

## ROAD MAINTENANCE AGREEMENT

This ROAD MAINTENANCE AGREEMENT ("**Agreement**") is made and entered into this 31 day of October, 2018, between ALLETE Clean Energy (ACE), its successors and assignees, whose address for purposes of notices is 30 W Superior St., Suite #200 Duluth, MN 55802 (hereinafter referenced as "**ACE**") and Morton County, North Dakota, whose address for purposes of notices is 2916 37<sup>th</sup> Street NW, Mandan ND 58554 (hereinafter referenced as "**County**"). ACE and County are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**").

WHEREAS:

1. ACE is developing a wind-powered electric generating facility project known as the Clean Energy #1 company name Glen Ullin Energy Center ("**Project**") with all necessary access needs located in Morton and Mercer Counties, North Dakota.
2. County is responsible for the maintenance of certain county roads within Morton County, North Dakota.
3. In connection with the development, construction and operation of the Project, it will be necessary for ACE, its contractors and subcontractors or designees to: (i) transport heavy equipment and materials over designated haul routes located in the county and on county roads, 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, widen radius of field entrances, and make certain other modifications and improvements (temporary and permanent) to such roads (including to certain culverts, bridges, road shoulders and other related fixtures) to permit such equipment and materials to pass, and (iv) place certain electrical cables for the project adjacent to or under certain roads for the purposes of the collection, distribution, and transmission of electricity to and from, and between and among the various parts of the Project. ACE, its contractors and subcontractors will permit all oversize and overweight loads with Morton County through the Morton County Moving Permit application process. Segments of Roads used for this project under this maintenance agreement will not require Overweight Permits. Any County Roads used that are outside the area of the project will require Overweight Permits.
4. County and ACE wish to enter into an agreement for the use, repair, maintenance and improvement of the designated roads, 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 is hereby acknowledged, the Parties hereby agree as follows:

1. Obligations of ACE

i. Roads: Maintenance and Repairs: Pre-construction, consultation and documentation: Prior to the commencement of construction of the Project, ACE shall consult with County's Road Supervisor regarding any available information on load pass and restrictions and bridge inspections on the respective roads or bridges on the proposed project transportation route.

ii. Documentation: ACE shall, at its expense, provide County with videotape or other media documenting the preconstruction condition of all County roads to be used by ACE during the construction or operation of the Project.

iii. Repair to roads: ACE shall, at its expense, contract with qualified contractors to repair any damage to the roads and bridges directly arising out of ACE, its contractors and subcontractors transportation of equipment and project components during the construction of the Project. ACE shall complete its final road repair obligations to the reasonable satisfaction of the Road Supervisor within one (1) month after ACE completes construction of the Project, or as soon thereafter as weather conditions permit. Routine Maintenance Gravel will not be required. This will include removing of radii that were installed at intersections for use by ACE, its contractors and subcontractors transportation of equipment and project components during the construction of the Project, Signs that were relocated during construction of the radii will be reinstalled in their original location, before the project.

iv. Emergency conditions and repairs: ACE shall promptly notify the Road Supervisor or his representatives of any road or bridge emergency discovered by ACE, its contractors or subcontractors. In the event such hazardous road or bridge condition arises out of use associated with the development of the Project, and is not corrected by ACE within a reasonable time after the discovery of such condition, the Road Supervisor may cause emergency road or bridge repair to be conducted at the County's initial expense, and Wind Company shall reimburse the County for the reasonable repair costs incurred by the County for such emergency repairs within thirty (30) days after receiving a written invoice of such repair costs.

b. Transportation route consultation: Prior to commencing construction activities for the Project, ACE agrees to consult with and receive input from the Road Supervisor regarding the transportation route(s) to be used by ACE, its contractors and subcontractors. Prior to construction, but within thirty (30) days of receiving notification of the proposed transportation route, the Road Supervisor (and Bridge Supervisor) will notify ACE if certain roads or bridges included in the proposed route are not suitable for Wind Company's use. ACE may then

choose to either make any necessary improvements to such unsuitable road or bridge to accommodate the utilization of the proposed transportation route, or, if the proposed route would require major improvement, ACE may revise the proposed route to include alternative routes. ACE shall prepare a map indicating the routes to be used in the construction and maintenance of the Project based on its consultations with the Road Supervisor and shall provide a copy of such map to the Road Supervisor.

- c. Road Treatment: ACE is responsible for a one-time treatment using magnesium chloride to County specifications on portions of 30<sup>th</sup> St SW from 62<sup>nd</sup> Ave SW to 66<sup>th</sup> Ave SW, 66<sup>th</sup> Ave SW from 30<sup>th</sup> St SW to Co Rd 140, and Co Rd 140 from Hwy 49 to 66<sup>th</sup> Ave SW.
- d. Alternate routes: It is the expectation of the Parties that all contractors and subcontractors associated with this Project shall use the agreed upon project transportation route. If it is learned by either Party that a contractor or subcontractor is using an alternate route not considered by the Parties in this Agreement, the Party learning of the use of the alternate route shall notify the other Party in writing. ACE shall be responsible for the repair and maintenance of the alternate routes being used in the same manner as the project transportation route agreed to by the Parties prior to construction.
- e. Cooperation: ACE and the County agree to communicate and cooperate in good faith concerning the safe implementation of the Project and preventing or correcting any hazardous road conditions that may be created by the Project.
- f. Engineer: If necessary to determine appropriate and safe routes, Morton County, at its discretion, may consult with a qualified and certified bridge engineer regarding load pass. ACE shall reimburse Morton County for all reasonable expenses and fees incurred by the County for such consultation.
- g. Temporary access: ACE shall promptly notify the Road Supervisor if it shall be necessary to construct or partially construct any temporary access on County roads in order to construct the Project and ACE shall further agree to return such access to its original status unless agreement is reached by the Parties.
- h. Indemnification: ACE, to the fullest extent permitted by law, agrees to defend, indemnify and hold harmless the County and its commissioners, administrators, employees and representatives against any and all losses, damages and claims, expenses and liabilities for physical damage to the property of the County and for physical injury to any person, including, without limitation reasonable attorney fees, to the extent directly resulting from or arising out of performance of work upon County roads by ACE or result from any breach of any representation or warranty

made in this Agreement by ACE. Furthermore, ACE agrees to defend, indemnify and hold harmless the County from any third party claims arising out of the terms and conditions of this Agreement.

Notwithstanding the foregoing, ACE obligations under this section shall not apply to the extent any such losses, damages, claims or injuries arise out of the negligence or willful misconduct of the County, its commissioners, administrators, employees or representatives. This indemnification obligation shall survive the termination of this Agreement.

- i. **Insurance:** ACE shall at all times during construction and operation of the Project carry (i) worker's compensation insurance and employer's liability insurance in accordance with the laws of the State of North Dakota, (ii) commercial general liability insurance with minimum limits of \$1,000,000.00 per occurrence, and (iii) automobile liability insurance. Certificates of insurance shall be provided to the County upon written request to the Company.
- j. **Compliance with Law:** ACE shall at all times comply with all federal, state and local laws, statutes, ordinances, rules and regulations, judgments and other valid orders of any governmental authority with respect to ACE's activities associated with the Project and shall obtain all necessary permits, licenses and orders required to conduct any and all such activities.

2. **Obligations of Morton County:**

**Notification:** County shall give timely notification to ACE of any condition which comes to its attention which may give rise to a road repair obligation, or which would constitute a hazardous road condition.

**Cooperation:** ACE and County agree to communicate and cooperate in good faith concerning the safe implementation of the Project and preventing or correcting any hazardous road conditions that may be created by the Project.

3. **Entire Agreement:** It is mutually understood and agreed that this Agreement constitutes the entire agreement between the Parties regarding road maintenance and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representations or statements, verbal or written, have been made to modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in writing executed by the Parties.

4. **Default:** Any failure by a Party to this Agreement to perform a material obligation hereunder which is not remedied within thirty (30) days after receipt by the defaulting party of written notice of such failure shall be deemed a default under this Agreement and allow the non-defaulting party to terminate this Agreement. Notwithstanding the

foregoing, so long as the defaulting party has initiated and is diligently attempting to affect a cure, the defaulting party's cure period shall be extended for a time period reasonably sufficient for the default to be remedied.

5. **Relationship of the Parties:** The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between the Parties or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act or be an agent or representative of, or to otherwise bind, the other Party.

6. **Severability:** Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated are fulfilled to the fullest extent possible.


7. **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Dakota. In any litigation arising from or related to this Agreement, the Parties hereto each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement.

8. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page to this Agreement by electronic mail shall be as effective as delivery of an originally signed counterpart to this Agreement.

*[Signatures on Next Page]*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on the day and year first above written.

**MORTON COUNTY ENGINEER  
MORTON COUNTY, NORTH DAKOTA**

  
\_\_\_\_\_  
John Saiki, PE

ATTEST:

  
\_\_\_\_\_  
Brandy Selland

**ALLETE Clean Energy**

By:   
\_\_\_\_\_  
John Hollingsworth, Project Development Manager