

AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS

This AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS ("**Agreement**") is made and entered into this 9-19, 2018 ("**Effective Date**"), between Dakota Range I, LLC and Dakota Range II, LLC (collectively, the "**Developer**"), each a Delaware limited liability company with offices at 310 4th St. N.E., Suite 200, Charlottesville, VA 22902, and the Codington County Highway Department on behalf of Codington County, South Dakota ("**County**"). Developer and the County may be referred to herein, individually, as a "**Party**" and, collectively, as the "**Parties**".

RECITALS

1. Developer has been developing a wind-powered electric generating facility with a planned nameplate capacity of up to approximately 300 MW, located in Grant, Codington, and Roberts Counties (the "**Project**").
2. The County is responsible for the maintenance of certain roads within Codington County.
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; (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.
4. The County and Developer wish to enter into an agreement for the use, repair, and improvement of the Designated Roads (as defined in Appendix B), 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 (Designated Roads)
 - v. Highlight all county roads designated as haul roads from state highways or interstate to the project area.
 - vi. Highlight all structures on 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 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. 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 prior to the beginning date of construction for approval.

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

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

ARTICLE II USE OF DESIGNATED ROADS BY DEVELOPER

2.1 Use of Designated Roads by Developer. The County hereby acknowledges and agrees that, in connection with the development, construction, operation, maintenance, and decommissioning of the Project, Developer Parties may use, non-exclusively, all public County roads. Use of public County roads, both Designated Roads (as defined in Appendix B) and non-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. The Developer Parties shall abide by the County's posted spring load limit restrictions on all roads, Designated (as defined in Appendix B) and non-Designated, 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. Such use may include the transportation of personnel, equipment, and materials to and from the Project and shall not be restricted by limitations or regulations of the County except as expressly provided in this Agreement (including Appendix B). 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. 4) Average daily anticipated trips on each Designated Road for each equipment type. Developer may request that additional roads be included as Designated Roads by (A) submitting such a request to the County in writing, accompanied by an updated version of Appendix B that includes such additional roads, and (B) 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 60 days to perform any additional initial evaluations of Designated Roads. County is not required to perform evaluations when the ground is frozen. Upon Developer's submission of such a request, the County shall promptly (A) review such request and (B) unless there exists a material defect in the form of the updated Appendix B or substantial reasons related to public safety why such request should not be granted, provide

written notice that such request has been granted, whereupon 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 Codrington County during construction of the Project other than Designated Roads 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 adding such road to Appendix B, as provided for in Section 2.1 and the performance of Repairs in accordance with Section 3.2 as if such road had been a Designated Road when such damage occurred.

2.3 County Designee; Commencement of Construction; Construction Period Meetings. Within ten (10) days after the execution of this Agreement, the County shall provide the name and contact information for the County Designee, who 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. Except as otherwise stated in Appendix C, County shall conduct an Initial Evaluation of Designated Roads no more than 60 days prior to commencement of construction of the Project. 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. 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 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 same fee per mile 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 90 days' written notice before construction is completed. The County shall then perform an inspection of the Designated Roads not more than 60 days after construction is completed. The results of the inspection shall be document in the Final Evaluation of Designated Roads. Inspection shall be completed in accordance with Section 2.1 of this Agreement. Final Evaluation Report shall also 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 Final Evaluation report shall be submitted to the Developer not more than 60 days after the completion of the evaluation. All costs associated with the final inspection and report shall be paid for the Developer. The Developer will be charged the same fee per mile for the inspection and report as enumerated by the County for the Initial Evaluation.

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. 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.

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 twenty-four (24) hours' prior notice of any planned road closure and obtained the County'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.

2.7 Security. Developer shall maintain a form of financial assurance as required by SDCL 49-41B-38 for damage to roads and bridges caused by construction of the Project. The form, terms and conditions of such financial assurance shall be established by the Public Utilities Commission in Docket No. EL18-003. Developer shall cause to be delivered to County, no later than ninety (90) days prior to commencement of construction, payment security (the "Payment Security"), in the form of a surety bond or letter of credit. The Payment Security shall be calculated on a per mile 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.
- b) **Rights of County.** In the event that the Developer fails to make a required payment under the terms of the Agreement, the County may make a claim upon the surety bond or draw upon the letter of credit, as applicable.

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 Developer shall be responsible for all maintenance of Designated Roads that is associated with construction of the project including but not limited to adding providing additional crushed rock, gravel and/or asphalt surfacing, 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 latest version of the Manual on Uniform Traffic Control Devices and blading and snow removal beyond the County's routine intervals. The Developer shall grade and maintain all non-paved Designated Roads during construction, 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 residences businesses and farms for all heavy farm equipment and all heavy trucks.

All costs associated with the construction related maintenance of the Designated Roads shall be paid for by the Developer. The County shall have the authority perform construction related maintenance if the safety of welfare of the public is at risk. The Developer will be charged for all costs associated with construction related maintenance performed by the County.

3.2 Repair of Designated Roads. Developer shall be responsible for repairing damage caused by Developer Parties. Developer shall not be responsible for, or required to Repair, any damage that is not caused by a Developer Party. 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 reasonable 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 Final 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 20 months of the Final Evaluation of Designated Roads report being issued to the Developer.

3.3 Collection System Cabling. The County acknowledges and approves the Electrical/Communications Installation as set forth in Appendix F(i). 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 road, 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 road crossings by the Electrical/Communications Installation shall be trenched or 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 Codington County Highway Department application process.

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 will use its commercially reasonable efforts to protect the existing County Road from damage during such crossings and shall be responsible for any damages and subsequent repairs in accordance with Section 3.2.

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 obligation to repair in accordance with Section 3.2.

ARTICLE IV IMPROVEMENTS AND MODIFICATIONS TO DESIGNATED ROADS

4.1 In General. Developer shall complete Improvements in accordance with this Article IV. Developer shall not be required to complete any improvement or modification, or perform any road work, that is not required by this Article IV, or in the case of Repairs, by Section 3.2, or that is expressly excluded from Developer's scope of work in Appendix B or in the Plans unless such improvement, modification, or work is required by applicable law.

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 Plans. The County acknowledges that it has received from Developer, 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.

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, based on review of locations for safety and drainage compliance.

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 perform, but shall not be obligated to perform, Future Improvements; *provided, however*, that such Future Improvements shall be subject to the County's customary review and permitting processes, if any, pursuant to statutory and regulatory authority, and in any case, processes applied consistently and in a fashion that treats Developer in a manner similar to other industrial users of County Roads.

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 NO CONSEQUENTIAL DAMAGES

The Parties waive all claims against each other (and against each other's parent company and Affiliates and their respective members, shareholders, officers, directors, agents, and employees) for any consequential, incidental, indirect, special, exemplary, or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non- operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability, or any other legal theory. This Article V shall be fully effective with respect to the subject matter of this Agreement.

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, 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, 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 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.

6.4 Disputes. If a dispute arises under this Agreement, any Party may commence a proceeding at law or in equity to resolve such dispute.

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, that 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, 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 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, upgrading, completion of the Project, 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.

8.2 Land Rights. Subject to the terms and conditions of this Agreement, the Parties acknowledge that the Developer Parties may require certain Private Land Rights in order to conduct maintenance or complete Improvements to Designated Roads, complete the Electrical/Communications Installation, or access private lands necessary for any of the foregoing. Except for such Private Land Rights and subject to the terms and conditions of this Agreement, the County represents and warrants that the County possesses and grants to Developer all Land Rights required, and that no further Land Rights are required for Developer, (i) to use the Designated Roads, (ii) to maintain and complete Improvements of the Designated Roads, and (iii) to complete the Electrical/Communications Installation insofar as the Designated Roads are affected thereby.

8.3 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 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, each Party (as “**Indemnitor**”) shall indemnify and hold harmless the other Party, and the affiliates, members, investors, and partners of such other Party, and its and their respective directors, shareholders, 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 performance of work upon County roads by Indemnitor 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 laws provisions in such state.

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, without 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, without 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 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 which shall contain customary provisions.
- (d) Developer may, without 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: Dakota Range Wind I, LLC
c/o Apex Wind Energy, Inc.
310 4th St. N.E., Suite 200
Charlottesville, VA 22902
Attention: General Counsel
Telephone: (434) 220-7595
Email: legal@apexcleanenergy.com

To the County: Codrington County Highway Departments

Attention:
Telephone:
Email:

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 Confidentiality. Except to the extent in conflict with laws relating to freedom of information or public access to governmental information, and only to such extent, all data and information acquired by the County from Developer Parties (or their affiliates, representatives, agents, or contractors) in connection with the performance by Developer of its obligations hereunder, including information regarding the Project, shall be confidential and will not be disclosed by the County to any third party, and upon request of Developer will be returned thereto. Notwithstanding the foregoing, the Parties acknowledge and agree that such confidential information may be disclosed to third parties as may be necessary for Developer to perform its obligations under this Agreement and that Developer may disclose such confidential information to its investors, potential investors, lenders, and potential lenders (including any tax equity investors). This provision will not prevent the County from providing any confidential information as required by open records laws, open meetings laws, or other laws regarding public information, or in response to the reasonable request of any governmental agency charged with regulating such Party's affairs; *provided*, that in the case of a request by such a governmental agency, if feasible, the County shall give prior notice to Developer of such disclosure and, if so requested by Developer, shall cooperate reasonably, at Developer's expense, in Developer's efforts (i) to oppose or resist the requested disclosure, as appropriate under the circumstances, or (ii) to otherwise make such disclosure subject to a protective order or other similar arrangement for confidentiality.

10.13 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 initial Developer Representative shall be Chris Weatherford.

10.14 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. All traffic control devices and signage associated with Road construction shall comply with the Manual on Uniform Traffic Control Devices.

10.15 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.

10.16 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.

10.17 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.

10.18 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.

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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.

Codington County Highway Department

By: Rick Hartley
Name: Rick Hartley
Title: Hwy Supt.

DAKOTA RANGE I, LLC

By: Apex GCL, LLC
Its: Sole Member

By: Apex Clean Energy Holdings, LLC
Its: Sole Member

By: [Signature]
Name: Kenneth L. Young
Title: COO

DAKOTA RANGE II, LLC

By: Apex GCL, LLC
Its: Sole Member

By: Apex Clean Energy Holdings, LLC
Its: Sole Member

By: [Signature]
Name: Kenneth L. Young
Title: COO

Signature Page

Signature Page

confidential

APPENDIX A

DEFINITIONS

“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.

“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 Virginia.

“County Designee” means the person designated by the County in a written notice delivered to Developer.

“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.

“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.

- (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.

“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 prior to such damage, 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 (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 the asphalt surfaced roads prior to commencement of construction and such video inspection report shall be used in the determination of damages caused by Developer.
- C. Designated Roads shall receive four (4) inches of 1 ½ inch non-spec road base material on public roads that currently do not have any gravel surfacing, and two (2) inches of 1 ½ inch non-spec road base material on public roads that have previously been surfaced with gravel but require additional material to withstand construction traffic.
- D. Developer shall design, engineer and install corrective measures to improve existing water ponding issues. County will review and approve agreed upon corrective work prior to installation.

APPENDIX C

DESIGNATED ROADS NOT EVALUATED

None

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 then-prevailing wage rate, as published or provided by the South Dakota Department of Labor for the specific type of labor in question and for the most specific region of South Dakota of which Codington County is a part. If a comparable prevailing wage rate cannot be obtained, the rate shall be equal to the County's actual, reasonable, out-of-pocket cost (without mark-up) for such labor.
- 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 in the then-current "Rental Rate Blue Book (Equipment Cost Recovery)", as published by Equipment Watch. Where such rates are stated in monthly terms, such rate shall be prorated to and billed as an hourly rate, where one month equals 176 hours.
- Materials:** With respect to materials used in making Repairs, the County shall be reimbursed for the expense of such materials at actual, reasonable, out-of-pocket cost (without mark-up).

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 Dakota Range I, LLC, Dakota Range II, LLC and Codington County , South Dakota.
- Set out 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 the Developer address set out in the Agreement's notice provision, to the attention of Project Controls.

APPENDIX F(i)

Electrical /Communications Installation

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

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APPENDIX G

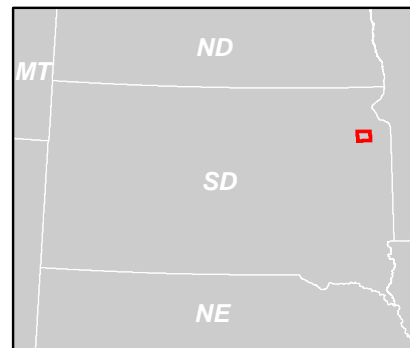
Permits

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











APPENDIX H
PAYMENT SECURITY

Payment Security shall be based upon the total mileage and paved and unpaved roads included among the Designated Roads. The total Payment Security amount shall be calculated as follows:

$$\begin{aligned} \text{Payment Security Amount} = & ((\text{Mileage Unpaved}) * (\$25,000/\text{mile})) \\ & + ((\text{Mileage Paved}) * (\$75,000/\text{mile})) \end{aligned}$$



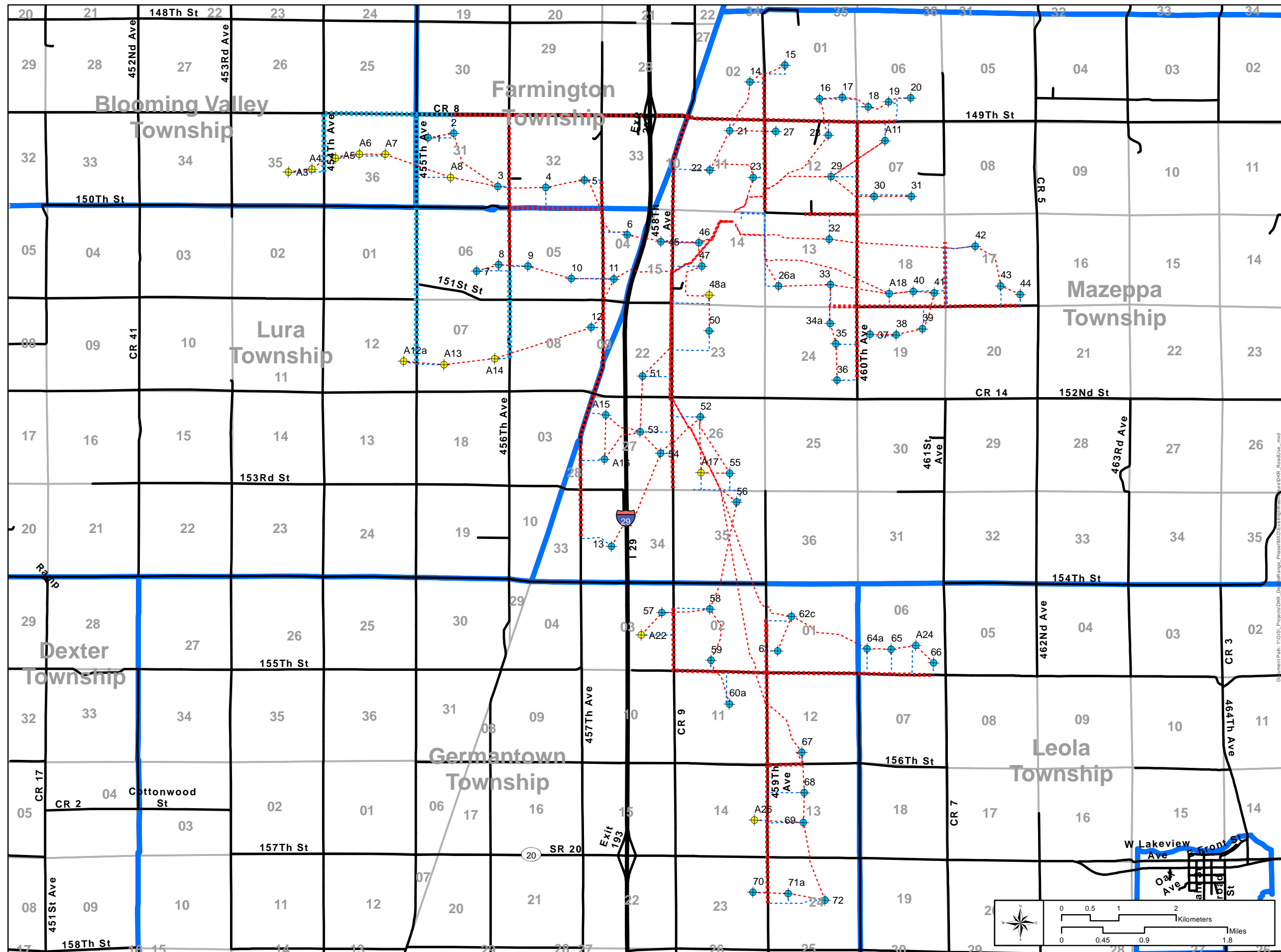
Dakota Range Public Road Use

-  County
-  Township Boundary
-  Section
-  Apex Road Use (Spare)
-  Apex Road Use
-  Public Road
-  Proposed Primary Turbine
-  Proposed Spare Turbine
-  Private Access Road
-  Underground Collection

Date: 9/11/2018 Author: MR

CONFIDENTIAL

Coordinate System: SD83-NF
Projection: Lambert Conformal Conic
Datum: North American 1983
Units: Foot US



Document Path: Y:\GIS\Projects\DKR_Data\Range_Phase\IX\DKR_ExistingInfrastructure\DKR_Roads\se

AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS

This AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS (“**Agreement**”) is made and entered into this 9-24, 2018 (“**Effective Date**”), between Dakota Range I, LLC and Dakota Range II, LLC (collectively, the “**Developer**”), each a Delaware limited liability company with offices at 310 4th St. N.E., Suite 200, Charlottesville, VA 22902, and the Leola Township on behalf of Leola Township, South Dakota (“**Township**”). Developer and the Township may be referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties**”.

RECITALS

1. Developer has been developing a wind-powered electric generating facility with a planned nameplate capacity of up to approximately 300 MW, located in Grant, Codington, and Roberts Counties (the “**Project**”).
2. The Township is responsible for the maintenance of certain roads within Leola Township.
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 Township, which may in certain cases be in excess of the design limits of such roads; (ii) transport personnel, equipment, and materials on such roads; (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.
4. The Township and Developer wish to enter into an agreement for the use, repair, and improvement of the Designated Roads (as defined in Appendix B), 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 Township roads designated as haul roads within the project area (Designated Roads)
 - v. Highlight all Township roads designated as haul roads from state highways or interstate to the project area.
 - vi. Highlight all structures on 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 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 Township. Any changes to the map after submission to the Township shall require written

approval by the Township. 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 prior to the beginning date of construction for approval.

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

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

ARTICLE II USE OF DESIGNATED ROADS BY DEVELOPER

2.1 Use of Designated Roads by Developer. The Township hereby acknowledges and agrees that, in connection with the development, construction, operation, maintenance, and decommissioning of the Project, Developer Parties may use, non-exclusively, all public Township roads. Use of public Township roads, both Designated Roads (as defined in Appendix B) and non-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, Township, or those of any other governmental entity or agency having jurisdiction over such roads. The Developer Parties shall abide by the Township's posted spring load limit restrictions on all roads, Designated (as defined in Appendix B) and non-Designated, 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 Township'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. Such use may include the transportation of personnel, equipment, and materials to and from the Project and shall not be restricted by limitations or regulations of the Township except as expressly provided in this Agreement (including Appendix B). 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. 4) Average daily anticipated trips on each Designated Road for each equipment type. Developer may request that additional roads be included as Designated Roads by (A) submitting such a request to the Township in writing, accompanied by an updated version of Appendix B that includes such additional roads, and (B) allowing the Township to perform an Initial Evaluation on such additional roads if use of the updated roads is approved by the Township. Township will be allowed 60 days to perform any additional initial evaluations of Designated Roads. Township is not required to perform evaluations when the ground is frozen. Upon Developer's submission of such a request, the Township shall promptly (A) review such request and (B) unless there exists a material defect in the form of the updated Appendix B or substantial reasons related to public safety why such

request should not be granted, provide written notice that such request has been granted, whereupon 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 Leola Township during construction of the Project other than Designated Roads 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 adding such road to Appendix B, as provided for in Section 2.1 and the performance of Repairs in accordance with Section 3.2 as if such road had been a Designated Road when such damage occurred.

2.3 Township Designee; Commencement of Construction; Construction Period Meetings. Within ten (10) days after the execution of this Agreement, the Township shall provide the name and contact information for the Township Designee, who shall have authority to act on behalf of the Township. Developer shall provide to the Township 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 Township 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. Except as otherwise stated in Appendix C, Township shall conduct an Initial Evaluation of Designated Roads no more than 60 days prior to commencement of construction of the Project. 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 Township 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. The costs of all Initial Evaluations will be borne by Developer. The Township shall provide the Developer in writing with a maximum limiting fee per mile for the inspections and reports. The fee per mile 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 Township an updated version of Appendix B that designates an additional road as a Designated Road, Township shall perform an Evaluation with respect to such additional Designated Road in accordance with Section 2.4. Township is not required to perform evaluations when the ground is frozen. The Developer will be charged the same fee per mile for the inspection and report for any additional inspections completed.

2.4b Evaluation of Designated Roads After Construction

The Developer shall provide the Township with not less than 90 days' written notice before construction is completed. The Township shall then perform an inspection of the Designated Roads not more than 60 days after construction is completed. The results of the inspection shall be document in the Final Evaluation of Designated Roads. Inspection shall be completed in

accordance with Section 2.1 of this Agreement. Final Evaluation Report shall also 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 Final Evaluation report shall be submitted to the Developer not more than 60 days after the completion of the evaluation. All costs associated with the final inspection and report shall be paid for the Developer. The Developer will be charged the same fee per mile for the inspection and report as enumerated by the Township for the Initial Evaluation.

The Developer may request the Township 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 Township 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 Township. 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 Township, 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.

2.6 Road Closures. Developer shall use reasonable efforts to avoid the closure of any Township 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 Township with twenty-four (24) hours' prior notice of any planned road closure and obtained the Township's approval thereof, which approval shall not be withheld except for reasons of public safety or substantial and unavoidable public inconvenience. Notice to the Township Designee shall satisfy such requirement, provided that such notice is given by both telephone and either fax or e-mail.

2.7 Security. Developer shall maintain a form of financial assurance as required by SDCL 49-41B-38 for damage to roads and bridges caused by construction of the Project. The form, terms and conditions of such financial assurance shall be established by the Public Utilities Commission in Docket No. EL18-003. Developer shall cause to be delivered to Township, no later than ninety (90) days prior to commencement of construction, payment security (the "Payment Security"), in the form of a surety bond or letter of credit. The Payment Security shall be calculated on a per mile 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 Township shall return the Payment Security in full. If Developer has performed under this Agreement and met its payment obligations, the Township shall return the Payment Security no later than ninety (90) days following substantial completion.
- b) Rights of Township. In the event that the Developer fails to make a required payment under the terms of the Agreement, the Township may make a claim upon the surety bond or draw upon the letter of credit, as applicable.

ARTICLE III MAINTENANCE AND REPAIR OF DESIGNATED ROADS

3.1 Maintenance of Designated Roads.

- a) The Township shall in a timely fashion maintain Designated Roads in accordance with the Township'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 Developer shall be responsible for all maintenance of Designated Roads that is associated with construction of the project including but not limited to adding providing additional crushed rock, gravel and/or asphalt surfacing, 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 latest version of the Manual on Uniform Traffic Control Devices and blading and snow removal beyond the Township's routine intervals. The Developer shall grade and maintain all non-paved Designated Roads during construction, 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 residences businesses and farms for all heavy farm equipment and all heavy trucks.

All costs associated with the construction related maintenance of the Designated Roads shall be paid for by the Developer. The Township shall have the authority perform construction related maintenance if the safety of welfare of the public is at risk. The Developer will be charged for all costs associated with construction related maintenance performed by the Township.

3.2 Repair of Designated Roads. Developer shall be responsible for repairing damage caused by Developer Parties. Developer shall not be responsible for, or required to Repair, any damage that is not caused by a Developer Party. Developer shall notify the Township of damage caused by the Developer Parties, and of any other damage noted by Developer, to the Designated Roads and request the Township's authorization to conduct Repairs. Developer shall provide the Township 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 Township 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 Township shall perform the Repairs in a timely fashion, in accordance with the Township'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 Township, the Developer Representative and the Township 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 Township performs Repairs of damage caused by the Developer Parties, Developer shall reimburse the Township the reasonable 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 Township standards. Upon completion of Repairs performed by the Township, but no more often than monthly, the Township 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 Final 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 20 months of the Final Evaluation of Designated Roads report being issued to the Developer.

3.3 Collection System Cabling. The Township acknowledges and approves the Electrical/Communications Installation as set forth in Appendix F(i). Instances where the Electrical/Communications Installations are required to cross a Township 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 Township. Developer shall also provide such reasonable documentation of the proposed crossings, as set forth in Appendix F, as the Township may require. The Township shall not require Electrical/Communications Installation cabling to be buried deeper than thirty-six (36) inches except (i) where such a cable crosses a Township road, where it shall be buried to a minimum depth of forty-eight (48) inches, or (ii) as required by state or federal law. The Township acknowledges that Township road crossings by the Electrical/Communications Installation shall be trenched or bored as agreed to by both parties, with the exception of Township roads that have an asphalt surface that shall be installed using directional bore when practical. For above grade Electrical/Communications Installations the Township 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 Leola Township Highway Department application process.

3.4 Crane Crossings. The Township hereby acknowledges and approves that the Developer will need to cross the Township Roads with heavy construction equipment, such as but not limited to cranes, during the construction, operation, maintenance, and decommissioning of the Project. The Developer will use its commercially reasonable efforts to protect the existing Township Road from

damage during such crossings and shall be responsible for any damages and subsequent repairs in accordance with Section 3.2.

3.5 Failure to Maintain or Repair. With respect to a Designated Road, in the event that the Township does not perform maintenance as required by Section 3.1 or does not perform Repairs undertaken by the Township pursuant to Section 3.2, Developer may request in writing that the Township permit Developer to perform such maintenance or Repair, in which case Developer shall also provide the Township with reasonable details as to the nature, scope, and schedule thereof. The Parties shall cooperate so as to permit the Township to respond promptly to such a request, which the Township shall endeavor in good faith to do. If the Township 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 Township 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 Township standards in all material respects and shall cooperate to permit the Township to inspect such maintenance and Repair work during and after its performance. The Township 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 Township 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 obligation to repair in accordance with Section 3.2.

ARTICLE IV IMPROVEMENTS AND MODIFICATIONS TO DESIGNATED ROADS

4.1 In General. Developer shall complete Improvements in accordance with this Article IV. Developer shall not be required to complete any improvement or modification, or perform any road work, that is not required by this Article IV, or in the case of Repairs, by Section 3.2, or that is expressly excluded from Developer's scope of work in Appendix B or in the Plans unless such improvement, modification, or work is required by applicable law.

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 Plans. The Township acknowledges that it has received from Developer, 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 Township'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 Township, and in no way is obligated to complete such Current Improvements if deemed unnecessary by Developer.

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 Township hereby acknowledges and grants the Developer the right to construct and/or install new driveway entrances from the Township Roads to these new access roads, based on review of locations for safety and drainage compliance.

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 perform, but shall not be obligated to perform, Future Improvements; *provided, however*, that such Future Improvements shall be subject to the Township's customary review and permitting processes, if any, pursuant to statutory and regulatory authority, and in any case, processes applied consistently and in a fashion that treats Developer in a manner similar to other industrial users of Township Roads.

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

ARTICLE V NO CONSEQUENTIAL DAMAGES

The Parties waive all claims against each other (and against each other's parent company and Affiliates and their respective members, shareholders, officers, directors, agents, and employees) for any consequential, incidental, indirect, special, exemplary, or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non- operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability, or any other legal theory. This Article V shall be fully effective with respect to the subject matter of this Agreement.

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

6.4 Disputes. If a dispute arises under this Agreement, any Party may commence a proceeding at law or in equity to resolve such dispute.

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, that 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, the Township represents, warrants, and covenants that:

- (a) the Township has fully and completely reviewed and approved the Plans (as provided to the Township as of the Effective Date) and 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 Township for such use, maintenance, upgrading, completion of the Project, 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 Township comes into effect which would otherwise be applicable to the Project, the Township 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.

8.2 Land Rights. Subject to the terms and conditions of this Agreement, the Parties acknowledge that the Developer Parties may require certain Private Land Rights in order to conduct maintenance or complete Improvements to Designated Roads, complete the Electrical/Communications Installation, or access private lands necessary for any of the foregoing. Except for such Private Land Rights and subject to the terms and conditions of this Agreement, the Township represents and warrants that the Township possesses and grants to Developer all Land Rights required, and that no further Land Rights are required for Developer, (i) to use the Designated Roads, (ii) to maintain and complete Improvements of the Designated Roads, and (iii) to complete the Electrical/Communications Installation insofar as the Designated Roads are affected thereby.

8.3 Review and Inspection. Upon request by Developer, the Township Designee shall review plans for any road work proposed by Developer, and inspect road work completed by Developer, under this Agreement for compliance with Township specifications and right-of-way or easement restrictions. If the Township Designee is able to confirm such compliance, the Township Designee shall promptly so notify Developer in writing. On termination of this Agreement, the Township Designee 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, each Party (as “**Indemnitor**”) shall indemnify and hold harmless the other Party, and the affiliates, members, investors, and partners of such other Party, and its and their respective directors, shareholders, 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 performance of work upon Township roads by Indemnitor 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 laws provisions in such state.

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 Township, the Township’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, without the consent of the Township, 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, without the consent of the Township, 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 connection with any such collateral assignment to a Permitted Collateral Assignee, the Township 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 which shall contain customary provisions.

- (d) Developer may, without the consent of the Township, 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: Dakota Range Wind I, LLC
c/o Apex Wind Energy, Inc.
310 4th St. N.E., Suite 200
Charlottesville, VA 22902
Attention: General Counsel
Telephone: (434) 220-7595
Email: legal@apexcleanenergy.com

To the Township: Leola Township

Attention:
Telephone:
Email:

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 Township is, and notwithstanding anything to the contrary in this Agreement the Township shall not be, a contractor of Developer with respect to Repairs. Rather, the Township shall perform Repairs as part of its ongoing maintenance of Township roads, and Developer's only obligation with respect to Repairs performed by the Township shall be to reimburse the Township 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 Confidentiality. Except to the extent in conflict with laws relating to freedom of information or public access to governmental information, and only to such extent, all data and information acquired by the Township from Developer Parties (or their affiliates, representatives, agents, or contractors) in connection with the performance by Developer of its obligations hereunder, including information regarding the Project, shall be confidential and will not be disclosed by the Township to any third party, and upon request of Developer will be returned thereto. Notwithstanding the foregoing, the Parties acknowledge and agree that such confidential information may be disclosed to third parties as may be necessary for Developer to perform its obligations under this Agreement and that Developer may disclose such confidential information to its investors, potential investors, lenders, and potential lenders (including any tax equity investors). This provision will not prevent the Township from providing any confidential information as required by open records laws, open meetings laws, or other laws regarding public information, or in response to the reasonable request of any governmental agency charged with regulating such Party's affairs; *provided*, that in the case of a request by such a governmental agency, if feasible, the Township shall give prior notice to Developer of such disclosure and, if so requested by Developer, shall cooperate reasonably, at Developer's expense, in Developer's efforts (i) to oppose or resist the requested disclosure, as appropriate under the circumstances, or (ii) to

otherwise make such disclosure subject to a protective order or other similar arrangement for confidentiality.

10.13 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 Township and the Township Designee. The initial Developer Representative shall be Chris Weatherford.

10.14 Safety. Developer shall perform the work hereunder in a safe manner and shall obey all safety requirements of the Township, and all applicable federal, state, county and Township 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. All traffic control devices and signage associated with Road construction shall comply with the Manual on Uniform Traffic Control Devices.

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

10.16 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 Township, 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 Township government, the traveling public, and nearby residents; and risks to public safety.


10.17 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 Township, in any manner or for any purpose, to an amount exceeding in any year the Township's income and revenue provided for such year.

10.18 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 Township upon written request to Developer.

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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.


Leola Township Highway Department

By: 
Name: DENNIS Schmeling
Title: Supervisor

DAKOTA RANGE I, LLC

By: Apex GCL, LLC
Its: Sole Member


By: Apex Clean Energy Holdings, LLC
Its: Sole Member

By: 
Name: Kenneth L. Young
Title: COO

DAKOTA RANGE II, LLC

By: Apex GCL, LLC
Its: Sole Member

By: Apex Clean Energy Holdings, LLC
Its: Sole Member

By: 
Name: Kenneth L. Young
Title: COO

Signature Page

confidential

Signature Page

confidential

APPENDIX A

DEFINITIONS

“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.

“Agreement”, **“Developer”**, **“Township”**, **“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 Virginia.

“Township Designee” means the person designated by the Township in a written notice delivered to Developer.

“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 Township from time to time.

“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 Township.

- (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 Township; *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 Township to terminate this Agreement, the Township 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 Township 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 Township.

“Project” 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 prior to such damage, 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 (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 the asphalt surfaced roads prior to commencement of construction and such video inspection report shall be used in the determination of damages caused by Developer.
- C. Designated Roads shall receive four (4) inches of 1 ½ inch non-spec road base material on public roads that currently do not have any gravel surfacing, and two (2) inches of 1 ½ inch non-spec road base material on public roads that have previously been surfaced with gravel but require additional material to withstand construction traffic.
- D. Developer shall design, engineer and install corrective measures to improve existing water ponding issues. Township will review and approve agreed upon corrective work prior to installation.

APPENDIX C

DESIGNATED ROADS NOT EVALUATED

None

APPENDIX D

REIMBURSEMENT RATES

- Labor:** With respect to labor used in making Repairs, the Township shall be reimbursed for the expense of such labor at the then-prevailing wage rate, as published or provided by the South Dakota Department of Labor for the specific type of labor in question and for the most specific region of South Dakota of which Leola Township is a part. If a comparable prevailing wage rate cannot be obtained, the rate shall be equal to the Township's actual, reasonable, out-of-pocket cost (without mark-up) for such labor.
- Equipment:** With respect to equipment used in making Repairs, the Township shall be compensated for the use of such equipment at the rates set out in the then-current "Rental Rate Blue Book (Equipment Cost Recovery)", as published by Equipment Watch. Where such rates are stated in monthly terms, such rate shall be prorated to and billed as an hourly rate, where one month equals 176 hours.
- Materials:** With respect to materials used in making Repairs, the Township shall be reimbursed for the expense of such materials at actual, reasonable, out-of-pocket cost (without mark-up).

APPENDIX E

INVOICING PROCEDURES

The Township 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 Dakota Range I, LLC, Dakota Range II, LLC and Leola Township , South Dakota.
- Set out 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 the Developer address set out in the Agreement's notice provision, to the attention of Project Controls.

APPENDIX F(i)

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

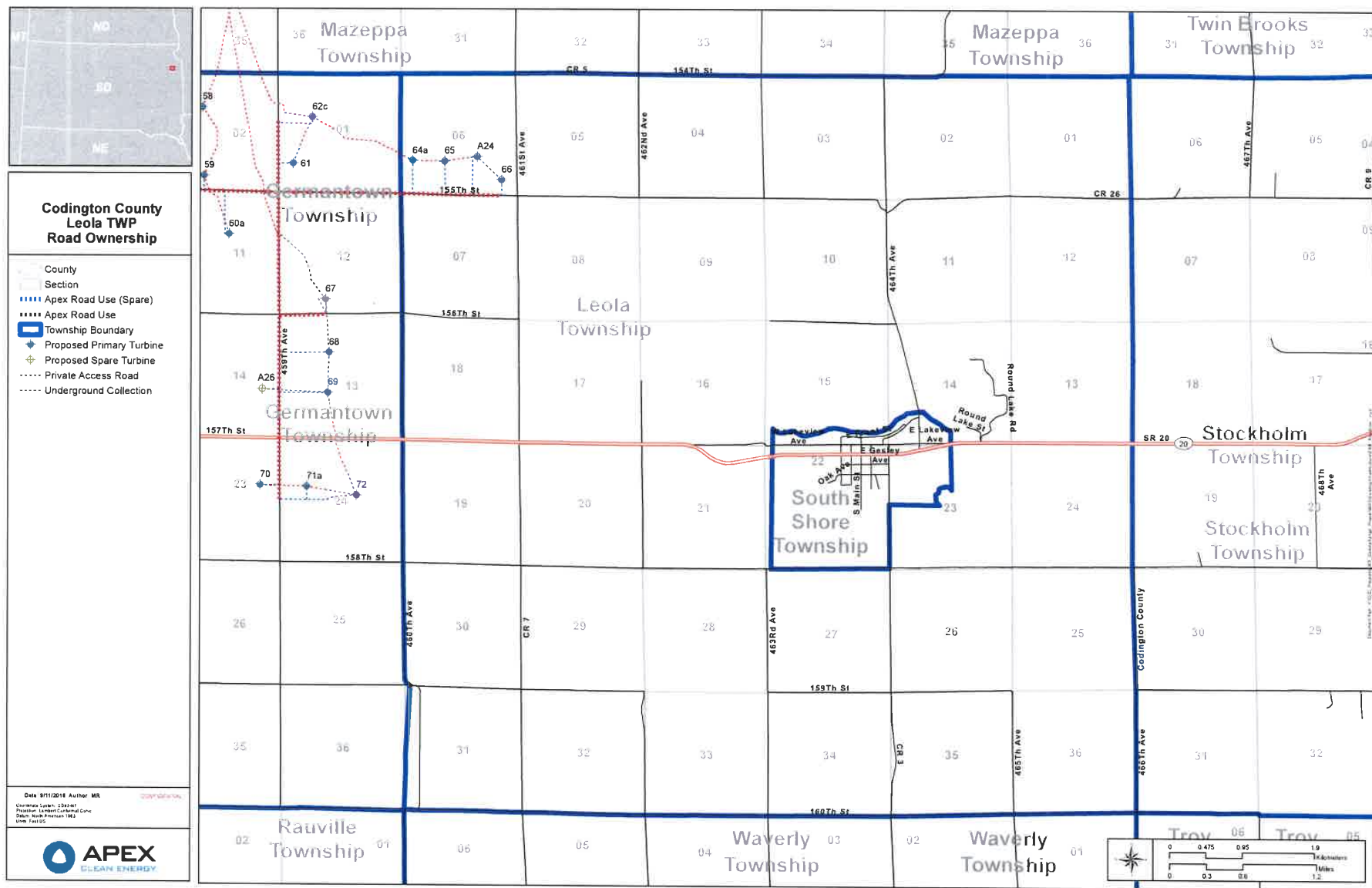
Permits

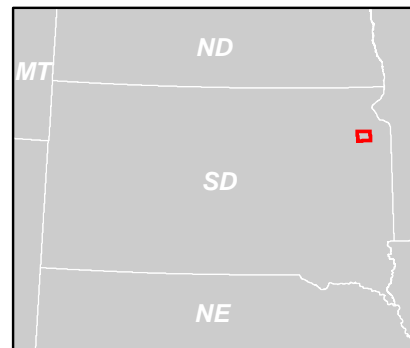
- A. Leola Township Haul Road Agreement
- B. Leola Township Overweight and/or Oversize Permit
- C. Leola Township Permit to Construct Access Approach
- D. Leola Township Utility Installation within the Public Right-of-Way

APPENDIX H
PAYMENT SECURITY











Payment Security shall be based upon the total mileage and paved and unpaved roads included among the Designated Roads. The total Payment Security amount shall be calculated as follows:

$$\begin{aligned} \text{Payment Security Amount} = & ((\text{Mileage Unpaved}) * (\$25,000/\text{mile})) \\ & + ((\text{Mileage Paved}) * (\$75,000/\text{mile})) \end{aligned}$$





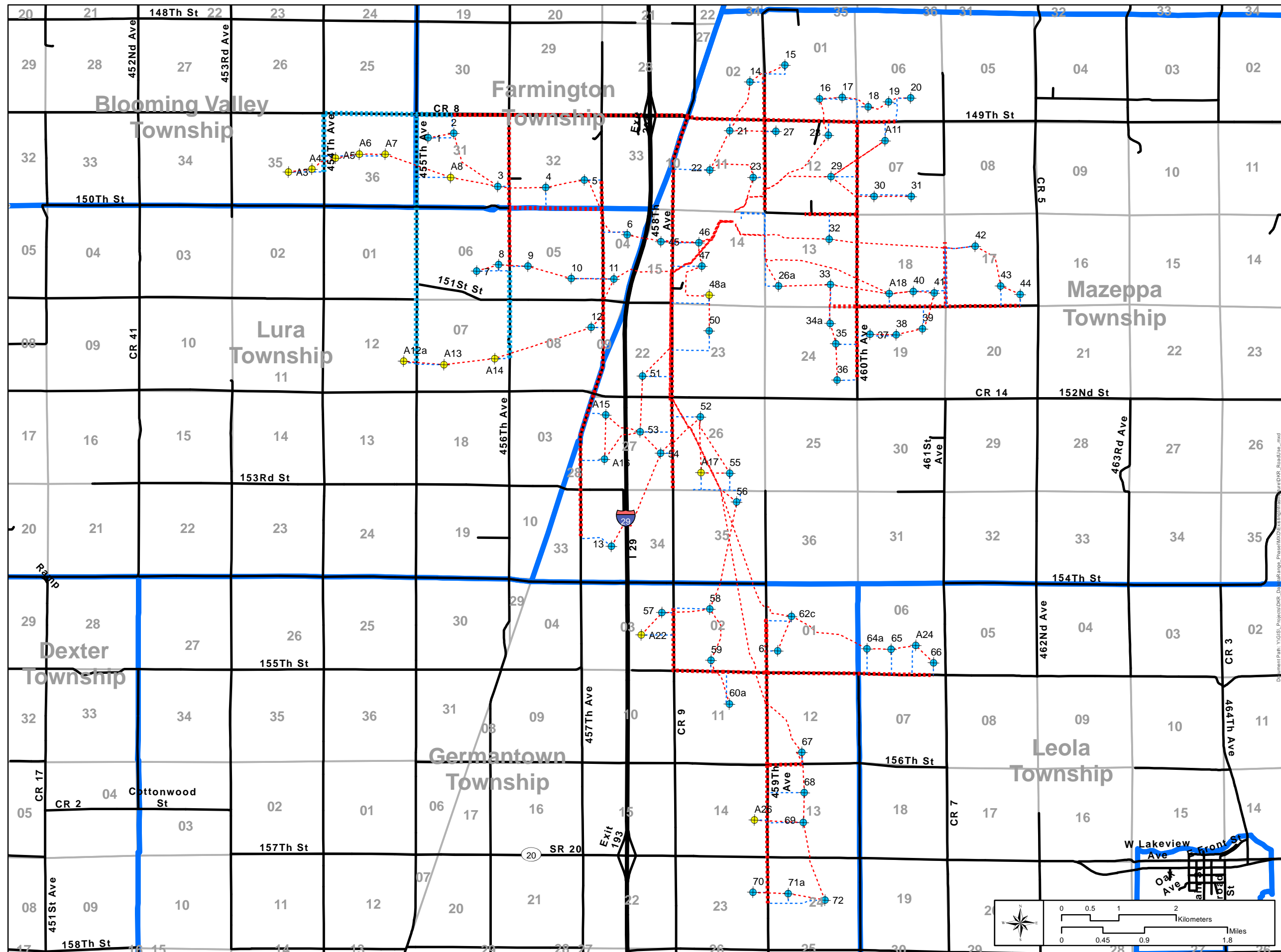
Dakota Range Public Road Use

-  County
-  Township Boundary
-  Section
-  Apex Road Use (Spare)
-  Apex Road Use
-  Public Road
-  Proposed Primary Turbine
-  Proposed Spare Turbine
-  Private Access Road
-  Underground Collection

Date: 9/11/2018 Author: MR

CONFIDENTIAL

Coordinate System: SD83-NF
Projection: Lambert Conformal Conic
Datum: North American 1983
Units: Foot US



structureDKR_RoadUse,

AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS

This AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS (“**Agreement**”) is made and entered into this July 17, 2018 (“**Effective Date**”), between Dakota Range I, LLC and Dakota Range II, LLC (collectively, the “**Developer**”), each a Delaware limited liability company with offices at 310 4th St. N.E., Suite 200, Charlottesville, VA 22902, and the Germantown Township on behalf of Germantown Township, South Dakota (“**Township**”). Developer and the Township may be referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties**”.

RECITALS

1. Developer has been developing a wind-powered electric generating facility with a planned nameplate capacity of up to approximately 300 MW, located in Grant, Codington, and Roberts Counties (the “**Project**”).
2. The Township is responsible for the maintenance of certain roads within Germantown Township.
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 Township, which may in certain cases be in excess of the design limits of such roads; (ii) transport personnel, equipment, and materials on such roads; (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.
4. The Township and Developer wish to enter into an agreement for the use, repair, and improvement of the Designated Roads (as defined in Appendix B), all in accordance with the terms and conditions set forth herein.

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

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

ARTICLE II USE OF DESIGNATED ROADS BY DEVELOPER

2.1 Use of Designated Roads by Developer. The Township hereby acknowledges and agrees that, in connection with the development, construction, operation, maintenance, and decommissioning of the Project, Developer Parties may use, non-exclusively, all public Township roads. Use of public Township roads that are not Designated Roads shall be restricted by all applicable limitations and regulations concerning their use, whether federal, state, Township, or those of any other governmental entity or agency having jurisdiction over such roads. 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. Such use may include the transportation of personnel, equipment, and materials to and from the Project and shall not be restricted by limitations or regulations of the Township except as expressly provided in this Agreement (including Appendix B). From time to time, Developer may request that additional roads be included as Designated Roads by (A) submitting such a request to the Township in writing, accompanied by an updated version of Appendix B that includes such additional roads, and (B) performing an Initial Evaluation on such additional roads. Upon Developer's submission of such a request, the Township shall promptly (A) review such request and (B) unless there exists a material defect in the form of the updated Appendix B or substantial reasons related to public safety why such request should not be granted, provide written notice that such request has been granted, whereupon 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 Germantown Township during construction of the Project other than Designated Roads 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 adding such road to Appendix B, as provided for in Section 2.1 and the performance of Repairs in accordance with Section 3.2 as if such road had been a Designated Road when such damage occurred.

2.3 Township Designee; Commencement of Construction; Construction Period Meetings. Within ten (10) days after the execution of this Agreement, the Township shall provide the name and contact information for the Township Designee, who shall have authority to act on behalf of the Township. Developer shall provide to the Township 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 Township 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. Except as otherwise stated in Appendix C, Developer shall conduct an Initial Evaluation of Designated Roads prior to commencement of construction of the Project. If, pursuant to Section 2.1, Developer submits to the Township an updated version of Appendix B that designates an additional road as a Designated Road, Developer shall perform an Initial Evaluation with respect to such additional Designated Road. The costs of all Initial Evaluations will be borne by Developer. Evaluations in addition to Initial Evaluations shall 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 Township, 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.

2.6 Road Closures. Developer shall use reasonable efforts to avoid the closure of any Township 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 Township with twenty-four (24) hours' prior notice of any planned road closure and obtained the Township's approval thereof, which approval shall not be withheld except for reasons of public safety or substantial and unavoidable public inconvenience. Notice to the Township Designee shall satisfy such requirement, provided that such notice is given by both telephone and either fax or e-mail.

ARTICLE III MAINTENANCE AND REPAIR OF DESIGNATED ROADS

3.1 Maintenance of Designated Roads.

- a) The Township shall in a timely fashion maintain Designated Roads in accordance with the Township'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.
- b) Developer shall grade and maintain all non-paved Designated Roads during construction, including such measures for Significant Fugitive Dust as provided in Section 2.5.

3.2 Repair of Designated Roads. Developer shall be responsible for repairing damage caused by Developer Parties. Developer shall not be responsible for, or required to Repair, any damage that is not caused by a Developer Party. Developer shall notify the Township of damage caused by the Developer Parties, and of any other damage noted by Developer, to the Designated Roads and request the Township's authorization to conduct Repairs. Developer shall provide the Township 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 Township 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 Township shall perform the Repairs in a timely fashion, in accordance with the Township'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 Township, the Developer Representative and the Township 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 Township performs Repairs of damage caused by the Developer Parties, Developer shall reimburse the Township the reasonable 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 Township standards. Upon completion of Repairs performed by the Township, but no more often than monthly, the Township 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's sole responsibility for Repairs is to return Designated Roads to a substantially similar condition as indicated in the Initial Evaluation, reasonable wear and tear excepted.

3.3 Collection System Cabling. The Township acknowledges and approves the Electrical/Communications Installation as set forth in Appendix F(i). Instances where the Electrical/Communications Installations are required to cross a Township 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 Township. Developer shall also provide such reasonable documentation of the proposed crossings, as set forth in Appendix F, as the Township may require. The Township shall not require Electrical/Communications Installation cabling to be buried deeper than thirty-six (36) inches except (i) where such a cable crosses a Township road, where it shall be buried to a minimum depth of forty-eight (48) inches, or (ii) as required by state or federal law. The Township acknowledges that Township road crossings by the Electrical/Communications Installation shall be trenched or bored as agreed to by both parties, with the exception of Township roads that have an asphalt surface that shall be installed using directional bore when practical. For above grade Electrical/Communications Installations the Township 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 Codington County Highway Department application process.

3.4 Crane Crossings. The Township hereby acknowledges and approves that the Developer will need to cross the Township Roads with heavy construction equipment, such as but not limited to cranes, during the construction, operation, maintenance, and decommissioning of the Project. The Developer will use its commercially reasonable efforts to protect the existing Township Road from damage during such crossings and shall be responsible for any damages and subsequent repairs in accordance with Section 3.2.

3.5 Failure to Maintain or Repair. With respect to a Designated Road, in the event that the Township does not perform maintenance as required by Section 3.1 or does not perform Repairs undertaken by the Township pursuant to Section 3.2, Developer may request in writing that the Township permit Developer to perform such maintenance or Repair, in which case Developer shall also provide the Township with reasonable details as to the nature, scope, and schedule thereof. The Parties shall cooperate so as to permit the Township to respond promptly to such a request, which the Township shall endeavor in good faith to do. If the Township 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 Township 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 Township standards in all material respects and shall cooperate to permit the Township to inspect such maintenance and Repair work during and after its performance. The Township 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 Township 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 obligation to repair in accordance with Section 3.2.

ARTICLE IV IMPROVEMENTS AND MODIFICATIONS TO DESIGNATED ROADS

4.1 In General. Developer shall complete Improvements in accordance with this Article IV. Developer shall not be required to complete any improvement or modification, or perform any road work, that is not required by this Article IV, or in the case of Repairs, by Section 3.2, or that is expressly excluded from Developer's scope of work in Appendix B or in the Plans unless such improvement, modification, or work is required by applicable law.

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 Plans. The Township acknowledges that it has received from Developer, 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 Township'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 Township, and in no way is obligated to complete such Current Improvements if deemed unnecessary by Developer.

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 Township hereby acknowledges and grants the Developer the right to construct and/or install new driveway entrances from the

Township Roads to these new access roads, based on review of locations for safety and drainage compliance.

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 perform, but shall not be obligated to perform, Future Improvements; *provided, however*, that such Future Improvements shall be subject to the Township's customary review and permitting processes, if any, pursuant to statutory and regulatory authority, and in any case, processes applied consistently and in a fashion that treats Developer in a manner similar to other industrial users of Township Roads.

4.5 Township Jurisdiction. Nothing in this Article IV or this Agreement shall be construed as limiting or abrogating the Township's jurisdiction or duties under 69 O.S. §60 I *et seq.* and other applicable law concerning the construction, maintenance, and repair of highways and bridges within the Township.

ARTICLE V NO CONSEQUENTIAL DAMAGES

The Parties waive all claims against each other (and against each other's parent company and Affiliates and their respective members, shareholders, officers, directors, agents, and employees) for any consequential, incidental, indirect, special, exemplary, or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non- operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability, or any other legal theory. This Article V shall be fully effective with respect to the subject matter of this Agreement.

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

6.4 Disputes. If a dispute arises under this Agreement, any Party may commence a proceeding at law or in equity to resolve such dispute.

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, that 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, the Township represents, warrants, and covenants that:

- (a) the Township has fully and completely reviewed and approved the Plans (as provided to the Township as of the Effective Date) and 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 Township for such use, maintenance, upgrading, completion of the Project, 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 Township comes into effect which would otherwise be applicable to the Project, the Township 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.

8.2 Land Rights. Subject to the terms and conditions of this Agreement, the Parties acknowledge that the Developer Parties may require certain Private Land Rights in order to conduct maintenance or complete Improvements to Designated Roads, complete the Electrical/Communications Installation, or access private lands necessary for any of the foregoing. Except for such Private Land Rights and subject to the terms and conditions of this Agreement, the Township represents and warrants that the Township possesses and grants to Developer all Land Rights required, and that no further Land Rights are required for Developer, (i) to use the Designated Roads, (ii) to maintain and complete Improvements of the Designated Roads, and (iii) to complete the Electrical/Communications Installation insofar as the Designated Roads are affected thereby.

8.3 Review and Inspection. Upon request by Developer, the Township Designee shall review plans for any road work proposed by Developer, and inspect road work completed by Developer, under this Agreement for compliance with Township specifications and right-of-way or easement restrictions. If the Township Designee is able to confirm such compliance, the Township Designee shall promptly so notify Developer in writing. On termination of this Agreement, the Township Designee 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, each Party (as “**Indemnitor**”) shall indemnify and hold harmless the other Party, and the affiliates, members, investors, and partners of such other Party, and its and their respective directors, shareholders, 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 performance of work upon Township roads by Indemnitor 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 laws provisions in such state.

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 Township, the Township'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, without the consent of the Township, 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, without the consent of the Township, 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 connection with any such collateral assignment to a Permitted Collateral Assignee, the Township 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 which shall contain customary provisions.
- (d) Developer may, without the consent of the Township, 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: Dakota Range Wind I, LLC
c/o Apex Wind Energy, Inc.
310 4th St. N.E., Suite 200
Charlottesville, VA 22902
Attention: General Counsel
Telephone: (434) 220-7595
Email: legal@apexcleanenergy.com

To the Township: Germantown Township

Attention:
Telephone:
Email:

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 Township is, and notwithstanding anything to the contrary in this Agreement the Township shall not be, a contractor of Developer with respect to Repairs. Rather, the Township shall perform Repairs as part of its ongoing maintenance of Township roads, and Developer's only obligation with respect to Repairs performed by the Township shall be to reimburse the Township 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 Confidentiality. Except to the extent in conflict with laws relating to freedom of information or public access to governmental information, and only to such extent, all data and information acquired by the Township from Developer Parties (or their affiliates, representatives, agents, or contractors) in connection with the performance by Developer of its obligations hereunder, including information regarding the Project, shall be confidential and will not be disclosed by the Township to any third party, and upon request of Developer will be returned thereto. Notwithstanding the foregoing, the Parties acknowledge and agree that such confidential information may be disclosed to third parties as may be necessary for Developer to perform its obligations under this Agreement and that Developer may disclose such confidential information to its investors, potential investors, lenders, and potential lenders (including any tax equity investors). This provision will not prevent the Township from providing any confidential information as required by open records laws, open meetings laws, or other laws regarding public information, or in response to the reasonable request of any governmental agency charged with regulating such Party's affairs; *provided*, that in the case of a request by such a governmental agency, if feasible, the Township shall give prior notice to Developer of such disclosure and, if so requested by Developer, shall cooperate reasonably, at Developer's expense, in Developer's efforts (i) to oppose or resist the requested disclosure, as appropriate under the circumstances, or (ii) to otherwise make such disclosure subject to a protective order or other similar arrangement for confidentiality.

10.13 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 Township and the Township Designee. The initial Developer Representative shall be Charles Kennedy.

10.14 Safety. Developer shall perform the work hereunder in a safe manner and shall obey all safety requirements of the Township, and all applicable federal, state, county and Township 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. All traffic control devices and signage associated with Road construction shall comply with the Manual on Uniform Traffic Control Devices.

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

10.16 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 Township, 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 Township government, the traveling public, and nearby residents; and risks to public safety.

10.17 Constitutional Limitations. In accordance with Article 10 Section 26 of 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 Township, in any manner or for any purpose, to an amount exceeding in any year the Township's income and revenue provided for such year.

[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.

Codington Township Highway Department

By: Jeff Brabow
Name: Jeff Brabow
Title: Supervisor

DAKOTA RANGE I, LLC

By: [Signature]
Name: Ken Young
Title: COO

DAKOTA RANGE II, LLC

By: [Signature]
Name: Ken Young
Title: COO

APPENDIX A

DEFINITIONS

“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.

“Agreement”, **“Developer”**, **“Township”**, **“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 Virginia.

“Township Designee” means the person designated by the Township in a written notice delivered to Developer.

“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 Township from time to time.

“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 Township.

- (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 Township; *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 Township to terminate this Agreement, the Township 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 Township 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 Township.

“Project” 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 prior to such damage, 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

- A. Designated Roads are depicted in the Attachments hereto. No other roads are Designated Roads. State highway(s) may be depicted on Attachments (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 the asphalt surfaced roads prior to commencement of construction and such video inspection report shall be used in the determination of damages caused by Developer.
- C. Designated Roads shall receive four (4) inches of 1 ½ inch non-spec road base material on public roads that currently do not have any gravel surfacing, and two (2) inches of 1 ½ inch non-spec road base material on public roads that have previously been surfaced with gravel but require additional material to withstand construction traffic.
- D. Developer shall design, engineer and install corrective measures to improve existing water ponding issues. Township will review and approve agreed upon corrective work prior to installation.

APPENDIX C

DESIGNATED ROADS NOT EVALUATED

None

APPENDIX D

REIMBURSEMENT RATES

- Labor:** With respect to labor used in making Repairs, the Township shall be reimbursed for the expense of such labor at the then-prevailing wage rate, as published or provided by the South Dakota Department of Labor for the specific type of labor in question and for the most specific region of South Dakota of which Germantown Township is a part. If a comparable prevailing wage rate cannot be obtained, the rate shall be equal to the Township's actual, reasonable, out-of-pocket cost (without mark-up) for such labor.
- Equipment:** With respect to equipment used in making Repairs, the Township shall be compensated for the use of such equipment at the rates set out in the then-current "Rental Rate Blue Book (Equipment Cost Recovery)", as published by Equipment Watch. Where such rates are stated in monthly terms, such rate shall be prorated to and billed as an hourly rate, where one month equals 176 hours.
- Materials:** With respect to materials used in making Repairs, the Township shall be reimbursed for the expense of such materials at actual, reasonable, out-of-pocket cost (without mark-up).

APPENDIX E

INVOICING PROCEDURES

The Township 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 Dakota Range I, LLC, Dakota Range II, LLC and Germantown Township , South Dakota.
- Set out 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 the Developer address set out in the Agreement's notice provision, to the attention of Project Controls.

APPENDIX F(i)

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

Permits

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

