

ROAD MAINTENANCE AND REPAIR AGREEMENT PAYNE COUNTY, OKLAHOMA

THIS ROAD MAINTENANCE AND REPAIR AGREEMENT (the "Agreement") is entered into as of [REDACTED] by and between **THE BOARD OF COUNTY COMMISSIONERS OF PAYNE COUNTY**, an Oklahoma County ("County") and [REDACTED] ("Operator"). County and Operator are sometimes referred to herein individually as a "Party" and collectively, as the "Parties". The capitalized terms used in this Agreement shall have the meanings assigned to them in this Agreement.

WHEREAS, Operator intends to construct and install an electrical energy storage facility (the "Project") in Payne County, Oklahoma;

WHEREAS, County owns, operates, and maintains certain roads located within Payne County ("County Roads");

WHEREAS, attached hereto as Exhibit A is a preliminary site layout plan for the Project that shows: (a) the primary County Roads over which the Parties agree Operator and its representatives will travel in connection with development of the Project (the "Primary Roads"), and (b) proposed energy storage site, the location of which may, from time to time, change in Operator's sole and exclusive discretion;

WHEREAS, the Primary Roads will be the only roads used for all travel for the Project which will include, but not limited to deliveries of energy storage components, concrete, rock, or any materials used in conjunction with the project, whether loaded or unloaded;

WHEREAS, Operator and County have agreed that there are [REDACTED] miles of Primary Roads which are depicted on Exhibit A attached hereto.

WHEREAS, there are [REDACTED] miles of Primary Roads depicted on Exhibit A attached hereto that are dirt and gravel roads (the "Dirt and Gravel Roads"). [REDACTED] miles of Primary Roads that are asphalted (the "Asphalt Roads").

WHEREAS, 69 O.S. § 601 (A) gives the boards of county commissioners of the various counties exclusive jurisdiction over the designation, construction, maintenance, and repair of all county highways and bridges;

WHEREAS, 47 O.S. § 14-113 authorizes the boards of county commissioners to impose weight restrictions on vehicles operating on highways, detours, and bridges under their jurisdiction;

WHEREAS, Attorney General Opinion 82-2 authorizes local authorities, including boards of county commissioners, to establish weight limits on highways or bridges

under their jurisdiction, whereby reason of deterioration, rain, snow, or other climatic conditions, will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited, or the permissible weight reduced; and

WHEREAS, County is willing to authorize Operator's use of and improvement to certain County Roads and provide certain exemptions to Operator in connection with the construction and installation of the Project in exchange for certain payments and work to be performed by Operator as described below.

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties, covenants, and conditions set forth in this Agreement, the receipt and sufficiency of which all Parties to this Agreement acknowledge, the Parties to this Agreement mutually agree as follows:

ARTICLE I

Responsibility of Parties; Road Documentation; Disputes

Section 1.1 County Responsibilities.

- a. County hereby authorizes Operator to travel over the Primary Roads with loads exceeding the weight limits set by County, if any.
- b. County agrees to perform reasonable, normal and customary maintenance, at its sole discretion, cost, and expense, on Primary Roads during the term of this Agreement, to maintain such roads in a passable condition and to facilitate safe travel for construction personnel, equipment and materials delivery as well as for the public.
- c. Upon completion of construction of the Project, the County shall rebuild the Asphalt Roads, if applicable. Upon completion of construction of the Project, the County shall grade and shape the Dirt and Gravel Roads. The County shall use the funds provided for in Section 1.4 to fulfill such requirements.
- d. County acknowledges that from time to time during the term of this Agreement, Operator transportation plans in connection with the development of the Project may change upon prior written notice, and Operator may travel over roads other than the Primary Roads. If travel consists of deliveries of any materials for the Project, then the new roads traveled will be added as Primary Roads using the pay structure set forth in the agreement.
- e. Following completion of the Project, except as set forth in Section 1.2, County shall be responsible, at its sole cost and expense, to repair the County Roads, as necessary, to comply with the required standards for such roads.
- f. If it becomes necessary for Operator to construct any facilities unrelated to the improvement or modification of the County Roads, including overhead or underground transmission and communication wires and appurtenances,

across the right of way of County Roads, County agrees to execute and deliver a separate road crossing permit authorizing the placement of such facilities across the right-of-way for such County Roads. Prior to the construction of such facilities, Operator shall consult with County regarding the location and placement of such facilities.

Section 1.2 Operator Responsibilities.

a. Preconstruction.

- i. Operator will identify all proposed Primary Roads for the Project and provide such information to the County Road Supervisor or other designated representative.
- ii. Operator will provide the County Road Supervisor or other designated representative with videotape documentation of the pre-construction condition of all Primary Roads.
- iii. The County Road Supervisor or other designated representative shall inspect the proposed Primary Roads for the Project for load paths and restrictions on the respective roads and bridges and, within thirty (30) days of receiving the same, inform the Operator if certain roads or bridges included in the Primary Roads are not suitable for the Operator's use. Operator, after consultation with the County Road Supervisor or other designated representative, may then choose in its sole discretion to either make necessary improvements to such unsuitable road or bridge to accommodate the utilization of the proposed Primary Road or, if such proposed Primary Roads require major improvements, Operator may revise the Primary Roads to include alternative routes.
- iv. If Operator elects to improve any Primary Roads, Operator, after consultation with the County Road Supervisor or other designated representative or a qualified contractor, will make such improvements in accordance with the construction requirements for such roads.
- v. In conjunction with its construction activities, Operator shall, at its sole cost and expense, initially modify or improve the Primary Roads in accordance with the plans and specifications as developed with the County's input and as agreed to by the County; provided, however, it shall be the County's responsibility to rebuild or improve the Primary Roads upon completion of construction of the Project in accordance with Section 1.1 above. Also, in conjunction with its construction activities, Operator shall, at its sole cost and expense, replace with an equal or better replacement, modify, or improve, as applicable, those certain culverts and bridges on the Primary Roads. Operator may at its sole cost and expense, make modifications or improvements (both temporary and permanent) to certain County Roads, including without limitation, modifying and widening certain roads and intersections, constructing wider turning radiuses at certain intersections, constructing or modifying

new or existing driveways providing access to County Roads, and constructing or improving culverts, bridges, road shoulders and other related fixtures, in order to facilitate travel of equipment and materials in connection with development of the Project; provided, however, that Operator shall notify County in writing of any such modifications or improvements prior to commencement of construction of the Project. Following commencement of construction of the Project, Operator may determine that further modifications or improvements to the County Roads are appropriate, and Operator may proceed to make such modifications or improvements, provided that Operator provides prior written notice thereof to County.

- vi. Notwithstanding section 1.1 herein, Operator has the right, but an obligation to, at its own cost and expense, take reasonable actions on the County Roads during construction of the Project to maintain such roads in a passable condition and to facilitate safe travel for the Operator construction personnel, equipment and materials delivery, including without limitation, blading such roads.
 - vii. During any type of road construction, maintenance or repair of the Primary Roads, Operator will utilize appropriate signage for construction or repair zones and crossings in accordance with the Manual on Uniform Traffic Control Devices ("MUTCD"). Operator will not close any Primary Road without advance notice and permission from the County and County emergency services. Operator shall be responsible for compliance with all traffic laws by contractors and sub-contractors utilizing Primary Roads.
 - viii. In the event that in connection with development of the Project, Operator construction personnel or contractors travel over a County Road, by mistake which is not a Primary Road, the route will be corrected to make sure the construction personnel or contractor remains on flow route as depicted on Exhibit A and Operator agrees to reimburse County for the actual cost to repair the damages actually caused by such travel, provided that the costs and expenses associated with the labor and material that County uses to perform such repair are consistent with market costs in County for such labor and materials; and provided, further that Operator will only be responsible for costs and expenses relating to repairing such County Roads to a condition substantially similar to their condition immediately prior to such damage. County shall provide Operator with invoices for all labor and material costs for repairs of unauthorized road usage as described herein prior to payment by Operator. The only exception to this would be the construction personnel or contractors traveling to the job site in the morning to begin work or leaving for the day. This exception would only pertain to construction personnel or contractors driving motor vehicles under 16,000# GVW. Any payments hereunder shall be due sixty (60) days after delivery.
- b. Emergency Repair. Operator will promptly notify the County of any road or bridge emergency condition on any Primary Road discovered by Operator or its

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

Section 1.3 Road Documentation; Disputes.

County and Operator shall cooperate to photograph or otherwise document the condition of the Primary Roads as well as any other County Roads likely to be used by Operator at times prior to commencement of construction of the Project and following completion of construction of Project. Once Operator has commenced construction of its Project, a representative from Operator shall meet on a bi-weekly basis with a representative of the County to discuss the condition of the County Roads. The Parties shall record and agree upon the minutes of such meetings. In the event there is a dispute with respect to the condition of the County Roads (other than the Primary Roads) resulting from construction of the Project, the Parties will first look to the minutes of meetings between the County and Operator, and then to the photographs or other documentation of road conditions. If the Parties are unable to resolve such dispute by reviewing the meeting minutes and looking at such photos or other documentation, the Parties will conduct an on-site inspection with a professional engineer reasonably acceptable to the Parties, who is registered as a professional engineer in the State of Oklahoma and knowledgeable and experienced in county road design and maintenance, to determine the condition of and amount of damage to the County Roads (other than the Primary Roads), if any, that was caused by construction of the Project.

Section 1.4 Compensation; Payments.

- a. As compensation for damage that may occur to the Primary Roads in connection with development of the Project, Operator agrees to pay County an aggregate amount of [REDACTED]
 - i. Operator shall pay County an aggregate amount of [REDACTED] within fifteen (15) days following commencement of construction of the Project, which date shall be determined by Operator in its reasonable discretion. Such amount shall be nonrefundable; and
 - ii. Operator shall pay County an aggregate amount of [REDACTED] upon commercial operation of the Project, which date shall be determined by Operator in its reasonable discretion but no later than sixty (60) days following the end of construction, which date shall be determined by Operator in its reasonable discretion.
- b. Except as set forth in Section 1.4 and 1.2, the Parties agree that payments set forth in Section 1.4 shall be the sole and exclusive compensation paid by Operator to County for activities on County Roads relating to development of the Project.
- c. In the event the Parties agree to amend Exhibit A designate additional County Roads as Primary Roads under this Agreement, Operator shall pay County [REDACTED] per Asphalt Road, and

per mile of Dirt and Gravel Roads. In the event that Operator, in its sole discretion, determines that certain County Roads identified on Exhibit A as Primary Roads are not needed as Primary Roads for its construction of the Project, it may unilaterally amend Exhibit A to remove such County Roads as Primary Roads, in which event, the payment amounts listed in subsection (a) of this section 1.4 shall be reduced by a proportionate amount as set forth in this subsection (c).

- d. Except as set forth above, the Parties agree that Operator shall not be required to pay or reimburse the County for any road repairs attributable to ordinary wear and tear and Operator shall not be required to pay for the costs of improving load maximums, expanding or adding lanes, or otherwise upgrading a Primary Road above its existing standards.
- e. The County shall be responsible for identification of the district(s) in which the Primary Roads are located, and the appropriate allocation of the compensation provided by Operator pursuant to this Section 1.4.

Section 1.5 Term.

This Agreement shall commence upon the Effective Date and shall terminate upon the completion of construction of the Project and construction-related restoration of the properties within the Project, which date shall be determined by Operator in its reasonable discretion, unless terminated earlier in accordance with terms of Article IV.

ARTICLE II

Representative and Warranties

Section 2.1 Capacity.

Operator represents and warrants to County that it is under no legal disability, by virtue of contract or otherwise, that would prevent Operator from entering into, being bound by, or performing the services contemplated by this Agreement, or that would give any other person or entity the right to damages or injunctive relief against County with respect to Operator entering into this Agreement or the performance of services contemplated by this Agreement.

Section 2.2 No Contractual Conflicts.

Operator represents and warrants to County, to the best of its knowledge, that the performance by Operator of the services contemplated by this Agreement does not violate terms of any confidentiality agreement, employment agreement, or agreement not to compete that Operator entered into with any previous party.

ARTICLE III

County Laws and Approvals

Section 3.1 County Laws and Zoning.

As of the date of this Agreement, County has not enacted planning, zoning, or subdivision ordinances, resolutions, or regulations (collectively "County Zoning Regulations"), that prohibit, limit, provide standards for, or burden the development, construction, or operation of the Project. As of the date of this Agreement, County has not enacted any other ordinances, resolutions, regulations, or policies (collectively "County Laws") that would prohibit, limit, provide standards for or burden the development, construction, or operation of the Project. County shall not enact County Zoning Regulations or County Laws that prohibit, limit, provide standards for, or burden the development, construction, or operation of the Project in any way, including, without limitation, any such County Zoning Regulations or County Laws applicable to or requiring building permits for construction of solar panels, batteries, meteorological towers, substations, electric collection lines, access roads, temporary construction areas, operations and maintenance facilities, and other infrastructures relating to the Project or setting weight limits for vehicular traffic on County Roads. To the extent County enacts any such County Zoning Regulations or County Laws, any and all such County Zoning Regulations or County Laws shall specifically exempt the Project from compliance.

Section 3.2 Approval.

County hereby approves the Project and the Operator's use of County Roads in accordance with this Agreement. County represents and warrants to Operator that there are no other applications to or other approvals from County that are necessary to construct the Project or use the County Roads. County hereby approves and accepts all improvements made to the County Roads in accordance with this Agreement.

ARTICLE IV

Termination

Section 4.1 Termination.

This Agreement may be terminated by mutual consent of County and Operator, by Operator if, in its sole discretion, it decides not to build the Project. In the event of a termination hereunder, the Parties obligations hereunder shall terminate as of the termination date. Such termination notwithstanding, Operator shall be responsible for paying all costs to repair any damage it actually caused to any County Roads in connection with the Project.

ARTIVE V

Remedies

Section 5.1 Notice and Cure.

In the event of a breach by either party or any of the terms and conditions of this Agreement, the non-breaching party shall provide notice of such breach and the opportunity to remedy or cure such breach with fifteen (15) days after receipt of such notice if it is monetary default and forty-five (45) days after receipt of such notice if it is any other type of breach. If the default is other than monetary and cannot reasonably be cured within forty-five (45) days, neither party shall be

deemed to be in default if it diligently commences such cure within forty-five (45) day period and thereafter diligently and continuously prosecutes the same to completion.

Section 5.2 Remedies.

The Parties agree that any remedy at law available to each Party for any breach of the provisions of the Agreement may be inadequate and that any such breach could cause irreparable harm to the non-breaching Party. The Parties agree, therefore, that each Party will be entitled to temporary and permanent injunctive relief to prevent a breach of this Agreement, without the necessity of proving damages or posting a bond, which remedy shall be in addition to, and not in lieu of, any other remedies available in law or in equity. Notwithstanding the foregoing, the Parties hereto shall only be liable for reasonably anticipated and foreseeable damages.

Section 5.3 Expenses.

If any at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party in a final non-appealable judgment shall be entitled to recover from the other party all costs and expenses reasonably incurred in connection with such action. Including reasonable attorneys' fees, the amount of which shall be determined by the court rendering the final non-appealable judgment and which shall be made part of the judgment so rendered.

Section 5.4 Cumulative Remedies.

No remedy conferred by any of the provisions of the Agreement to Operator or County is intended to be exclusive of any other remedy, and each and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by County or Operator will not constitute a waiver of the right to pursue other available remedies.

ARTICLE VI Miscellaneous

Section 6.1 Notice.

Any notice required or permitted under this Agreement will be in writing and mailed by registered or certified mail, return receipt requested, to the Parties at the following addresses:

County: Payne County Board of County Commissioners
315 W. 6th Avenue, Suite 200/201
Stillwater, Oklahoma 74074

Operator:

Section 6.2 Entire Agreement.

This Agreement contains the entire agreement between Parties. It incorporates and reduces to writing all prior understandings, promises, agreements, commitments, covenants, or conditions, and constitutes the full and complete understanding and contractual relationship of the Parties. This Agreement may be amended only by any agreement in writing signed by both Parties.

Section 6.3 Severability.

In case any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision hereof, and, such provision or portion thereof will be modified or deleted in such a manner as to make this Agreement, as modified, legal and enforceable to the fullest extent permitted under applicable law.

Section 6.4 Headings.

The headings in this Agreement are for references only and shall not affect the interpretation of this Agreement.

Section 6.5 Successor and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, the Seller agrees that, prior to Closing, the Buyer may assign its rights and obligations under this Agreement to another legal entity of which the Buyer is the majority owner. No Assignment shall relieve the assigning party of any of its obligations hereunder. Any purported assigned in violation of this Section 6.6 shall be void.

Section 6.6 No Third-Party Beneficiaries

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon other person any legal or equitable rights, benefits, or remedies of any nature whatsoever under or by reason this Agreement.

Section 6.7 Amendments.

This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.

Section 6.8 Applicable Law and Venue.

This Agreement and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of Oklahoma without regard for its choice of law provisions. Any legal suit, action, or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby, whether in law or at equity, may only be institute in United States District Court for the Eastern District of Oklahoma or in the courts of the State of Oklahoma having jurisdiction over the County of Payne, Oklahoma. Each party irrevocably submits to the exclusive jurisdiction of such courts in any suit, action or proceeding only in the courts listed herein. Each party hereto acknowledges that it and the other party hereto have been induced to enter into this Agreement and the transactions contemplated hereby by, among other things, the mutual waivers contained in Section 6.8.

Section 6.9 Jury Trial

Each Party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or any of the transactions contemplated hereby whether based on contract, tort or any other theory. Each party hereto acknowledges that it and the other party hereto have been induced to enter into this Agreement and the transactions contemplated hereby by, among other things, the mutual waivers contained in Section 6.9.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date written above by their respective officers thereunto duly authorized.

By the County:

Commissioner – District 1

Commissioner – District 2

Commissioner – District 3

Attest:

County Clerk

APPROVED AS TO FORM AND LEGALITY this _____ day of _____,
20_____.

General Counsel

By the Operator:

By: _____

Name: _____

Title: _____