responsible for all maintenance of Designated Roads that is associated with the conduct of any Project Activities for the development, construction, operation, maintenance, and decommissioning of the Project including but not limited to providing: additional crushed rock, gravel and/or asphalt surfacing of a quality approved by the County Designee, temporary repair of roadway damage (soft spots, blow outs, rutting, etc.), repair of damaged bridges and/or culverts, Chloride Dust Control, construction warning signs in accordance with the most recent version of the Manual on Uniform Traffic Control Devices for Streets and Highways published by the Federal Highway Administration of the U.S. Department of Transportation (the "MUTCD"), and blading and snow removal beyond the County's routine intervals. For greater clarity, Developer shall not have any responsibility for maintenance of Designated Roads during the operation and maintenance of the Project after acceptance and release based on the After Construction Evaluation report after construction unless required as a result of Developer conducting any subsequent Project Activities during the operation and maintenance of the Project. With regard to gravel and asphalt surfacing quality, the County uses South Dakota Department of Transportation specifications for road surfacing per 2015 Standard Specifications for Roads and Bridges. For gravel surfacing, the County uses the specifications in Section 882 with a plasticity index between 9 and 12. The Developer shall grade and maintain all non-paved Designated Roads during the conduct of any Project Activities for development, construction, operation, maintenance, and decommissioning, including such measures for Significant Fugitive Dust as provided in Section 2.5. The Designated roads shall be maintained in drivable and safe condition at all times, including maintaining drivable and safe access to all adjacent residence's businesses and farms for all heavy farm equipment and all heavy trucks.

All costs for maintenance of the Designated Roads required by any Project Activities shall be paid for by the Developer. The County shall have the authority to perform maintenance required by any Project Activities if the safety or welfare of the public is at risk and not promptly and adequately addressed by Developer after written notice by the County in accordance with Section 10.5 of this Agreement with reasonable details as to the nature, scope, and schedule thereof. The Developer will be charged for all costs associated with construction related maintenance performed by the County to the extent not performed by Developer after written notice by the County with reasonable details as to the nature, scope, and schedule thereof. The Parties shall cooperate so as to permit the Developer to respond promptly to such a request, which the Developer shall endeavor in good faith to do. If the Developer does not object to such request within five (5) business days (or within two (2) business days if exigent circumstances require) or the Developer fails to respond as required to perform such maintenance, the County may perform, or cause to be performed, such maintenance.

Notwithstanding anything contained in this Section 3.1, Developer shall only be responsible for maintenance required as a result of use of Designated Roads for Project Activities and shall not be responsible for maintenance required as a result of use of Designated Roads by the public.

3.2 Repair of Designated Roads. Developer shall be responsible for repairing damage caused by the Developer Parties in a timely manner as agreed upon by Developer and County. Developer shall notify the County of damage caused by the Developer Parties, and of any other damage noted by Developer, to the Designated Roads and request the County's authorization to conduct Repairs. Developer shall provide the County with reasonable details as to the nature, scope, and schedule of Repairs of damage to Designated Roads that Developer desires to perform, and unless substantial County interests would not be properly served by allowing Developer to make such Repairs, the Parties shall agree upon the manner in which Developer may proceed with such Repairs. If the Parties cannot so agree, the County shall perform the Repairs in a timely fashion, in accordance with the County's standard practices for road repairs and any specific needs of Developer that Developer would address if Developer were making the Repairs, and otherwise having due regard for safety, prevailing and predicted weather conditions, Developer's construction schedule and the presence of emergency conditions. Prior to the commencement of a Repair, whether by Developer or by the County, the Developer Representative and the County Designee shall, in response to a request by either Party, meet to review the damage in question in relation to any Initial Evaluation or any more recent subsequent evaluation, as applicable, and to discuss the nature, scope, and schedule of Repairs. The Parties shall rely upon any available Initial Evaluation or any subsequent evaluation, as applicable, as a benchmark by which to determine (i) the condition of Designated Roads prior to commencement of construction of the Project, and (ii) whether a Repair was required and performed in accordance with this Agreement. If the County performs Repairs of damage caused by the Developer Parties, Developer shall reimburse the County the actual costs of Repairs in accordance with Appendix D, except to the extent that the Repair is of damage that results from a pre-existing condition that made or makes the Designated Road or appurtenance inadequate for, or that would cause it to fail under, normal use. At any time during or after completion of a Repair, the Parties shall, upon the request of either Party, promptly conduct a joint inspection of the Repair or the progress thereof to determine that the Repair is being performed in accordance with County standards. Upon completion of Repairs performed by the

County, but no more often than monthly, the County shall deliver an invoice to Developer in accordance with the invoicing procedures attached hereto as Appendix E. Developer shall pay undisputed invoiced amounts within thirty (30) days after receipt of such invoice.

Developer is responsible for the restoration of all Designated Roads as specified in the After Construction Evaluation of Designated Roads report. Restoration may include, but is not limited to, the following: 1) services of civil, structural and geotechnical consultant(s), 2) design, plans, bidding, staking, testing, observation, etc., 3) repair of damaged roadway areas, additional gravel, asphalt overlays, etc., 4) replacement of roadway base and surfacing, 5) repair and/or replacement of bridges and/or culverts. All costs associated with the restoration of the roadways, bridges and culverts along the Designated Roads shall be paid for by the Developer. The restoration of the Designated Roads shall be completed within 6 months of the After Construction Evaluation of Designated Roads report being issued to the Developer. Should the need arise for Developer to submit a request to the County for consideration of an extension for such additional commercially reasonable period required by the circumstances, including due to weather conditions, the County will review the request and approve or deny the request in its sole reasonable discretion. Further, Developer agrees to be liable to the County for any and all costs and expenses, including attorney's fees, that the County may incur based upon Developer's failure to restore, within the time period required by this Agreement, to the satisfaction of the County or the County's Designee, said Designated Roads to the same or better condition as stated in the Evaluation.

3.3 Collection System Cabling. Subject to final approval as provided in Section 1.2, the County acknowledges and approves the Electrical/Communications Installation as set forth in Appendix F. Instances where the Electrical/Communications Installations are required to cross a County Road, the Developer shall design and construct such crossing so as not to permanently interfere with the intended use of such road, public safety or considerations for future road maintenance by County. Developer shall also provide such reasonable documentation of the proposed crossings, as set forth in Appendix F, as the County may require. The County shall not require Electrical/Communications Installation cabling to be buried deeper than thirty-six (36) inches except (i) where such a cable crosses a County right-of-way, where it shall be buried to a minimum depth of forty-eight (48) inches, or (ii) as required by state or federal law. The County acknowledges that County right-of-way crossings by the Electrical/Communications Installation shall be bored as agreed to by both parties, with the exception of County roads that have an asphalt surface that shall be installed using directional bore when practical. For above grade Electrical/Communications Installations, the County shall not require Developer to install such installations greater than the local, state, and/or federal electrical code(s) requires. Permits will be submitted for crossings in accordance with the applicable County Highway Department application process. The Developer is responsible for any cost to relocate these Electrical/Communications Installations in the future, if required.

3.4 Crane Crossings. The County hereby acknowledges and approves that the Developer will need to cross the County Roads with heavy construction equipment, such as but not limited to cranes, during the construction, operation, maintenance, and decommissioning of the Project. The Developer agrees to provide the County with forty-eight (48) hour notice prior to crossing any County Road with any heavy construction equipment. The Developer will use its commercially reasonable efforts to protect the existing County Roads from damage during such crossings and

shall be responsible for any damages and subsequent repairs in accordance with Section 3.2. For purposes of this Section 3.4, “commercially reasonable efforts” regarding crane crossings shall be demonstrated by Developer’s implementation of the following measures:

- (a) Developer will prepare the crossing area with crane matting and/or earthen fill as needed on each side of the county road to minimize any damage to the roads.
- (b) Upon crane crossing completion developer will promptly remove any matting/fill, blade the crossing area smooth and repair any damage.
- (c) If inclement weather is anticipated Developer will hold off on crossing to ensure the activity can be completed timely once commencement has begun.

3.5 Failure to Maintain or Repair. With respect to a Designated Road, in the event that the County does not perform maintenance as required by Section 3.1 or does not perform Repairs undertaken by the County pursuant to Section 3.2, Developer may request in writing that the County permit Developer to perform such maintenance or Repair, in which case Developer shall also provide the County with reasonable details as to the nature, scope, and schedule thereof. The Parties shall cooperate so as to permit the County to respond promptly to such a request, which the County shall endeavor in good faith to do. If the County does not object to such request within five (5) business days (or within two (2) business days if exigent circumstances require *e.g.*, if significant Project maintenance or construction delays might otherwise result), or if the County grants such request, Developer may perform, or cause to be performed, such maintenance or Repair. If Developer performs such maintenance or Repair, Developer shall complete such maintenance or Repair to standards that are the same as or better than applicable County standards in all material respects and shall cooperate to permit the County to inspect such maintenance and Repair work during and after its performance. The County shall not be required to reimburse or otherwise compensate Developer for performing any such maintenance or Repair, except to the extent of any maintenance that the County was required to perform pursuant to Section 3.1. In the event a Repair is not timely performed and it interferes with Developer’s construction and/or maintenance schedule, Developer shall have the right to utilize alternative routes on public or private roads as may be required to mitigate any such adverse effect on its schedule, subject to Developer’s repair obligations pursuant to Section 3.2. Developer shall provide notice to the County at least five (5) business days (or within two (2) business days if exigent circumstances require *e.g.*, if significant Project maintenance or construction delays might otherwise result), prior to utilizing alternate routes.

ARTICLE IV IMPROVEMENTS AND MODIFICATIONS TO DESIGNATED ROADS

4.1 In General. Developer shall complete Improvements in accordance with this Article IV. After the County has completed all evaluations required by Article II of this agreement, Developer shall

be responsible for any improvements, modifications, road work and repairs required by the terms of this Agreement.

4.2 Current Improvements. Developer shall complete Current Improvements to certain Designated Roads prior to/and/or during the construction of the Project and in accordance with Appendix B and the final Plans as completed by Developer and approved by the County in accordance with Section 1.2. The County acknowledges that it has received from Developer as of the initial approval, and is satisfied with and approves, Plans that are thirty percent (30%) complete. The Parties agree and acknowledge as follows:

- (a) that such Plans are not final and shall be revised so as to finalize them and take into account any need for changes as the Plans are finalized and conditions of the Designated Roads and Developer 's construction plans change or become better known;
- (b) that it is, nevertheless, the Parties' intention that the Current Improvements be similar to the Current Improvements described on the Plans discussed and approved to date; and
- (c) that the Parties shall consult and cooperate reasonably so as to permit the County's review and approval of final (100% complete) Plans in a timely manner to not disrupt or delay the Developer's construction schedule.
- (d) The Developer may make changes to the plans, with the consent of the County, and in no way is obligated to complete such Current Improvements if deemed unnecessary by Developer.
- (e) That plan changes may result in Developer having to submit applications for additional permits or amendments to existing permits and County to approve those applications for additional or amended permits. The parties agree to cooperate in that process.

4.3 Driveway Entrances. The Developer will construct new roads on private lands in order to access proposed project facilities; these roads are for use by (i) the Developer only for the construction, operation, maintenance and decommissioning of the Project, and (ii) by the landowner on whose property the private road is constructed. The County hereby acknowledges and grants the Developer the right to construct and/or install new driveway entrances from the County Roads to these new access roads, subject to the provisions of Section 8.1 hereof and subject to final approval in accordance with Section 1.2 hereof. Any new driveway entrances constructed will be in compliance with applicable federal, state, or County law, specifically Hughes County Ordinance 1996-04. Permit requests will be submitted for all new driveway entrances in accordance with applicable County Highway Department application process.

4.4 Future Improvements. After completion of the construction of the Project and for so long as the Project has not permanently ceased commercial operation, Developer may permitted to perform Future Improvements as may be required from time to time in connection with maintenance, repair and operation of the Project; *provided*, that such Future Improvements shall be subject to the County's review and approval. The Developer agrees to abide by any terms or conditions set by the County with regard to approval of Future Improvements, up to and including complete removal

of the Future Improvement and restoration of the road to the precise state it was in prior to the Future Improvement.

4.5 County Jurisdiction. Nothing in this Article IV or this Agreement shall be construed as limiting or abrogating the County's jurisdiction or duties under applicable law concerning the construction, maintenance and repair of highways and bridges within the County.

**ARTICLE V
[RESERVED]**

**ARTICLE VI
TERM; DEFAULT AND REMEDIES**

6.1 Term of Agreement. The term of this Agreement shall be from the Effective Date until substantial completion of construction of the Project and final acceptance by the County of all final road repairs or reimbursement, unless either Party terminates this Agreement as herein provided. Notwithstanding anything herein to the contrary, the following provisions of this Agreement shall survive its termination or expiration for so long as the Project has not permanently ceased commercial operation: (i) Section 3.1 and Section 3.4, (ii) the right of the Developer Parties under Article IV (but not any obligation) to perform Future Improvements, (iii) this Article VI, and (iii) Article IX and Article X. In the event major maintenance or repairs are required during operation of the Project, the Parties agree to enter into a new Agreement on substantially the same terms and conditions as contained herein.

6.2 Remedies Upon Default. Whenever an Event of Default shall have occurred, the Party not in default shall have the right to terminate this Agreement upon notice to the defaulting Party, subject to any right to cure of a Permitted Collateral Assignee, and 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, or to enforce the performance or observance of any obligations, agreements or covenants of the Party in default under this Agreement.

6.3 Material Breach. Should Developer cause damage to any County Road that creates a safety hazard for Developer Parties or any person using the road and Developer fails to repair said damage pursuant to the terms of this Agreement, such failure to repair the damage will constitute a Material Breach (as defined below) of the terms of this Agreement. If a Material Breach occurs, the County, in its sole discretion, may suspend use of the damaged County Road until Developer repairs the damage pursuant to the terms of this Agreement. Developer will be liable for any injury to any person to the extent determined to have been caused by unrepaired damage to a County Road as described in Section 10.13 of this agreement. "**Material Breach**" means a breach of the obligations of Developer set forth in Section 2.8 and 6.3 for which the County shall have the right to exercise the remedies provided in this Section 6.3. For avoidance of doubt, the County shall not have the right to terminate this Agreement for a Material Breach except after giving to Developer notice and opportunity to cure such Material Breach in accordance with the requirements for an Event of Default.

6.4 Remedies Cumulative. The rights and remedies of the County under this Agreement shall be cumulative and shall not exclude any other rights or remedies the County may have at law or in equity with respect to any Event of Default under this Agreement.

6.5 Disputes. If a dispute arises under this Agreement, any Party may commence a proceeding at law or in equity to resolve such dispute. County and Developer agree to waive a jury trial and to conduct any trial to the Court alone. Any proceeding commenced as a result of this Agreement will be conducted under the law of the State of South Dakota and venue will be in state circuit court in Hughes County, South Dakota. Prior to commencing any proceeding in state court, Developer and County may engage in mediation if both parties agree in writing to do so.

ARTICLE VII FORCE MAJEURE EVENT

7.1 Applicability of Force Majeure Event. No Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

- (a) the affected Party shall give the other Party written notice describing the particulars of the occurrence, with written notice given promptly after the occurrence of the event, and in no event more than five (5) Business Days after the affected Party becomes aware that such occurrence is a Force Majeure Event; *provided*, however, that any failure of the affected Party to provide such written notice within such five (5) Business Day period shall not waive, prejudice, or otherwise affect such Party's right to relief under this Article VII;
- (b) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;
- (c) the Party whose performance is delayed or prevented will proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance; and
- (d) when the performance of the Party claiming the Force Majeure, event is no longer being delayed or prevented, such Party will give the other Party written notice to that effect.

ARTICLE VIII PERMITTING AND LAND RIGHTS

8.1 Review, Approval, and Permitting.

Except as expressly set forth in Section 3.3, Section 4.2, Section 4.3, and Section 8.2, and subject to final approval in accordance with Section 1.2, the County represents, warrants, and covenants that:

- (a) the County has fully and completely reviewed and approved the Plans (as provided to the County as of the Effective Date) and, upon final approval in accordance with Section 1.2, permits Developer's use, maintenance, and upgrading of the Designated Roads, the

Electrical/Communications Installation, and technical plans for all of the foregoing, as described in this Agreement and the Plans;

- (b) as of the Effective Date, unless as previously stated, no further licenses, permits, or approvals are required by or from the County for such use, maintenance, and upgrading of the Designated Roads for completion of the Project Activities covered by this Agreement, including the Improvements and the Electrical/Communications Installation, or the technical plans, except as provided herein; and
- (c) in the event that a requirement for review and/or approval of plans by, or for any other approval, license, permit, authorization, or consent from the County comes into effect which would otherwise be applicable to the Project, the County shall, to the maximum extent permissible by law, apply such requirement proactively so as to “grandfather” the Project and maintain the effectiveness of Section 8.1(a) and Section 8.1(b) as written.
- (d) That plan changes per Section 1.2 may result in Developer having to submit applications for additional permits or amendments to existing permits and County to approve those applications for additional or amended permits. The Parties agree to cooperate in that process.

8.2 Review and Inspection. Upon request by Developer, the County Designee shall review plans for any road work proposed by Developer, and inspect road work completed by Developer, under this Agreement for compliance with County specifications and right-of-way or easement restrictions. If the County Designee is able to confirm such compliance, the County Designee shall promptly so notify Developer in writing. On termination of this Agreement, the County Designee or County Commission shall provide an acknowledgement and release that Developer has performed its obligations under this Agreement and that Developer is released from any and all ongoing maintenance activities on the Designated Roads.

ARTICLE IX INDEMNITY

To the fullest extent permitted by law, Developer (as “**Indemnitor**”) shall indemnify and hold harmless the County, and the affiliates, members, investors, and partners of such other Party, and its and their respective directors, members, officers, and employees (collectively, “**Indemnitee**”), from and against all Losses, to the extent that such Losses may be caused by or arise out of any damage caused or work performed upon County roads by Developer Parties or result from any breach of any representation or warranty made in this Agreement by Indemnitor.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota, without regard to the conflict of law’s provisions in such state. Venue for all proceedings will be in state circuit court in Hughes County, South Dakota.

10.2 Compliance with Law. Developer agrees that all Repairs, Improvements, and the Electrical/Communications Installation shall comply with all applicable laws.

10.3 Amendments and Integration. This Agreement (including Appendices) shall constitute the complete and entire agreement between the Parties with respect to the subject matter hereof. No prior statement or agreement, oral or written, shall vary or modify the written terms hereof. Except as set out in Section 2.1 of this Agreement, this Agreement may be amended only by a written agreement signed by the Parties.

10.4 Assignment.

- (a) Except as provided in subsections (b), (c), and (d) below, no Party to this Agreement shall assign, transfer, delegate, or encumber this Agreement or any or all of its rights, interests, or obligations under this Agreement without the prior written consent of the other Party. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned, or delayed; and (ii) without limiting the foregoing, in the case of the County, the County's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of Developer pursuant to this Agreement.
- (b) Developer may, with the consent of the County, assign this Agreement or any or all of its rights, interests, or obligations under this Agreement; *provided*, that such assignment shall be in connection with the conveyance or lease of the Project and the Developer assignee agrees in writing to be bound by the terms of this Agreement.
- (c) Developer may, with the consent of the County, pledge, mortgage, grant a security interest in, or otherwise collaterally assign this Agreement or any or all of its rights, interests and obligations under this Agreement to a Permitted Collateral Assignee in a transaction related to the development and construction of the Project. In connection with any such collateral assignment to a Permitted Collateral Assignee, the County shall, upon the request of Developer, deliver to Developer and the Permitted Collateral Assignee without delay a consent agreement and/or an opinion of counsel in a form reasonably requested by Developer and the Permitted Collateral Assignee and reasonably acceptable to the County and which shall contain customary provisions, provided that Developer shall be responsible for reasonable attorney's fees incurred by the County for the review and preparation of any such consent agreement and/or opinion of counsel.
- (d) Developer may, with the consent of the County, assign this Agreement or any or all of its rights, interests, and obligations under this Agreement to any corporation, partnership, limited liability company, or other business entity that acquires all or substantially all of the assets used in connection with the Project or (ii) any corporation, partnership, limited liability company, or other business entity that acquires all or a portion of the membership interests in Developer; *provided*, in each case, that such Developer assignee agrees in writing to be bound by the terms of this Agreement.

10.5 Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement, including all documents delivered pursuant to this Agreement,

shall be in writing (which may include electronic mail) and shall be deemed to have been duly given when received if personally delivered; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express or UPS); upon receipt, if sent by certified or registered mail, return receipt requested; and upon transmission by the sender to the correct electronic mail address, if sent by electronic mail with no out-of-office or delivery failure notification. In each case notice shall be sent to:

To Developer: North Bend Wind Project, LLC
1360 Post Oak Blvd., Suite 400
Houston, TX 77056
Attention: General Counsel, Renewables
Telephone: 713.636.0000
Email: engiena-legal@engie.com

With a copy to: North Bend Wind Project, LLC
1360 Post Oak Blvd., Suite 400
Houston, TX 77056
Attention: Blake Crosby
Telephone: 303-327-1556
Email: blake.crosby@engie.com

To the County: Hughes County Highway Department
2401 293rd Avenue
Pierre, SD 57501
Attention: Highway Superintendent Trent Arbach
Telephone: 605-773-7486
Email: HwySupt@co.hughes.sd.us

The foregoing addresses may be changed by any Party by giving written notice to the other Party as provided above.

10.6 Exercise of Rights and Waiver. The failure of any Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof, nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

10.7 Nature of Relationship. The status of Developer under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, each Party and its officers, agents, employees, representatives, and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives, or servants of the other Party. Each Party accepts full responsibility for providing to its employees all statutory coverage for worker's compensation, unemployment, disability, or other coverage required by law. Notwithstanding the foregoing, it is not the Parties' intention to establish a relationship whereby the County is, and notwithstanding anything to the contrary in this Agreement the County shall not be, a contractor of Developer with

respect to Repairs. Rather, the County shall perform Repairs as part of its ongoing maintenance of County roads, and Developer's only obligation with respect to Repairs performed by the County shall be to reimburse the County in accordance with this Agreement.

10.8 Severability. In the event that any clause, provision, or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be impaired, invalidated, or otherwise affected and shall remain in full force and effect.

10.9 Headings and Construction. The section headings in this Agreement are inserted for convenience of reference only and shall in no way effect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement may have been prepared by one of the Parties, the Parties confirm that they and their respective counsel have reviewed, negotiated, and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole, and any presumption that ambiguities are to be resolved against the primary drafting Party shall not apply. All Appendices and Attachments referenced in this Agreement are incorporated in and form a part of this Agreement.

10.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

10.11 No Third-Party Beneficiary. No provisions of this Agreement shall in any way inure to the benefit of any person or third party so as to constitute any such person or third party as a third-party beneficiary under this Agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party hereto.

10.12 Representative of Developer. The Developer Representative shall act as the manager and coordinator of this Agreement on Developer's behalf and as liaison for Developer's communications with the County and the County Designee. The Developer Representative is vested with full authority to act on Developer's behalf under this Agreement. All decisions of the Developer Representative pursuant to this Agreement shall be binding on Developer. The initial Developer Representative shall be Blake Crosby. Should Developer elect to designate a different Developer Representative, Developer will provide 5 days notices prior to the new Developer Representative assuming those responsibilities.

Developer Representative Contact Information:

Name: Blake Crosby

Address: 1360 Post Oak Blvd., Suite 400, Houston, TX 77056

Email: blake.crosby@engie.com

Contact Phone Number: 1-303-327-1556

10.13 Safety. Developer shall perform the work hereunder in a safe manner and shall obey all safety requirements of the County, and all applicable federal, state, and County laws, rules, and regulations, that may be established from time to time. While work is being done on a Designated Road, Developer shall cause the Developer Parties to (i) place signs stating that people and vehicles

are entering a construction area and (ii) identify certain hazards that may be present on the Designated Road. Developer also agrees to cause the Developer Parties to provide traffic control on the Designated Roads when such roads are blocked during their use by Developer or the Developer Parties under this Agreement or at any time required by the MUTCD. All traffic control devices and signage associated with Road construction shall comply with the MUTCD. Developer shall be responsible for all public notice, traffic control, and signage for the project as required by the MUTCD.

10.14 Cooperation. Notwithstanding anything contained herein to the contrary, County agrees to reasonably cooperate with Developer's reasonable use of all County roads for the operation and maintenance of the Project.

10.15 Extraordinary Events. The Parties acknowledge that, during the expected life of the Project, circumstances may arise which will make it necessary or advisable for Developer to replace major turbine components or make other repairs to turbines or other heavy or bulky equipment beyond ordinary maintenance and that transportation of such components or equipment on or across Designated Roads may be necessary. The Parties agree that, if Developer determines that such circumstances have occurred, Developer will give advance written notice of the intended transportation plans to the County, and the Parties shall work together cooperatively in good faith to control such factors as: unreasonable costs for Developer; delays in transportation; inconvenience to Developer, the County government, the traveling public, and nearby residents; and risks to public safety. Developer shall repair, or be responsible for all repair costs, of any damage caused to any County Roads by these extraordinary repair activities pursuant to this Agreement. The Developer agrees to enter into a new haul road agreement containing terms substantially similar to this Agreement should the County feel it necessary for any such extraordinary event.

10.16 Constitutional Limitations. In accordance with the Constitution of South Dakota, and notwithstanding anything to the contrary in this Agreement, this Agreement shall not be construed or interpreted as having indebted the County, in any manner or for any purpose, to an amount exceeding in any year the County's income and revenue provided for such year.

10.17 Insurance. Developer shall at all times during construction of the Project carry or cause to be carried: (i) Worker's Compensation insurance in accordance with the laws of the State of South Dakota and Employer's Liability insurance; (ii) Commercial General Liability insurance with a minimum limit of \$5,000,000 per occurrence, and (iii) Automobile Liability insurance with a minimum limit of \$1,000,000 per occurrence. Certificates of insurance will be provided to the County upon written request to Developer.

10.18 Compliance by Developer Parties. Developer agrees that it shall use reasonable efforts to (i) cause all Developer Parties to comply with the terms of this Agreement, and (ii) to ensure that all Developer Parties use only Designated Roads, whenever required by the terms of this Agreement. Such reasonable efforts shall include providing a copy of this Agreement (or redacted version or summary of pertinent terms) to its general contractor and directing its general contractor to cause its subcontractors to comply with the terms of this Agreement and use Designated Roads as permitted hereunder. The County may take action to suspend the right of any contractor,

subcontractor or supplier to use Designated Roads pursuant to this Agreement, if, after notice by the County Designee to the Developer Representative of a material violation of this Agreement by such contractor, subcontractor or supplier, such contractor, subcontractor or supplier commits any subsequent material violation.

10.19 Entire Agreement. This Agreement and the schedules and other documents to be delivered pursuant hereto constitute the entire agreement among the parties hereto and there are no agreements, representations or warranties which are not set forth herein. All prior negotiations, agreements and understandings are superseded hereby. This Agreement may not be amended or revised except by a writing signed by the parties hereto. All parties being represented by counsel, no one party shall be deemed the drafter of this Agreement with respect to its interpretation.

[next page is signature page]

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Agreement for Road Use, Repair, and Improvements effective as of the date first above written.

COUNTY:

Hughes County

By: 

Name: Randy Brown

Title: Hughes County Commission Chairman

DEVELOPER:

North Bend Wind Project, LLC

^{DS}


By: ^{DocuSigned by:} 

Name: Mathew Magdanz

Title: VP, Engineering & Delivery

6/10/2022

^{DS}


APPENDIX A

DEFINITIONS

“**After Construction Evaluation**” means the geotechnical report to be provided based upon evaluation of the condition of the Designated Roads after construction of the Project is completed, as required by Section 2.4b of the Agreement.

“**Agreement,**” “**Developer,**” “**County,**” “**Effective Date,**” “**Parties,**” and “**Party**” have the respective meanings assigned to them in the preamble to the Agreement.

“**Appendix**” shall mean an appendix to this Agreement, including any Attachment to such Appendix.

“**Article**” and “**Section**” shall refer, respectively, to an article and section of this Agreement.

“**Attachment**” shall refer to an attachment to an Appendix.

“**Business Day**” refers each of, and “**Business Days**” refers to all weekdays, except those designated as national holidays or state holidays in either South Dakota or California.

“**County Designee**” means the person designated by the County below, unless changed by written notice by the County delivered to Developer. The initial County Designee and his address and contact information is:

Trent Arbach - Highway Superintendent
2401 293rd Avenue
Pierre, SD 57501
Phone 605-773-7486
FAX 605-773-7488
email address hwysupt@co.hughes.sd.us

“**Current Improvements**” means near-term Improvements to the Designated Roads made in accordance with Section 4.2.

“**Designated Road**” means any road specifically and expressly identified as a Designated Road in Appendix B to the Agreement, and “**Designated Roads**” means any two or more thereof; *provided, however,* that Designated Roads do not include any state or federal road or highway even if depicted in Appendix B.

“**Developer Party**” refers to each of, and “**Developer Parties**” refers to all of, Developer and its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns.

“**Developer Representative**” means the initial representative of Developer designated in Section 10.13 or such other representative of Developer as may be designated by Developer in a written notice delivered to the County from time to time.

“**Electrical/Communications Installation**” means the routing, construction, and installation, above or below ground, at a location adjacent to, under, or across certain roads, as identified on Appendix F, of certain wires, cables, conduits, and/or lines (and their associated equipment) related to the collection, distribution, or transmission of the Project’s (i) electrical power output at a voltage of up to 345 kV, and (ii) construction, maintenance, and operation related data.

“**Event of Default**” means the occurrence of any one or more of the following events:

- (a) Failure by either Party to make any payment or reimbursement due under the terms of the Agreement when due and payable, when such failure continues for thirty (30) days after receipt by Developer of written notice of such failure from the County.

To all

- (b) Failure by either Party to comply with any of its non-monetary obligations, covenants, agreements or conditions contained in this Agreement, when such failure continues for thirty (30) days after written notice of default from the County; *provided*, that if such failure cannot reasonably be cured within the thirty (30) day period, a default shall not be deemed to have occurred if Developer begins to cure the breach within the thirty (30) day period and thereafter diligently and in good faith continues to pursue the cure of the breach until cured.

- (c) Either Party experiencing either of the following:

- (i) Voluntarily commencement of bankruptcy, insolvency, moratorium, reorganization, stay, or similar debtor-relief proceedings, or having become insolvent or generally failing to pay its debts as they become due, or having admitted in writing its inability to pay its debts, or the making of an assignment for the benefit of creditors; or

- (ii) Bankruptcy, insolvency, receivership, reorganization, or a similar proceeding having been commenced against such Party and such proceeding remaining undismissed or unstayed for a period of ninety (90) days.

- (d) In the event of an Event of Default by the Developer, or upon the occurrence or non-occurrence of any event or condition which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the County to terminate this Agreement, the County shall not terminate this Agreement until it first gives written notice of such Event of Default to the Permitted Collateral Assignee (concurrently with the notice of such Event of Default to the Purchaser) and affords the Permitted Collateral Assignee (a) a period of thirty (30) days from receipt of such notice to cure such Event of Default if such Event of Default is the failure to pay amounts to County which are due and payable under the Agreement, or (b) with respect to any other Event of Default, a reasonable opportunity, but no fewer than forty five (45) days from receipt of such notice, to cure such non-payment Event of Default (provided that during such cure period the Permitted Collateral Assignee or the Developer continues to perform each of the Developer’s other obligations under the Agreement, as applicable).

“Force Majeure Event” means a cause or event that is beyond the reasonable control, and without the fault or negligence, of the Party claiming such Force Majeure Event, to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money), and includes the following: natural disasters; fire; lightning strikes; earthquake; unavailability of equipment; acts of God; unusually severe actions of the elements such as snow, floods, hurricanes, or tornadoes; causes or events affecting the performance of third-party suppliers of goods or services to the extent caused by an event that otherwise is a Force Majeure Event under this definition; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act (including expropriation and requisition) of any governmental agency.

“Future Improvements” means such reasonable further Improvements as Developer believes to be reasonably necessary to accommodate the use of the Designated Roads by the Developer Parties for operation and maintenance of the Project.

“Improvements” means improvements and modifications by Developer to the Designated Roads and may include the strengthening and widening of Designated Roads, the strengthening and/or spanning of existing culverts and bridges thereon, and other improvements and modifications reasonably necessary to accommodate increased traffic and the heavy equipment and materials to be transported on the Designated Roads.

“Indemnitor” and **“Indemnitee”** have the respective meaning assigned to them in Article IX.

“Initial Evaluation” means the geotechnical report included in Appendix B which provides an evaluation of the then-current condition of a Designated Road, as required by the Agreement.

“Land Rights” means rights or interests in real estate, including any easement (proscriptive or otherwise), leasehold, right of way, licenses, or title in fee, as well as all consents, authorizations, and approvals that may be required for the full exercise thereof.

“Losses” means any and all losses, damages, liabilities, and expenses, including reasonable attorneys’ fees and court costs.

“Permitted Collateral Assignee” means any lender, financing party or investor providing financing of any sort, including equity financing, construction debt, back leveraged debt, or sale-leaseback financing for the Project as security for Developer’s obligations under a financing agreement, purchase and sale agreement, sale leaseback transaction or similar financing mechanism (including a trustee or agent for the benefit of its lenders).

“Plans” means plans, drawings, and specifications for Current Improvements.

“Private Land Rights” means Land Rights in or to private property which Land Rights are not owned by and do not relate to any real property that lies within any easement or right of way held by the County.

“Project” has the meaning assigned to it in the recitals of this Agreement.

“Project Activities” has the meaning assigned to it in the recitals of this Agreement.

“Repair” and **“Repairs”** refer to the performance of work (or causing the performance of work) on a Designated Road or related appurtenance (including any bridge, culvert, or other fixture upon such Designated Road) in order to repair damage beyond ordinary wear and tear, so as to restore such Designated Road or related appurtenance to the condition it was in at the time of the Initial Evaluation, as near as is reasonably practicable and; *provided, however,* that Repairs performed by or on behalf of Developer shall not include removal or plowing of snow or routine maintenance activities.

“Significant Fugitive Dust” means dust that creates a nuisance by drifting beyond the boundary of the property on which such dust is raised, it being understood that a nuisance is not created unless a person is significantly and adversely affected and that dust drifting onto a vacant lot, pasture, or field may not be a nuisance.

APPENDIX B

DESIGNATED ROADS AND PROJECT CONSTRUCTION EQUIPMENT

- A. Designated Roads are depicted in the Attachments hereto. No other roads are Designated Roads. State highway(s) may be depicted on Attachments to this Appendix B (and, if depicted, may be depicted in yellow). Nevertheless, State highway(s) are not Designated Roads and are not subject to the Agreement.
- B. The Initial Evaluation shall be the geotechnical report included in this appendix and the Developer shall complete video inspection of any asphalt surfaced Designated Roads prior to commencement of construction and such video inspection report shall be used for purposes of the After Construction Evaluation inspection and report.
- C. If reasonably determined to be needed based on the Initial Evaluation, prior to the use of the Designated Roads for construction purposes, the Designated Roads shall receive road base material on public roads that currently do not have any gravel surfacing, and road base material on public roads that have previously been surfaced with gravel but require additional material to withstand construction traffic, in each case, in such quantities as are reasonably determined from the Initial Evaluation.
- D. To the extent existing water ponding issues are identified in the Initial Evaluation, Developer shall design, engineer and install corrective measures to improve such existing water ponding issues. County will review and approve agreed upon corrective work prior to installation.
- E. A list of Project Construction Equipment and related information required by Section 2.1 is set forth included in the Attachments to this Appendix B consisting of a chart of Preliminary Estimated Vehicle Weights by vehicle type and a table of Anticipated Traffic Due to Construction by road and vehicle type.

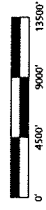


Westwood Professional Services, Inc.
1000 15th Street, Suite 1000
Fargo, ND 58102
701.785.1100
www.westwoodps.com



4850 32nd Avenue South
Fargo, ND 58104

REVISION	DATE	COMMITTEE
1	7/20/21	BOCC/PLANS



North Bend Wind Project

Hughes and Hyde County, South Dakota

RUA APPENDIX B
DESIGNATED ROADS
PRELIMINARY

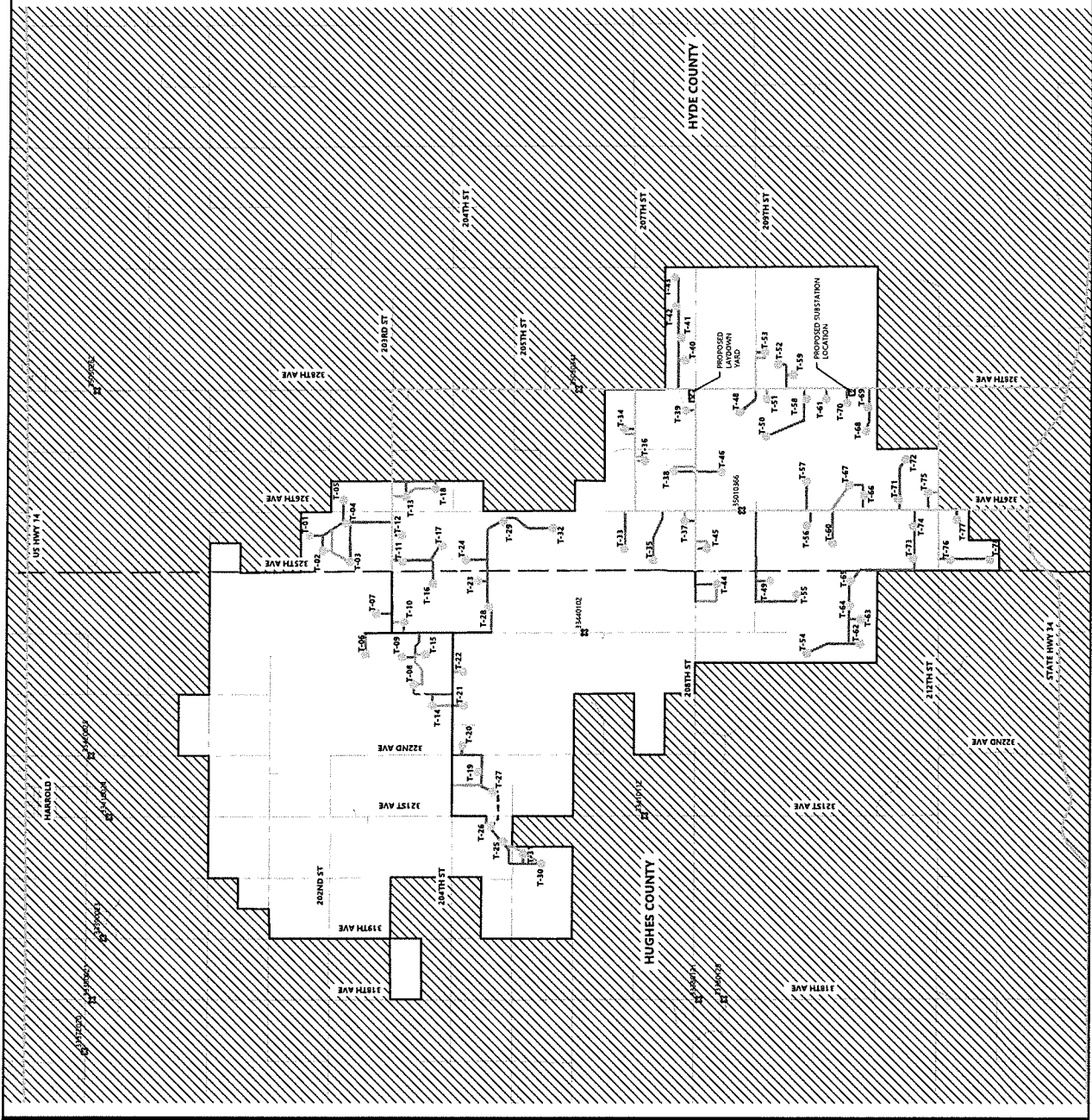
NOT FOR CONSTRUCTION

DATE 5/26/2022

SHEET 1

- LEGEND:**
- PROJECT BOUNDARY
 - PROPOSED TURBINE LOCATION
 - PROPOSED ACCESS ROAD
 - PROPOSED CRANE PATH
 - PROPOSED ALTERNATE CRANE PATH
 - PROPOSED HYDRAULIC FLUME DESIGNATED ROADS
 - PROPOSED HUGHES COUNTY DESIGNATED ROADS
 - EXISTING ROAD
 - EXISTING COUNTY BOUNDARY
 - EXISTING PROPERTY BOUNDARY
 - EXISTING MI BRIDGE
 - BRIDGES TO AVOID FOR PROJECT USE RESTRICTED TO 5 TON GVW OR LESS

ITEM	LENGTH
PROPOSED ACCESS ROADS	34.62 mi
PROPOSED HYDRAULIC FLUME DESIGNATED ROADS	29.22 mi
PROPOSED HUGHES COUNTY DESIGNATED ROADS	7.20 mi



County Agreement for Road Use, Repair, and Improvements, Supplement to Appendix B

Preliminary Estimated Vehicle Weights			
Vehicle	Total Weight (lbs)	Number of Axles	Individual Axel Weights (lbs)
Aggregate	80,000	5	12,000 to 17,000
Concrete	67,000	3	18,000 to 24,500
Turbines	100,000 to 275,000	7 - 13	18,000 to 20,000
Other (semi-trailers)	80,000	5	12,000 to 17,000
Water	46,000	3	12,000 to 17,000
Empty Trucks	27,000 to 40,000	3 - 5	7,000 to 10,000

Notes:

1. "Other" includes miscellaneous delivery vehicles such as, semi-trailers, for project construction
2. "Empty Trucks" includes the unloaded axel weights for the aggregate, concrete, turbine, and water trucks.

County Agreement for Road Use, Repair, and Improvements, Supplement to Appendix B
North Bend Wind Project – Anticipated Traffic Due to Construction (Preliminary, Not for Construction)

Table 1: Cumulative Truck Counts

Table with columns: WPS ID, AET Report ID, ROAD, BETWEEN ROADS, AGGREGATE, CONCRETE, TURBINE, OTHER, WATER, EMPTY TRUCKS, TOTAL. Rows include various road segments like 7-G-H_203, 8-D-E_204, etc.

Summary table with columns: ESAL Factor (2.35, 5.63, 5.05, 2.34, 1.26, 0.25) and rows for TURBINE COMPONENTS, CONCRETE TRUCK 40 CY LOAD, DUMP TRUCKS 40 CY, WATER TRUCKS, EMPTY TRUCKS.

Main summary table with columns: WPS ID, AET Report ID, ROAD, BETWEEN ROADS, AGGREGATE, CONCRETE, TURBINE, OTHER, WATER, EMPTY TRUCKS, TOTAL. Rows include 7-G-H_203, 8-D-E_204, 8-E-F_204, etc.

APPENDIX C

BRIDGES

Hughes County has 23 bridges. Shown below are the nine structures located east of 314th Avenue, in the area of this project.

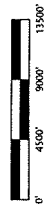
Structure No.	Location
33372020	1.0m south & 3.8m west of Harrold on 198th Street
33380021	3.0m west & 0.6m south of Harrold on 318th Avenue
33380121	3.3m west & 11.5m south of Harrold on 318th Avenue
33380125	3.3m west 11.2m south of Harrold on 318th Avenue
33390023	2.0m west & 1.3m south of Harrold on 319th Avenue
33410024	0.3m west 1.4m south of Harrold on 321st Avenue
33410112	0.3m west & 10.17m south of Harrold on 321st Avenue
33420025	1.0m east & 1.5m south of Harrold on 322nd Avenue
33440102	3.0m east & 9.2m south of Harrold on 324th Avenue

Attached to this Appendix C is a map identifying certain of the above bridges which may not be used for any purpose by the Developer Parties except that such bridges may be used during the period of operation and maintenance of the Project by vehicles 5 tons GVW or less.

Westwood
 P.O. Box 1110
 1200 Avenue C, Suite 100
 Rapid City, SD 57702
 Phone: 605.341.1110
 Fax: 605.341.1112
 westwood@westwoodinc.com

WANZEK
 4850 32nd Avenue South
 Fargo, ND 58104
 Phone: 701.785.1111
 Fax: 701.785.1112
 wanzek@wanzek.com

PROJECT NO. _____
 SHEET NO. _____
 CONTRACT _____
 PROJECT LOCATION _____

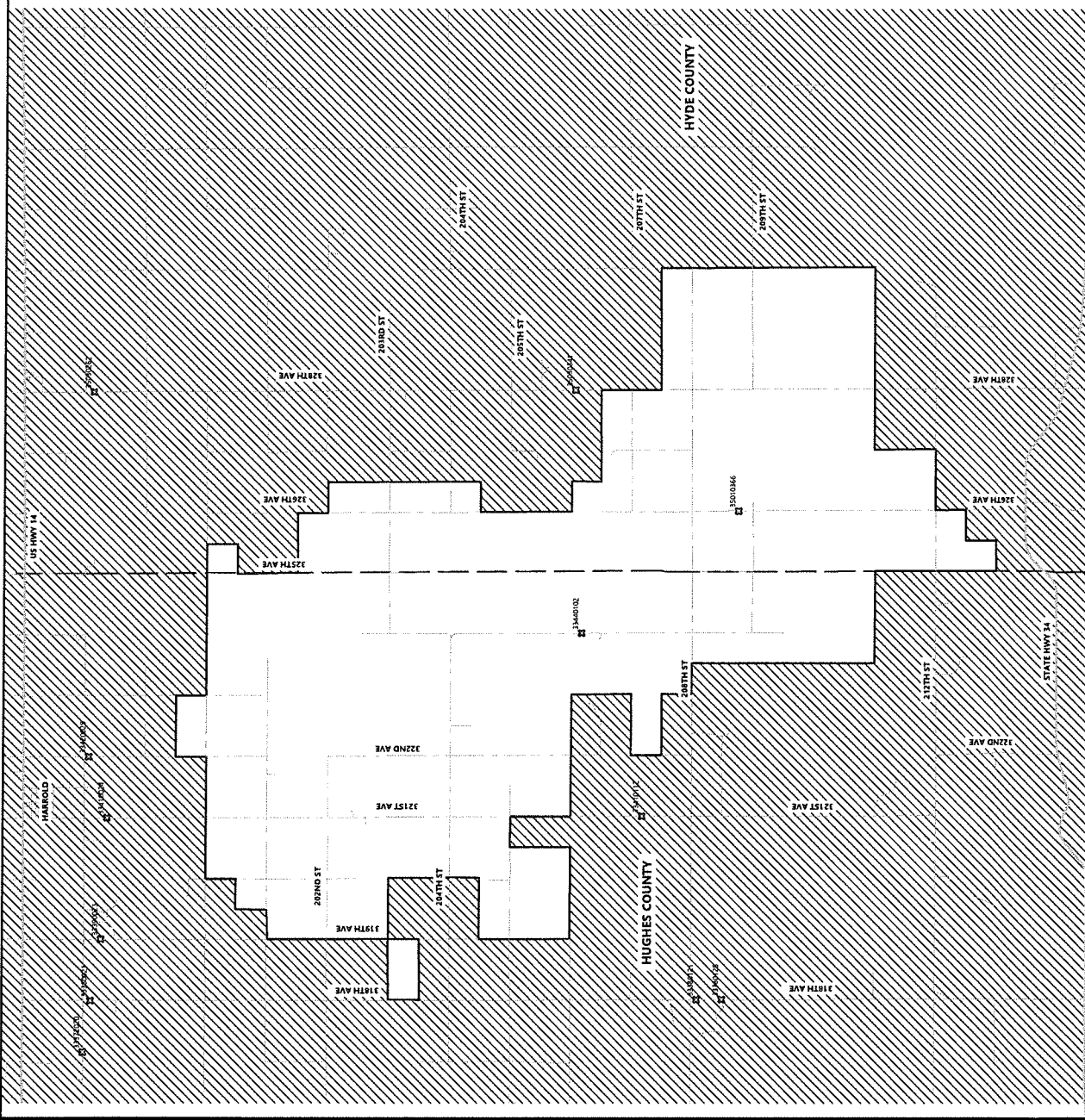


North Bend Wind Project
 Hughes and Hyde County, South Dakota

RUA APPENDIX B
 DESIGNATED ROADS
 PRELIMINARY
 BRIDGES ONLY
 NOT FOR CONSTRUCTION

DATE 5/24/2022
 SHEET 1

LEGEND:
 --- PROJECT BOUNDARY
 --- DESIGNATED ROAD
 --- EXISTING COUNTY BOUNDARY
 --- EXISTING HIGHWAY
 [Symbol] BRIDGE
 [Symbol] EXISTING IN-BRIDGE
 *BRIDGES TO AVOID FOR PROJECT USE RESTRICTED TO 5 TON GVW OR LESS



APPENDIX D

REIMBURSEMENT RATES

- Labor:** With respect to labor used in making Repairs, the County shall be reimbursed for the expense of such labor at the full cost of County's current employee wages, benefits, overtime, and other labor costs.
- Equipment:** With respect to equipment used in making Repairs, the County shall be compensated for the use of such equipment at the rates set out on Schedule 1 to this Appendix D attached hereto. The said rate shall be billed as an hourly rate.
- Materials:** With respect to materials used by the County in making Repairs pursuant to this Agreement, the County shall be reimbursed for the expense of such materials at the County's actual, reasonable, out-of-pocket cost , including markup for overhead as established by the County.

**SCHEDULE 1
TO APPENDIX D**

County Rate Schedule
for Equipment Used in Making Repairs

APPENDIX E

INVOICING PROCEDURES

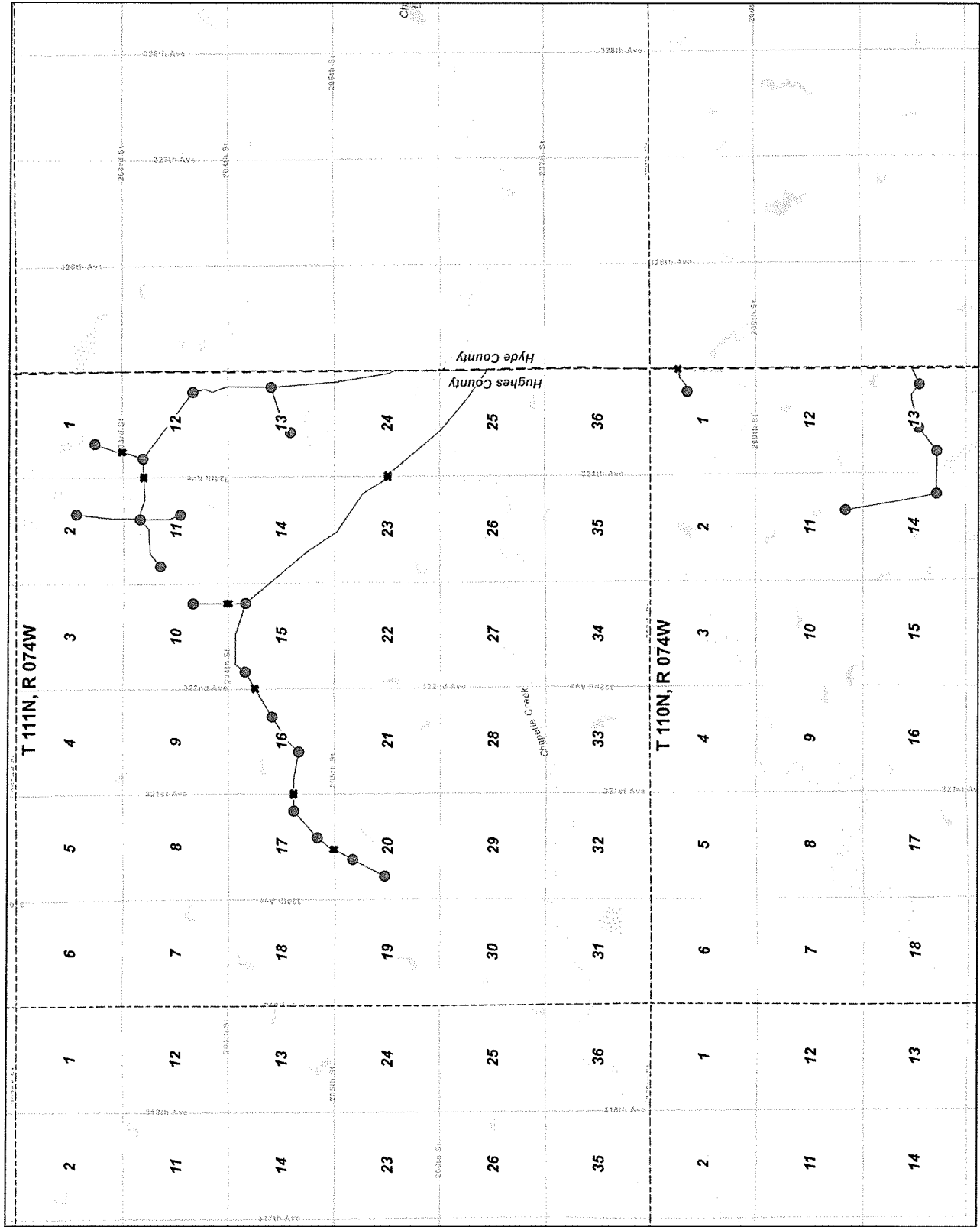
The County shall invoice Developer in accordance with the invoicing procedures set out below.
Invoices shall:

- Identify the invoice as relating to the Agreement for Road Use, Repair, and Improvements, including the Effective Date, between North Bend Wind Project, LLC and Hughes County, South Dakota.
- Include an itemization of the Repairs made and their location, in each case in such detail and with such supporting documentation as are reasonable to permit Developer to verify the invoiced amounts.
- Be addressed to Developer's address as set forth in the Agreement's Notice provision, to the attention of Project Controls.

APPENDIX F

Electrical /Communications Installation

The attached map(s) depict routing, construction, and installation of the Electrical /Communications Installation adjacent to, under, or across certain roads.



ENGIE

North Bend Wind Project
 Hughes County Agreement for Road Use, Repair, and Improvements
 Appendix F: Electrical / Communications Infrastructure
 1/12/2022

Legend

- Turbine Array
- Crossing Location
- Collection Line
- County Boundary
- Section Line
- Township & Range

Project Location

South Dakota

Reference

NAD 1983 StatePlane South Dakota South FIPS 4002 Feet

0 0.5 1 Miles

Preliminary
Not for Construction

APPENDIX G

Permits

- A. This Agreement
- B. Hughes County Overweight and/or Oversize Permit
- C. Hughes County Permit to Construct Access Approach
- D. Hughes County Utility Installation within the Public Right-of-Way

HUCHES COUNTY
HIGHWAY USE RECEIPT

RECEIPT NUMBER

PERMIT EFFECTIVE FROM _____ TO _____

*****ISSUED SUBJECT TO ALL APPLICABLE LAWS AND REGULATIONS*****

DATE _____ TIME _____ CASH CHECK OTHER

CARRIER _____ RECEIVED OF _____

ADDRESS _____ SEND PERMIT TO _____

ORIGIN _____ DESTINATION _____ ADDRESS _____

ROUTES TRAVELED _____ TRUCK STOP # _____

CARGO _____ TELEPHONE # _____

TRUCK _____ STATE _____ LICENSE # _____ SERIAL # _____

TRAILER #1 _____ STATE _____ LICENSE # _____ SERIAL # _____

TRAILER #2 _____ STATE _____ LICENSE # _____ SERIAL # _____

GENERAL PERMIT INFORMATION _____

TRIP PERMIT _____ \$ _____

TEMPORARY FUEL PERMIT _____ \$ _____

OVERSIZE PERMIT: WIDTH _____ LENGTH _____ HEIGHT _____ \$ _____

OVERWEIGHT PERMIT: GROSS WEIGHT _____ # OF AXLES _____ \$ _____

SPECIAL PERMIT _____ \$ _____

* ALL VERTICAL CLEARANCES SHALL BE THE RESPONSIBILITY OF THE PERMITTEE AND ANY DAMAGES TO STRUCTURES OR OTHER PROPERTY WITHIN HIGHWAY RIGHT OF WAY SHALL BE COMPENSATED FOR BY THE PERMITTEE.

* NO OVERWIDTH MOVEMENT SUNSET TO SUNRISE.

* OVERSIZE AND OVERWEIGHT PERMITS ARE VALID ONLY ON HUGHES COUNTY HIGHWAYS.

* NO MOBILE HOME MOVEMENT WHEN THE WINDS EXCEED 25 MPH.

\$ _____
TOTAL FEES COLLECTED

ISSUED BY _____

VEHICLE PHYSICALLY INSPECTED YES NO

TITLE _____

Hughes County Highway Department Approach Permit Application

Date: _____

Applicant

Name: _____

Mailing Address: _____

Phone Number: _____

Approach Location

Legal description of property to access: _____

The approach will be off this road: _____ (Road Name)

The approach will be on this side of the road: _____ (N, S, E, W)

Approximate approach location from closest intersection: _____

Proposed width of approach: _____ Proposed culvert size: _____

The approach will serve: _____ (residence, church, business, etc.)

Does the applicant currently own the property this approach will access? _____

The approach will be constructed between _____ and _____
(beginning date) (completion date)

Applicant agrees to construct this approach and culverts to meet County specifications, which are on file at the County Highway Department.

Please attach drawing, sketch, or aerial image showing the proposed location of the approach and set stakes on the ground at the proposed location to enable the Highway Superintendent to locate the proposed approach.

Signed: _____ (Property owner/representative)

This part to be completed by the Hughes County Highway and Planning Departments:

Permit Number: _____

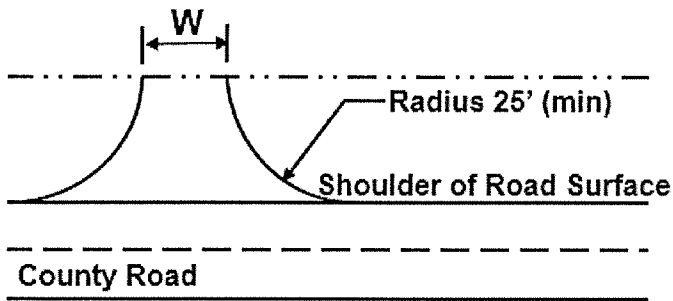
Preliminary Inspection: Date: _____ By: _____

Required Culvert Diameter: _____ Length: _____

Remarks: _____

County Highway Supt. Signature: _____

County Planner Signature: _____



**W is the surface width
at the Right of Way line.**

TYPICAL APPROACH DETAIL

The above Typical Approach Detail shall be followed in the construction of approaches to be placed off any County or Subdivision Road. The Approach design will comply with Hughes County Ordinance and be approved by the Highway Superintendent. The following are a summary of Standards from County ordinance which shall be met:

1. Rural approaches shall not have less than a minimum of a 28 foot driving lane with a maximum driving lane restriction of no more than 34 foot.
2. Housing Project approaches shall not have less than a minimum of a 24 foot driving lane with a maximum driving lane restriction of no more than 28 foot.
3. The in-slope on the constructed approach shall not be greater than a 6 to 1 slope or flatter with pipe and 10 to 1 slope or flatter without pipe, unless the contour of the ditch requires a different slope. Any deviations from this specification may only be made at the discretion of the Hughes County Highway Superintendent.
4. Culverts shall be sized to ensure proper drainage. The minimum size of a culvert shall be eighteen inches (18") in diameter or as approved by the Hughes County Highway Superintendent.
5. Safety ends will be required on all culverts installed within approaches that access Hughes County Highways with designated speed limits of 55 mph or more.
6. Two approaches may be permitted on each side of each half mile segment of county highway. Where possible, the approaches on the opposite side of the highway shall be at the same location.
7. Access from individual lots within a subdivision onto a county highway will not be permitted. Frontage roads are not encouraged but may be considered when special circumstances exist.
8. Approaches shall be constructed perpendicular to the County Road.

Hughes County
Application for Work Within County Highway Right-of-Way

Application is made by _____ for work in the Right-of-Way.

Location of Proposed Work

Co. Highway: _____ Begin Point: _____ End Point: _____

Nearest Intersection: _____ Distance from nearest intersection: _____ N S E W
A map or sketch showing the location must be attached.

The following information is pertinent to the proposed work:

1. Work Description: _____
2. Installation type, if applicable: _____
3. Anticipated work dates: _____
3. Restoration Methods: _____
4. Remarks: _____

The Applicant hereby agrees to the following conditions:

- The Applicant is entirely responsible for any traffic control or signage.
- All work will comply with the National Safety Code and all Federal Guidelines.
- Warning signs will be installed where appropriate.
- All roads and ditches will be restored back to present condition. If not returned to present condition, Applicant hereby agrees to reimburse the County for the costs to do so.
- In case of future road construction, Applicant will move anything installed as part of this project at no cost to the County.
- Prior to any road construction or maintenance within the County, the owner shall call South Dakota One-Call at 1-800-781-7474 for location of the facilities.

Signature of Applicant: _____ Date: _____

Applicant Address: _____

Phone: _____ Fax: _____

Recommended for Approval:

By: _____ Date: _____
(Hughes County Superintendent)

Approved: Board of Hughes County Commissioners

By: _____ Date: _____
(Hughes County Commission Chairman)

APPENDIX H

PAYMENT SECURITY

Payment Security shall be based upon the total mileage of the Designated Roads and whether the Designated Road is paved or unpaved. The total Payment Security amount shall be calculated as follows:

Payment Security Amount = ((Mileage Unpaved) * (\$200,000/mile))

((Mileage Paved) * (\$800,000/mile))

APPENDIX I

Form of Supplement to Agreement

SUPPLEMENT TO AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS

This SUPPLEMENT TO AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS (“**Supplement**”) is made and entered into this _____, 2022 (“**Effective Date**”), between North Bend Wind Project, LLC (the “**Developer**”), a Delaware limited liability company with offices at 1360 Post Oak Blvd., Suite 400, Houston, Texas 77056, and Hughes County, South Dakota (“**County**”) with offices at 104 E Capitol Avenue, Pierre, SD 57501. Developer and the County may be referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties.**”

RECITALS

1. Developer and the County are Parties to that certain Agreement for Road Use, Repair, and Improvements dated as of _____, 2022 (the “**Agreement**”) related to Developer’s wind-powered electric generating facility with a planned nameplate capacity of up to approximately 200 MW, located in Hyde and Hughes Counties, South Dakota (the “**Project**”).
2. The Agreement provides for final approval by the County of the Plans and certain information submitted by Developer to the County in preliminary form and attached to the Agreement as Appendix B, Appendix F and Appendix G.
3. Developer has submitted the final Plans as described on Exhibit A attached hereto and information required by Appendix B, Appendix F and Appendix G to the Agreement which are attached hereto.

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions Capitalized terms used in this Supplement and not otherwise defined herein shall have the meanings set forth in the Agreement.

ARTICLE II FINAL APPROVAL

2.1 Approval and Incorporation. The final Plans described on Exhibit A to this Supplement attached hereto and the information required by Appendix B, Appendix F and Appendix G to this Supplement attached hereto have been approved by the County and are incorporated into and replace the corresponding information previously submitted to the County and/or attached to the Agreement.

ARTICLE III

3.1 Entire Agreement. As supplemented by this Supplement and the attachments hereto, the Agreement is ratified and confirmed as continuing in full force and effect unmodified except as set forth herein.

[next page is signature page]

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Supplement to Agreement for Road Use, Repair, and Improvements effective as of the date first above written.

COUNTY:

Hughes County

By: _____

Name: Randy Brown

Title: Hughes County Commission Chairman

DEVELOPER:

North Bend Wind Project, LLC

By: _____

Name: _____

Title: _____

**EXHIBIT A to Supplement
for Road Use, Repair, and Improvements**

Description of Plans

1. [Insert title, preparer, job and revision number, and date of each component of Plans]

**APPENDIX B to Supplement
for Road Use, Repair, and Improvements**

Designated Roads and Project Construction Equipment

[To be revised as applicable based on final Plans]

- A. Designated Roads are depicted in the Attachments hereto. No other roads are Designated Roads. State highway(s) may be depicted on Attachments to this Appendix B (and, if depicted, may be depicted in yellow). Nevertheless, State highway(s) are not Designated Roads and are not subject to the Agreement.
- B. The Initial Evaluation shall be the geotechnical report included in this appendix and the Developer shall complete video inspection of any asphalt surfaced Designated Roads prior to commencement of construction and such video inspection report shall be used for purposes of the After Construction Evaluation inspection and report.
- C. If reasonably determined to be needed based on the Initial Evaluation, prior to the use of the Designated Roads for construction purposes, the Designated Roads shall receive road base material on public roads that currently do not have any gravel surfacing, and road base material on public roads that have previously been surfaced with gravel but require additional material to withstand construction traffic, in each case, in such quantities as are reasonably determined from the Initial Evaluation.
- D. To the extent existing water ponding issues are identified in the Initial Evaluation, Developer shall design, engineer and install corrective measures to improve such existing water ponding issues. County will review and approve agreed upon corrective work prior to installation.
- E. A list of Project Construction Equipment and related information required by Section 2.1 is set forth included in the Attachments to this Appendix B.

**APPENDIX F to Supplement
for Road Use, Repair, and Improvements**

Electrical /Communications Installation

The attached map(s) depict routing, construction, and installation of the Electrical /Communications Installation adjacent to, under, or across certain roads.

**APPENDIX G to Supplement
for Road Use, Repair, and Improvements**

Permits

[To be revised as applicable based on final Plans]

- A. The Agreement
- B. Hughes County Overweight and/or Oversize Permit
- C. Hughes County Permit to Construct Access Approach
- D. Hughes County Utility Installation within the Public Right-of-Way