

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (“Agreement”), dated as of _____, 2022 (the “Effective Date”), is entered into by and between High Banks Wind, LLC, a Delaware limited liability company (“Developer”) and Republic County, Kansas, a governmental entity in the State of Kansas (“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 its 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 is developing a wind turbine (meaning with three blades) electrical generation facility project commonly referred to as the High Banks Wind Project, with an approximate size of 559 megawatts of installed nameplate capacity in the County, to be located on privately owned rural farmland or public right of way located within the County land area as shown on Exhibit A to the Development Agreement between Developer and County dated the Effective Date (“Development Agreement”), consisting of wind turbine generators, meteorological towers, substations, above-ground transmission lines, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (all such types of infrastructure, plus any other directly ancillary Developer infrastructure located within the land area shown on Exhibit A to the Development Agreement, collectively the “Wind Project”); and

WHEREAS, Developer intends to construct and operate the Wind Project; and

WHEREAS, pursuant to K.S.A. 79-201 (Eleventh), some or all of the Wind Project might be exempt from Kansas property tax; and

WHEREAS, Developer, as a new member of the local business community, wishes to demonstrate good citizenship by making a commitment to: (1) assist the County in improving and maintaining a physical, business and social environment benefiting all members of the community, and (2) contribute to the County for potential impacts of the Wind Project within or upon the County by making contributions to the County, subject to the conditions set forth herein; and

WHEREAS, the County 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 and sufficiency 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.
2. Developer shall make the following contributions (“Contributions”) to the County:
 - a. One “Initial Payment” described in attached Exhibit A, made within 30 days after the Commencement of Construction. Exhibit A amounts are payments calculated based on 559.32 megawatts of installed nameplate capacity in the County (“MWs”). If the proposed MWs increase prior to Commencement of Construction, the Initial Payment will increase by the amount equal to: the additional proposal MWs multiplied by \$1666.67.
 - b. An “Annual Contribution” payment described in attached Exhibit A, made once the Wind Project achieves initial COD, by January 1 of each year (the “Annual Contribution Date”), beginning on the first Annual Contribution Date following the Wind Project’s initial COD (the “Initial Contribution Date”), and continuing through the 9th anniversary of the Initial Contribution Date, for a total of 10 Annual Contributions. Exhibit A amounts are payments calculated based on 559.32 MWs. If the installed MWs increase by or after COD, the Annual Contribution due after such installation date will increase by the amount equal to: the additional installed MWs multiplied by \$1333.33.
3. In addition to the payments described above, Developer shall make a one-time payment to the County within 30 days after the Commencement of Construction in the amount of One Hundred Thousand Dollars (\$100,000.00), to be distributed by the County for the benefit of the local fire districts and fire departments which district or service area is included at least in part within the Wind Project boundaries.
4. The County may direct each Contribution to any taxing jurisdiction, general County fund, or specific fund or funds as may be directed by the County from time to time; provided, however, that the County hereby acknowledges and agrees that it is the County’s intent to distribute the Contributions hereunder in such a way as the County determines to be in the best interests of the residents of the County.
5. If any (A) *ad valorem* tax is assessed against assets owned solely by Wind Project, or (B) state taxes, a portion of which are transferred to the County, are imposed on Developer or the Wind Project by the state of Kansas or any of its governmental subdivisions, and as of the Effective Date the Developer or Wind Project would not be legally obligated during the term of this Agreement to pay the tax; then the amount of Developer's Contributions shall be reduced by the amount of the tax described in this Section 5 that is actually received by the County: (a) real or personal property tax due with respect to property located in Kansas, owned by Developer and/or associated with or used in the operation of the Wind Project; (b) any amount of Kansas sales or use tax due with respect to (i) property purchased (by Developer or an unrelated party) for use in either the construction, repowering, or enlargement of the Wind Project or (ii) 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) the Kansas statutes (or the regulations thereunder) are amended after the date of this Agreement so as to reduce the tax benefits available to Developer and/or the Wind Project under K.S.A. 79-32,160a; K.S.A. 74-50,132; K.S.A. 79-3606(cc); K.S.A. 74-50,115; K.S.A. 79-3606(kk); K.S.A. 79-3606(fff); or K.S.A. 79-201 (Eleventh).

6. The Parties intend for the Wind Project to qualify for the ten year exemption from Kansas property tax pursuant to K.S.A. 79-201 (Eleventh) (the “Initial Exemption”). Prior to, upon, and any time after, the expiration of the Initial Exemption, Developer shall not seek, claim, or utilize any further exemption from Kansas property tax for any Wind Project property regardless when it was acquired or installed in Republic County. This property tax exemption prohibition includes as an example but without limitation, exemption: in connection with the acquisition, construction or otherwise of new infrastructure that is part of a repower of the Wind Project; and pursuant to any legal, regulatory or other interpretation of or related to K.S.A. 79-201 (Eleventh) as that law is written on the Effective Date; but this property tax exemption prohibition does not include if K.S.A. 79-201 (Eleventh) or another Kansas statute is expressly modified or created to extend the Initial Exemption. Developer breach of this Section obligates Developer to pay as Contributions the amounts equal to the property tax due or that would have been due on Wind Project property pursuant to the property tax exemption prohibition imposed by this Section, allocable to the time period through completion of Decommissioning Services, and to pay said Contributions when those property tax amounts are or would have been due.

7. If Developer fails to make any payment required under this Agreement, then the County may provide written notice of such failure to the Developer and the Developer shall have sixty (60) days from the date of such notice to make its required payment. If the County elects to provide a written notice of such failure to the Developer and Developer does not cure such failure, the Parties shall meet within sixty (60) days of such notice and shall employ good faith efforts to try to resolve such dispute. If the Parties are unable to resolve such dispute within such sixty (60) day-time period, then the Developer shall pay the disputed payment and may do so “under protest”. If the Developer fails to make such payment, either under protest or not, within the time period set forth above, then the Developer is in “Default” of this Agreement, and must cease operations for the entire Wind Project until the disputed amount is paid. The County may seek an immediate injunction to cause the Wind Project to cease operations (including without limitation cessation of Developer’s rights pursuant to the Road Use Agreement and invoking County’s remedies pursuant to Road Use Agreement Section 10.B.), and the Developer consents to the jurisdiction of Republic County for such action. Any payment not paid when due pursuant to Section 2, 3 or 6, accrues interest from the date due at the rate of the lower of the maximum interest rate allowed by applicable law or 15% per annum. Said interest is due at the time the payment is actually made for the payment to be considered paid in full. Developer shall pay to County the County’s reasonable attorney and professional fees and other costs with respect to the County’s pursuit and implementation of any and all remedies.

8. The failure of either Party to insist in any one or more instances on the performance of any of the obligations required by the other under this Agreement shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

9. The rights and remedies of the Parties under this Agreement are cumulative and shall not exclude any other rights or remedies that the Party may have in law or in equity, except Developer does not have the right to terminate this Agreement.

10. All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given or made in writing via the methods allowed by the notice party below (including by telecopy) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by electronic mail with confirmation of receipt received, personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein. Notice is accomplished when as provided to a Party by this Section 10, a copy provided to a Party's legal counsel is merely a courtesy copy.

To Developer:

Business Manager
High Banks Wind, LLC
700 Universe Boulevard, FEW-JB
Juno Beach, FL 33408

Courtesy copy to:

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

To County:

County Clerk
Republic County, Kansas
1815 M Street
Belleville, KS 66935

Courtesy copy to:

County Counselor
Republic County, Kansas
1815 M Street
Belleville, KS 66935

11. This Agreement may not be modified or amended or waived on behalf of a Party, except by an instrument in writing referring specifically to this Agreement executed by all of the parties to this Agreement as of the time of the modification or amendment.. Any oral or verbal agreements between the Parties different from or in conflict with the provisions of this Agreement shall be null and void and of no force or effect where they are in conflict with the written provisions of this document.

12. This Agreement may be assigned by Developer upon written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed; except Developer may assign this Agreement without written consent to an affiliate, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. But, Developer may only assign this Agreement if the assignee: (A) assumes, agrees and acknowledges in writing that such assignee shall be bound by all terms and Developer obligations of and pursuant to all the Definitive Agreements, and (B) delivers to County replacement insurance evidence and financial security, and updated notice information; with copies of the proposed assignment, insurance evidence and financial security provided to County for review at least 30 days prior to the assignment effectiveness; the replacement insurance evidence and financial security delivered to County by the effective date of the assignment; and a copy of the assignment within 10 days of its effectiveness. Upon such assignment all of Developer's rights and obligations shall inure to the benefit of and shall be binding upon the Developer's assignee and its respective successors, assignees and legal representative.

13. 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 of this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

14. If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by applicable law: (a) the other provisions hereof shall remain in full force and effect in such jurisdiction in order to carry out the intentions of the Parties as nearly as may be possible; and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction; and (c) the Parties will promptly and continuously work reasonably and in good faith to amend the Definitive Agreements to implement the invalid or unenforceable provision as closely as possible to carry out the intentions of the Parties regarding the Definitive Agreements.

15. Headings appearing herein are used solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

16. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to conflicts of laws provisions. Venue is only proper in Kansas state district court located in Republic County, Kansas, or federal district court located in Wichita, Kansas.

17. The initial effectiveness of this Agreement is contingent upon both Parties fully and concurrently executing and delivering this Agreement, plus a Road Use Agreement, Decommissioning Agreement, and Development Agreement (collectively, the "Definitive Agreements"), which together collectively constitute the entire agreement between the Parties regarding the Wind Project, and supersede all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth in the Definitive Agreements.

18. 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 should decide to cease development, construction or operation of the Wind Project at any time, then Developer will be obligated to provide written notice to the County, and the Parties agree that then this Agreement shall terminate subject to and following Developer's satisfaction of its obligation to decommission the Wind Project pursuant to the Decommissioning Agreement. All amounts received by the County are not refundable, and termination does not relieve Developer of any obligation to pay an amount due before termination.

19. This Agreement was prepared with substantial input from both Parties and their respective legal counsel; no phrase, sentence, clause, provision or section of this Agreement shall be construed against a Party as a result of such Party's legal counsel having acted as the primary drafter thereof

20. Time is of the essence of this Agreement, and of each and every provision hereof, and the Parties shall make every reasonable effort to expedite the subject matters hereof and to perform their respective obligations.

21. The recitals set forth above constitute a material part of this Agreement, and are incorporated herein. The Parties confirm the accuracy, truth and validity of said recitals.

22. Developer hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Developer. The County hereby represents and warrants that the current County Commission and Commissioners signing this Agreement (i) have not taken any action on behalf of the County, and (ii) do not have actual knowledge (without any duty to investigate or inquire) that a prior County Commission took any action on behalf of the County, to restrict the signing Commissioners' authority to execute and deliver this Agreement on behalf of the County. Except for the express terms of the immediately preceding sentence: Developer agrees to rely solely on its own interpretation, with the assistance of legal counsel, regarding whether this Agreement is valid and enforceable under Kansas and applicable law. Additionally, Developer agrees to not challenge the validity or enforceability of any term of this Agreement. Developer hereby releases and agrees to indemnify and hold harmless County and its respective officers, employees and agents (the "County Parties") from: (i) any and all actions, causes of actions, suits, claims, expenses (including reasonable attorney fees) and demands made by third parties against County Parties arising out of or relating to, directly or indirectly, the negligence, or willful or wanton act or omission, of Developer related to this Agreement; and (ii) any and all claims made by a claimant other than County, arising out of or relating to this Agreement, including but not limited to claims relating to the enforceability of any term, claims alleging the County should have imposed additional requirements on Developer, or that the County was not authorized to enter into this Agreement (other than claims made by County or claims arising because County's representation and warranty above in this Section was not true).

**[REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK; SIGNATURE
PAGES FOLLOW.]**

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement to be effective as of the Effective Date.

DEVELOPER:

HIGH BANKS WIND, LLC,
a Delaware limited liability company

By: _____
Anthony Pedroni, Vice President

[SIGNATURE PAGE OF DEVELOPER TO CONTRIBUTION AGREEMENT.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement to be effective as of the Effective Date.

THE COUNTY:

THE BOARD OF COUNTY COMMISSIONERS OF REPUBLIC COUNTY, KANSAS

By: _____
Doug Garman, County Commissioner -- Chairman

By: _____
Edwin G. Splichal, County Commissioner

By: _____
Melvin Jeardoe, County Commissioner

ATTEST:

By: _____
Kathleen Marsicek, County Clerk

Reviewed and approved by:

Justin Ferrell, County Counselor

[SIGNATURE PAGE OF COUNTY TO CONTRIBUTION AGREEMENT.]

EXHIBIT A

Contribution Payments

<u>Payment</u>		<u>Contribution Amount</u>
Initial Contribution		\$932,201.86
Year 1		\$745,758.14
Year 2		\$745,758.14
Year 3		\$745,758.14
Year 4		\$745,758.14
Year 5		\$745,758.14
Year 6		\$745,758.14
Year 7		\$745,758.14
Year 8		\$745,758.14
Year 9		\$745,758.14
Year 10		\$745,758.14