

STATE OF TEXAS

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COUNTY OF HIDALGO

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**COUNTY ROAD ACCESS AGREEMENT  
BETWEEN COUNTY OF HIDALGO AND MONTE ALTO WINDPOWER, LLC**

This **COUNTY ROAD ACCESS AGREEMENT**, (hereinafter referred to as “**Agreement**”) is made on and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **COUNTY OF HIDALGO, TEXAS**, (hereinafter referred to as “**County**”), and **MONTE ALTO WINDPOWER, LLC**, a Texas limited liability company, (hereinafter referred to as “**Developer**”), collectively referred to as “**Parties**” and individually as a “**Party**”.

**WITNESSETH:**

**WHEREAS**, the County is a “local government”, and a political subdivision of the State of Texas; and

**WHEREAS**, Developer is developing a wind-powered electric generating facility located in Hidalgo County, Texas (the “**Project**”); and

**WHEREAS**, the County is responsible for the maintenance of certain roads within the County of Hidalgo, Texas; and

**WHEREAS**, in connection with the development, construction operation, maintenance, and decommissioning of the Project, it will be necessary for Developer to use County roads identified in Exhibit A (“**Designated Roads**”) in order 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; and

**WHEREAS**, County and Developer desire to enter into this Agreement for the use, repair, and improvement of the Designated Roads.

**NOW, THEREFORE**, and in consideration of the premises and the mutual covenants and agreements expressed hereinafter, County and Developer agree as follows:

**I. AGREEMENT**

- 1.1 Developer and its contractors and subcontractors, and each of their respective agents, employees, representatives and permitted assigns (the “**Developer Parties**”) shall have authorization to use County roads located within Hidalgo County identified in Exhibit A, at any time, seven (7) days a week including rights of way, for access to and from the Project. Such use may include, but not be limited to, the transportation of personnel, equipment, and materials to and from the Project and use of the road(s) shall not be restricted by limitations or regulations of the County except as expressly provided in this Agreement. The County hereby acknowledges and agrees that the Developer will need to cross the Designated Roads with heavy construction equipment, including, but not limited to, cranes, during the development, construction, operation, maintenance, and decommissioning of the Project. As such, for the duration of the development, construction, operation, maintenance and decommissioning of the Project, no over-weights or over- size permits will be required from the County for the use of the Designated Roads by the Developer Parties. Developer will comply with all other Federal/State laws and regulations in relation to the Project and use of the road(s).
- 1.2 From time to time during the term of this Agreement, Developer may request that additional roads be included as Designated Roads by submitting such a request to the County in writing, accompanied by an updated version of Exhibit A that includes such additional roads. 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 Exhibit A or substantial reasons related to public safety why such request should not be granted, provide written notice that such request has been granted or the reasons for not granting such request within ten (10) Business Days after Developer’s submission. Upon issuance of such written notice by County, Exhibit A shall be deemed automatically amended and restated as such updated version of Exhibit A without any further action required by either Party. If the County fails to provide such written notice within such ten (10) business day period, Developer’s request shall be deemed granted.
- 1.3 Developer may (i) widen designated areas, including intersections, of Designated Roads; (ii) install temporary turning radii; (iii) upgrade the base thickness and surface of the Designated Roads; (iv) strengthen and/or expand existing culverts, bridges, road shoulders and other related fixtures on Designated Roads; (v) install driveway and road entrances from Designated Roads, with each permanent culvert installed at the private driveway entrances in such a way as to preserve the existing drainage patterns where applicable and maintain any right of way and/or easement(s); (vi) perform the routing, construction and installation, above or below ground, of certain wires, cables, conduits and/or lines (and their associated equipment) related to the collection, distribution or transmission of the Project’s electrical power output (up to 345kV) and construction, maintenance and operation related data (“**Electrical/Communication Installation**”); (vii) place footings, foundations, towers, poles, guy lines and anchors, circuit breakers, junction boxes, and other machinery related to the Electrical/Communications Installation in close proximity to the Designated Roads; and (viii) carry out all other related activities described in clauses (i) through (vii) (collectively, the “**Improvements**”). Developer shall obtain a survey from a licensed surveyor and/or engineer, including photographs and/or video to document the condition of a Designated Road prior to commencement of construction of the Project, any

Improvements, or any Electrical/Communication Installation, to establish the initial condition of such Designated Roads (the “**Initial Evaluation**”). Developer shall provide such Initial Evaluation to the County for approval prior to commencing any work. If the County does not give written notice of any objection to the completeness and accuracy of the Initial Evaluation within thirty (30) calendar days after delivery, the Initial Evaluation shall be deemed accepted by the County. The costs of the Initial Evaluation or subsequent evaluations will be borne by Developer.

- 1.4 Developer shall have no obligation to upgrade, maintain or repair the Designated Roads except for damage caused to any Designated Road by Developer.
- 1.5 In the event Developer damages the Designated Roads, Developer shall repair Designated Roads to a state equal to or better than the original condition of such Designated Road prior to such damage by Developer; provided however, Developer shall not be required to repair such Designated Roads until a reasonable time period after the end of construction of the Project.
- 1.6 The County shall in a timely fashion maintain all 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. To the greatest extent possible, the County shall conduct maintenance and any repairs in such a manner as to not unreasonably interfere with Developer’s rights pursuant to this Agreement. Without limitation of the foregoing, the County shall not repave any Designated Road during construction of the Project; *provided that*, the County shall nevertheless be permitted to make repairs to road surfaces as it deems necessary in its sole discretion to ensure safety of the travelling public. In the event the County does not perform the maintenance required hereunder, 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 and advise County of time to respond to said request. 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 forty-eight (48) hours 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 reimburse Developer for all repairs performed pursuant to this section within thirty (30) days after County’s receipt of an invoice therefor.
- 1.7 At the end of each day, the Developer shall use reasonable efforts to check for any damage or safety hazard to the portion of road(s) that were used that day. In the event that any damage or other safety hazard exists Developer will notify County promptly both verbally and in writing by contacting the designated Precinct Point of Contact or other Precinct

Official if the Developer is unable to verbally make contact with the Precinct Point of Contact. Prompt safety measures will be undertaken as coordinated between Developer and Precinct Point of Contact or other Precinct Official(s). If Developer is unable to make contact with any Precinct Point of Contact or other Precinct Official, then Developer should undertake prompt safety measures to address the damage/safety hazard until contact with the Precinct can be undertaken.

- 1.8 If the County determines that any damage reported by Developer (or any damage to the road(s) observed by County, or reported by another Party, which was caused by Developer's use of the road(s)) may impose a danger to the safety of the public or traffic (i.e. damaged or removed safety signs), repair(s) to roads will commence as soon as possible but in no event later than ten (10) calendar days after first reporting. If the necessary repair(s) are not promptly undertaken by Developer within the timeframe required by this Agreement, the County may initiate the necessary repair(s). Developer shall reimburse County for the cost of repair(s) pursuant to this Agreement.
- 1.9 After the Initial Evaluation and throughout the term of Agreement, Developer may at its option and expense regrade Designated Roads to the existing contours and add stabilizing aggregate materials as necessary to maintain access to the Project.
- 1.10 Developer may utilize either water, magnesium chloride, calcium chloride, or other commercially available accepted means on Designated Roads for dust suppression
- 1.11 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. In the event Developer or its representatives travel over a County road that is not a Designated Road and such travel damages such County road, Developer shall follow protocol set forth in 1.6 and 1.7 of this Agreement.
- 1.12 Within ten (10) days after the execution of this Agreement, the County shall provide the name and contact information of the individual(s) who shall have authority to act on behalf of the County (the "**Precinct Point(s) of Contact**") and receive any written notices described in this Agreement. Developer shall provide to the Precinct Point(s) of Contact forty- eight (48) hours' prior written notice of the commencement of any Improvements. Upon the commencement of construction of the Project and/or the Improvements, Developer and the Precinct Point(s) of Contact 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. To the extent deemed appropriate by Developer, Developer may invite certain landowners whose property is near or adjacent to the areas of use to attend the meetings. Hidalgo County Precinct Point(s) of Contact may be found on the attached Exhibit B.
- 1.13 Developer shall use reasonable efforts to avoid the closure of any Designated Road. Nevertheless, Developer shall be permitted to close Designated Roads for commercially reasonable time periods in order to permit the safe passage of large loads and the

installation of Improvements; *provided*, that Developer shall provide the Precinct Point(s) of Contact verbally and in writing seventy-two (72) hours' prior notice of any planned road closure and obtain the County's approval thereof., which approval shall not be withheld except for reasons of public safety or substantial and unavoidable public inconvenience.

- 1.14 Developer is responsible, at its expense, to put up regulatory signs and safety signs as necessary to ensure the continued safe passage of the public and Developer vehicles while construction and use of the roads is ongoing.
- 1.15 When Developer believes that all improvements and repairs are completed pursuant to this agreement, Developer will notify County in writing. Not later than thirty (30) calendar days after receipt of such notice from Developer, County will inspect Roads and provide written notice to Developer if improvements and repairs have or have not been completed. If Developer and County disagree as to the completion, the Developer and County will in good faith attempt to resolve the dispute.

## **II. CONSIDERATIONS**

### **Term, Termination and Modification**

2.1 The term of this Agreement shall commence as of the effective date noted above, and shall remain in effect until completion of the decommissioning of the Project.

2.2 To the extent allowed by law, whenever an Event of Default shall have occurred and is continuing, the Party not in default shall have the right to terminate this Agreement and/or take whatever action at law or in equity as may appear necessary or desirable, or to enforce specific performance or observance of any obligations, agreements, or covenants of the Party in default under this Agreement. An "**Event of Default**" means the failure of either Party to comply with any of its obligations, covenants, agreements or conditions contained in this Agreement, when such failure continues for thirty (30) days after written notice of default to the failing Party from the other Party; *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 the failing Party 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.

2.3 The Agreement may be modified at any time by mutual consent in writing of both Parties. Changes shall be in the form of an amendment and shall become effective upon signature by authorized individuals representing both Parties.

### **Immunities**

2.4 It is expressly understood and agreed that, in the execution of this Agreement, the County does not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercising of governmental powers and functions.

## **Insurance**

2.5 **Liability Insurance:** Each entity will carry sufficient liability insurance at the statutorily required limits, pursuant to the Texas Tort Claims Act.

### **No Additional Permitting**

2.6 Except as expressly set forth in this Agreement, the County represents, warrants, and covenants that: (i) as of the Effective Date, no further licenses, permits, or approvals are required by or from the County for use of the road(s), maintenance, upgrading, or completion of the Project, including the Improvements, except as provided herein; and (ii) 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 2.6 as written. Nothing herein waives any Federal/State law or requirement by any other regulating authority outside of County.

## **III. INDEMNIFICATION**

3.0 **Developer shall indemnify and hold harmless the County, its officers, officials, and employees from and against all claims and liabilities of any nature or kind, including costs and expenses for or on account of any claims, damages, losses, or expenses of any character whatsoever resulting in whole or in part from the negligent performance or omission of Developer’s employees or representatives connected with the activities described herein.**

## **IV. MISCELLANEOUS**

4.1 **Governing Law:** This Agreement will be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created by the Agreement as performable in Hidalgo County, Texas. The Parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

4.2 **Conflicts with Applicable Law:** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of their Agreement and any present or future law, ordinance, or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the Parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

4.3 **No Waiver:** No waiver by any Party hereto of any breach of any provision of the Agreement will be deemed to be a waiver of any proceeding or succeeding breach of the same or any other provision hereof.

4.4 **Notice:** Except as may be otherwise specifically provided in this Agreement, all notices,



4.8 **No Consequential Damages:** To the extent allowed by law, the Parties waive all claims against each other (and against each other's parent company, 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.

4.9 **Assignment:** Developer may, without the consent of the County, (i) 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. 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. In connection with any such collateral assignment, the County shall, upon the request of Developer, deliver to Developer without delay a consent agreement in a form reasonably requested by Developer and any such collateral assignee and which shall contain customary provisions. 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 (i) 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.

4.10 **Additional Documents:** The Parties agree that they will use reasonable, good faith efforts to execute each such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

4.11 **Successors:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

4.12 **Headings:** The headings and captions contained in this Agreement are solely for convenience reference and shall not be deemed to affect the meaning or interpretation of any provision of paragraph hereof.

4.13 **Gender and Number:** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and singular shall include the plural whenever and so often as may be appropriate.

4.14 **Non-Discrimination:** The Agreement and all related activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law or County policy, including without limitation to race, color, national origin, religion, sex, age, veteran status, or disability.

4.15 **Authority to Execute:** The execution and performance of this Agreement by the Parties has been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the participating County and Senator in accordance with its terms.

**(Signature Page to Follow)**

**WITNESS THE HANDS OF THE PARTIES effective as of the day and year first written above.**

**APPROVED BY COMMISSIONERS' COURT ON Month 00, 2023.**

**Agenda Item No. \_\_\_\_\_ Executive Office: \_\_\_\_\_**

**MONTE ALTO WINDPOWER, LLC**

By: \_\_\_\_\_  
Name, Title Date

**COUNTY OF HIDALGO, TEXAS**

By: \_\_\_\_\_  
Name, Title Date

**APPROVED AS TO FORM FOR COUNTY:      ATTEST:**  
Office of the Criminal District Attorney,  
Toribio "Terry" Palacios

\_\_\_\_\_  
Michelle Lopez, Assistant District Attorney

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

## EXHIBIT A

### DESIGNATED ROADS

- Mile 2 E
- Mile 10 N
- Mile 2 ½ E
- Mile 3
- Mile 1
- Mile 1 ½ E
- Mile 11 N
- FM 1425 S
- Mile 12 N
- 1425
- 107
- Mile 15 ½ N
- Mile 14 N
- Mile 17
- County Rd 17018
- FM 2629
- 3325
- 3328
- 491
- Uncle Peter's Rd
- Mile 20 N
- 3340
- 3321
- Mile 21
- 1015
- 3250
- 88
- Pinkston Rd
- Mile 5 ½
- Valdez Rd
- Nittler Rd
- 1921
- 3308
- 3304/Chapa Rd
- 105
- Mars Nursery Rd
- Jesus Flores Rd
- 12<sup>th</sup> St
- 11<sup>th</sup> St
- Israel Cavazos Rd

EXHIBIT B

PRECINCT POINTS OF CONTACT

Hidalgo County Precinct 1 Points of Contact

Address: 1902 Stephens Ave Ste. 101, Weslaco, TX 78596

Phone Number: (956) 968-8733

<u>Name</u>	<u>Title</u>	<u>Email</u>	<u>Extension</u>
Jorge Pena	Deputy Chief Administrator	<a href="mailto:Jorge.pena1@co.hidalgo.tx.us">Jorge.pena1@co.hidalgo.tx.us</a>	1015
Luis Diaz	Program Specialist I	<a href="mailto:luis.diaz@co.hidalgo.tx.us">luis.diaz@co.hidalgo.tx.us</a>	1034
Oscar Gonzales	Field Operations Director	<a href="mailto:Oscar.gonzales3@co.hidalgo.tx.us">Oscar.gonzales3@co.hidalgo.tx.us</a>	1435