

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement"), dated as of the date last signed on behalf of a party, is entered into between the Board of County Commissioners of Bourbon County, Kansas, (the "County"), and Jayhawk Wind, LLC ("Developer").

WHEREAS, Developer intends to construct and operate a wind project with a currently projected total size of approximately 146 megawatts ("MWs") of installed nameplate capacity in Bourbon County, commonly referred to as the Jayhawk Wind Energy Project, to be located on privately owned rural farmland within the County and consisting of wind turbine generators, meteorological towers, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Wind Project"); and

WHEREAS, the County has deemed the Wind Project to be in the best interest of the County and beneficial to the health, safety and welfare of the County and its residents; and

WHEREAS, Developer and County wish to specify certain parameters for the siting and operation of the Wind Project;

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

1. Sound Restrictions. Sound emanating from any Wind Project turbines shall be less than 50 dBA Leq at the exterior centerpoint of a non-participating occupied primary residential dwelling in existence as of the date of this Agreement (except when the fee simple owner of such dwelling has consented, in writing, to a sound level in excess of such level), using the ISO 9613-2 sound propagation methodology. As used in this Agreement, the term "non-participating" shall describe those persons and their respective property with whom Jayhawk Wind, LLC has not entered into any such contractual agreements for the benefit of the Wind Project.
2. Setback from Non-Participating Dwellings. Except where consent is received in writing from the fee simple owner of such dwelling, Wind Project turbines shall be located at least 1,400 feet from any non-participating occupied primary residential dwellings in existence as of the date of this Agreement, as measured from the center of the base of the wind turbine to the center of the occupied primary residential dwelling.
3. Setback from Non-Participating Property Lines: Except where consent is received in writing from the impacted fee simple landowner, Wind Project turbines shall be located at least 1.1 times the height of such turbine, as measured from the base of the wind turbine to the tip of the wind turbine blade at the twelve o'clock position, from the property line of any non-participating parcel that is in existence as of the date of this Agreement of a non-participating landowner.

4. Setback from County Roads: Wind Project turbines shall have a minimum setback from the County Roads in existence as of the date of this Agreement at least equal to 1.1 times the height of such turbine, as measured from the nearest point of the right-of-way to the center of the base of the turbine, and where the height of the turbine is measured from the base of the wind turbine to the tip of the wind turbine blade at the twelve o'clock position. In the event that the dimension of such right-of-way cannot be determined after reasonable inquiry, then the right-of-way shall be deemed to end twenty (20) feet from the nearest edge of such roadway.
5. Turbines. Structures for wind turbines shall be self-supporting tubular towers. Any identification numbers shall be placed at a visible location along the access road to each turbine. The structure, blades and nacelle of each turbine free from logos or advertisements.
6. Lighting. Turbines will be lighted in accordance with the requirements of the Federal Aviation Administration.
7. Termination. In the event that the Developer has failed to meet any of its obligations under the terms of this Agreement (a "Default"), the County shall provide written notice to Developer identifying the alleged Default and demanding a cure (a "Default Notice"). Developer shall have one hundred and eighty (180) days after receiving the Default Notice to investigate and cure such Default; provided, that such one hundred and eighty (180) day cure period shall be extended so long as Developer is exercising commercially reasonable diligent efforts to cure such Default. If the Default has not been cured within the timeframe set forth above, the County shall be entitled to seek any remedies available to the County at law or in equity. Following a non-appealable judgment from a court with jurisdiction (which the parties agree is Bourbon County state court) concerning a Default, if (i) Developer fails to pay damages awarded to County within the time specified by such court, (ii) County sends a notice of default detailing the non-payment of such judgment, and (iii) Developer fails to pay such awarded damages within thirty (30) days following County's notice of default, the County may terminate this Agreement and the Road Agreement. For the avoidance of doubt, this Agreement shall not be terminated until a final and non-appealable adjudication of any disputes relating to an applicable Default has been issued.
8. Removal Upon Termination. In the event this Agreement is terminated pursuant to its terms by the County, then and in that event, regardless of cost to Developer, Developer shall promptly proceed to decommission the Wind Project pursuant to the Decommissioning Agreement.
9. No Waiver. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy shall operate as a waiver thereof. No single or partial exercise by any Party of any such right, power or remedy hereunder shall preclude any other further exercise of any right, power or remedy hereunder.
10. Headings; Interpretation. Headings appearing herein are used solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement. All terms used but not defined herein shall have the same meaning as is given thereto in the Road Agreement. The County Agreements, each being executed by the

County and Developer concurrently herewith, constitute the entire agreement and undertaking of the Parties and supersede all offers, negotiations and other agreements. There are no representations or undertakings of any kind except as expressly set forth in the County Agreements. No amendment or modification to this Agreement shall be binding unless it shall be in writing and signed by both Parties to this Agreement. This Agreement does not waive or limit County's police power, home rule, regulatory authority, or any other County authority or discretion. Time is of the essence regarding every obligation hereunder.


11. Authority and Validity. Developer warrants and agrees that Developer has full power and authority to execute, deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement. Developer further warrants and agrees that this Agreement has been duly executed and delivered by Developer and constitutes a legal, valid and binding obligation of Developer, enforceable against the Developer in accordance with its terms. County warrants and agrees that County has full power and authority to execute, deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement. County further warrants and agrees that this Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable against the County in accordance with its terms.
12. Further Assurances and Cooperation. Each Party will promptly, diligently and in good faith cooperate with the other Party during the Term, including without limitation delivering to such Party upon request proof of compliance with this Agreement, estoppel certificates, and further assurances, documents and reasonably-requested agreements.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed in their respective names by their duly authorized representatives and dated their signatures as shown below, to be effective as of the Effective Date.

DEVELOPER:

Jayhawk Wind, LLC,
a Delaware limited liability company

By:  3/16/2020
Printed Name: Ken Young Date


Title: COO and Authorized Signatory of Apex Clean Energy Holdings, LLC, in its capacity as Manager of Apex GBR, LLC, the Sole Member of Apex Clean Energy Finance, LLC, the Sole Member of Jayhawk Wind, LLC

THE COUNTY:

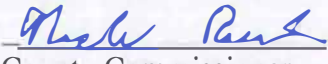
THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

By: 
County Commissioner

Date: 03/13/2020

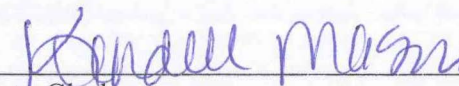
By: 
County Commissioner

Date: 3/13/2020

By: 
County Commissioner

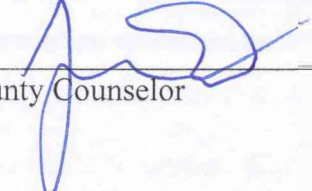
Date: 3-13-20

ATTEST:

By: 
County Clerk



Reviewed and approved by:


County Counselor