

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (“Agreement”), dated as of March ¹²~~12~~, 2020, is entered into by and between Jayhawk Wind, LLC, a Delaware limited liability company (“Developer”), whose address is 310 4th St. NE, Charlottesville, VA 22902, and the Board of County Commissioners of Bourbon County, Kansas, a governmental entity in the State of Kansas (the “County”). Developer and the County are hereinafter referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, the County, pursuant to K.S.A. 19-101 *et seq.*, has the authority to determine their local affairs and government and to enter into contractual agreements with private parties to achieve such purposes; and

WHEREAS, the County desires to promote the economic development of the County and the development of renewable energy within the County and the State of Kansas; and

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, 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 Wind Project may be constructed at the sole discretion of Developer or its successors or assigns, with a total size, configuration, and phasing subject to change at the sole discretion of Developer; and

WHEREAS, the development and construction of a project of the size, complexity, and level of capital investment of the Wind Project can only be undertaken in a stable regulatory environment; and

WHEREAS, as of the date of this Agreement, the County has not enacted any ordinances, resolution, regulations or policies (collectively, “County Laws”) that would prohibit, limit, provide standards for, or burden the development, construction, or operation of the Wind Project; and

WHEREAS, pursuant to K.S.A., Sec. 79-201 (Eleventh), property used to produce and generate electricity using renewable energy resources (including wind) is exempt from all property or ad valorem taxation for a period of ten (10) taxable years immediately following the taxable year in which construction or installation of such property is completed; and

WHEREAS, Developer, as a new member of the local business community, wishes to demonstrate good citizenship by making a commitment to assist the County in improving and maintaining a physical, business and social environment benefiting all members of the community by making contributions to the County, subject to the conditions set forth herein; and

WHEREAS, the County desires and supports the construction of the Wind Project is willing to accept such contributions subject to the terms of this Agreement,

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

TERMS AND CONDITIONS

1. Each of the Parties represents to the other that it has the requisite power and authority to enter into this Agreement. Once the Wind Project enters commercial operation, Developer (or the then current owner of the Wind Project) shall make annual contributions in an amount set forth on Exhibit A, attached hereto (each, a "Annual Contribution") to the County by December 1st of each year (the "Annual Contribution Date"), beginning on the first Annual Contribution Date following the date that Developer provides notice to the County that the requirements for final completion have been satisfied pursuant to the primary engineering, procurement, and construction agreement for the Project (the "First Annual Contribution Date"), which notice Developer covenants to promptly deliver upon said final completion, and continuing through the ninth (9th) anniversary of the First Annual Contribution Date, for a total of 10 Annual Contribution payments. Additionally, within 45 days after the date that Developer provides notice to the County that the notice to proceed has been issued pursuant to the principle construction agreement for the Project, Developer shall make an additional one-time payment to the County in the amount set forth on Exhibit A (the "NTP Contribution").

Each such Annual Contribution and the NTP Contribution shall be paid by Developer (or the then current owner of the Wind Project) to the County by wire transfer. Upon receipt of each Annual Contribution or NTP Contribution payment, the County Treasurer shall disburse such Annual Contribution or NTP Contribution to any taxing jurisdiction, general County fund, or specific fund or funds as may be directed by the County Commission from time to time; provided, however, that the County hereby acknowledges and agrees that (i) it is intended that this Agreement and the Annual Contributions and NTP Contribution contemplated hereunder constitute the only agreements relating to Annual Contributions, NTP Contributions, or similar payments that the Developer (or the then current owner of the Wind Project) will enter into, and for the benefit of, the County or any government or quasi-government entities within the County that would otherwise be entitled to tax revenues, and (ii) it is the County's intent to distribute the Annual Contributions and NTP Contribution hereunder in such a way as the County determines to be in the best interests of the residents of the County.

No Contributions shall accrue or be due or payable after January 1 of the first year of any applicable *ad valorem* tax assessments against the Wind Project. Additionally, if any assessment, tax, levy, cost, fee, or burden, including but not limited to those listed in this paragraph, are imposed upon Developer (or the then current owner of the applicable phase of the Wind Project) or the Wind Project by the County, the state of Kansas, any governmental or taxing subdivisions thereof, or any other governmental entity or quasi-governmental entity, the amount of Contributions shall be reduced by the amount or impact of the assessment, tax, levy, cost, fee or burden imposed. Such assessments, taxes, levies, costs or fees shall include, but not

be limited to: (a) real or personal property tax due with respect to property located in Kansas, owned by Developer (or the then current owner of the applicable phase of the Wind Project) and/or associated with or used in the operation of the Wind Project; (b) any amount of Kansas excise, sales or use tax due with respect to (i) the electrical output of the Wind Project or any proceeds derived therefrom; (ii) property purchased (by Developer or an unrelated party) for use in either the construction or enlargement of the Wind Project or (iii) any purchase of machinery and/or equipment used either (x) as an integral or essential part of the integrated production operations of the Wind Project or (y) for the handling, movement or storage of the output of the Wind Project; (c) any Kansas state or local tax (other than the Kansas income tax, the Kansas franchise tax or the Kansas sales and use tax) is imposed on the income, operations or property of the Wind Project; (d) any amendment after the date of this Agreement that reduces the tax benefits available to the Developer (or the then current owner of the applicable phase of the Wind Project) and/or the Wind Project under the following Kansas statutes (or the regulations thereunder): K.S.A., Section 79-32,160a; K.S.A., Section 74-50,0132; K.S.A., Section 79-3606(cc); K.S.A., Section 74-50,115; K.S.A., Section 79-3606(kk); K.S.A., Section 79-3606(fff); K.S.A., Section 79-201 (Eleventh); or K.S.A., Section 79-259; (e) any mortgage registration fee or tax; (f) any excise tax or other fee, assessment, charge or surcharge relating to the generation, transportation or sale of electricity generated by the Wind Project (or the then owner of the applicable phase of the Wind Project); or (g) any other governmental actions by the County, the State of Kansas, or any of their respective governmental subdivisions or quasi-governmental entities which materially and negatively affect the financial operations, return or viability of the Wind Project, including but not limited to changes in zoning regulation, conditional use permit restrictions or related governmental permits or approvals.

2. Notwithstanding anything in Section 1 above, if the Kansas legislature either amends K.S.A., Sec. 79-201 (Eleventh) or enacts a new statute, and such amendment or enactment has the effect of granting the Wind Project a lifetime exemption from all property or *ad valorem* taxation, Developer shall make Annual Contributions in the amount of \$365,625.00 each year until such time as the Wind Project is decommissioned pursuant to that certain Decommissioning Agreement executed between Developer and the County.

3. As of the date of this Agreement, the Developer has received all required County approvals and materially complied with all County Laws relating to the development, construction, or operation of the Wind Project, including, without limitation, any such County Laws applicable to the permitting, development, construction or operation of wind turbine generators, meteorological towers, substations, electronic collection lines, access roads, temporary construction areas, operations and maintenance facilities, and other infrastructures relating to the Wind Project. In the event that the County enacts any new or amended County Laws in the future that prohibit, limit, provide standards for, or burden the development, construction, or operation of the Wind Project, any and all such County Laws shall exempt the Wind Project from compliance therewith.

4. Each Party covenants, represents and warrants to the other Party that: (a) such Party 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; and (b) this Agreement

has been duly approved, executed and delivered by such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

5. An "Event of Default" shall occur upon failure by either Party to observe or perform any material covenant, condition or agreement required of such Party under this Agreement for a period of forty-five (45) days after written notice of such Event of Default has been given to the defaulting Party by the non-defaulting Party, during which time such Event of Default is neither cured by the defaulting Party nor waived in writing by the non-defaulting Party, provided that, the defaulting Party shall not have been in default if the failure stated in the notice cannot be corrected within said forty-five (45) day period and the corrective action is instituted within the forty-five (45) day period and is reasonably and diligently pursued to completion.

6. Whenever any Event of Default by Developer shall have occurred and be continuing beyond the period for cure set forth in Section 5 of this Agreement, the County may terminate this Agreement and retain all past Annual Contributions made to the County, or pursue enforcement of Developer's obligations. Whenever any Event of Default by County shall have occurred and be continuing beyond the period for cure set forth in Section 5 of this Agreement, Developer may terminate this Agreement and shall be relieved of all obligations hereunder to make future Annual Contributions; provided, however, County may retain any and all previously paid Annual Contributions and shall be entitled to a pro rata payment of the Annual Contribution for the then-current year.

7. Developer (or the then current owner of the Wind Project) may assign or partially assign its rights, obligations, and interests pursuant to this Agreement without the County's consent upon written notice to the County. If requested by either Party or any assignee thereof, each Party hereto agrees to provide such further assurances and execute such additional documents as may be reasonably requested by the other Party to give effect to the foregoing assignment.

8. This Agreement is not a binding obligation or commitment for Developer to construct the Wind Project or any portion thereof, nor to continue any operation of the Wind Project. If Developer (or the then current owner of the Wind Project) should decide not to develop, construct, or operate the Wind Project, Developer (or the then current owner of the Wind Project) will be obligated to provide written notice to the County, and the Parties agree that this Agreement shall terminate and all obligations to provide the Annual Contributions hereunder shall cease without liability to either Party.

9. All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the Party or person intended, or upon facsimile transmission to the fax numbers set forth herein, or upon electronic transmission with read receipt requested and returned to the e-mail addresses set forth herein, or after deposit with a nationally recognized overnight commercial courier services, air bill prepaid, or after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the Party as follows (or to such other address, fax number, or e-mail address as either Party shall designate in writing to the other Party at any time):

To Developer:

Apex Clean Energy, Inc.
310 4th St. NE, Suite 200
Charlottesville, VA 22902
Attention: Deputy General Counsel
Email: legal@apexcleanenergy.com

And

Alan Claus Anderson
Polsinelli PC, 900 W 48th Place, Suite 900
Kansas City, MO 64112
(816)572-4761
aanderson@polsinelli.com

To County:

Bourbon County Counselor
210 S. National Ave.
Fort Scott, KS 66701
Email: jmeeks@bourboncountyks.org


10. This Agreement shall inure to the benefit of the parties' assigns and successors in interest.
11. Notwithstanding anything in this Agreement to the contrary, each of County and Developer hereby waives any claim that they may have against the other with respect to any consequential, indirect, punitive, special or incidental damage or lost profits.
12. This Agreement shall be interpreted under the laws of the State of Kansas.
13. This Agreement constitutes the entire agreement and undertaking of the Parties and supersedes all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth herein. No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by both Parties to this Agreement.
14. Each Party will promptly, diligently and in good faith cooperate with the other Party during the Term, including without limitation delivering to the other 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.

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

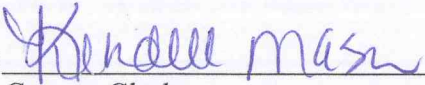
THE COUNTY:

THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

By: 
Name: Lynn D. Okavak
County Commissioner

By: 
Name: JEFF FISCHER
County Commissioner

By: 
Name: Wick Ruhl
County Commissioner

ATTEST:
By: 
County Clerk



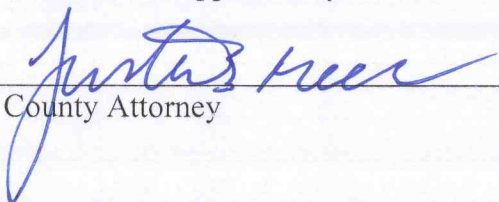
Reviewed and approved by:

County Attorney

EXHIBIT A
CONTRIBUTION PAYMENTS

NTP Contribution:	\$ 407,812.50
First Annual Contribution Date:	\$ 365,625.00
Second Annual Contribution Date:	\$ 365,625.00
Third Annual Contribution Date:	\$ 365,625.00
Fourth Annual Contribution Date:	\$ 365,625.00
Fifth Annual Contribution Date:	\$ 365,625.00
Sixth Annual Contribution Date:	\$ 365,625.00
Seventh Annual Contribution Date:	\$ 365,625.00
Eighth Annual Contribution Date:	\$ 365,625.00
Ninth Annual Contribution Date:	\$ 365,625.00
Tenth Annual Contribution Date:	\$ 182,813.00