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## **TRANSMISSION EASEMENT AGREEMENT**

This Transmission Easement Agreement (“Agreement”) dated as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), is entered into by and between \_\_\_\_\_ whose address for purposes hereof is \_\_\_\_\_ (“Grantor”), and Expedition Wind, LLC, a Kansas limited liability company, whose address for purposes hereof is 1907 Wayzata Boulevard, Suite 220, Wayzata, MN 55391 (together with its successors and assigns, “Grantee”). The Grantor and Grantee may be referred to herein individually as a “***Party***” or collectively as the “***Parties***”.

### **RECITALS**

A. Grantor owns the real property located in Marion County, Kansas, more particularly described on Exhibit A attached hereto and by this reference incorporated herein (the “Property”).

B. Grantee is developing wind-powered generation facilities on properties located in the vicinity of the Property (the “Projects”), and in connection therewith Grantee desires to obtain the following: (i) an easement for purposes of installing, repairing and maintaining above-ground and underground transmission lines and related facilities, to serve one or more phases of the Projects, for the transmission of wind-generated electric power over, across and under the portions of the Property; and (ii) a construction and maintenance easement over additional portions of the Property for purposes of constructing and maintaining such lines and facilities, as more fully set forth in this Agreement.

C. Grantor is willing to grant such easements on the terms and conditions set forth in this Agreement.

### **AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

#### **1. Grant and Description of Easements.**

**1.1. Grant of Easement for Transmission Facilities.** Grantor hereby grants and conveys to Grantee an exclusive easement (the “Transmission Easement”) on, in, along, over,

across and under the Property, in the locations as generally depicted on the attached Exhibit B, which exhibit by this reference is incorporated herein (the “Proposed Transmission Easement Area”), for the sole purposes of surveying, erecting, designing, developing, siting, installing, constructing, replacing, relocating, improving, enlarging (for the purpose of increasing circuits or voltage), removing, inspecting, maintaining, operating, repairing, using, and allowing the line swings, from time to time, the following: (a) one or more overhead or underground electrical transmission and communications lines and related cables, wires, guy wires, cross arms, conduit, footings, foundations, towers, poles, cross-arms, guy lines and anchors, circuit breakers and transformers, interconnection, distribution and/or switching facilities, including for purposes of line swings from any such lines, whether constructed on the Property or adjacent Property; (b) any and all necessary and proper facilities, fixtures, and additional equipment and improvements in any way related to or associated with any of the foregoing for the transmission of wind-generated electrical energy; and (d) access roads (collectively, “Transmission Facilities”); provided, however, that such Transmission Facilities shall not include substations. Grantee shall conform to good utility practices in siting the Transmission Easement and in constructing all footings and lines, and shall consult with Grantor on the proposed location of the Transmission Easement before making Grantee’s final siting decisions; provided, however, that Grantor acknowledges and agrees that Grantee shall otherwise have sole discretion over final siting decisions with respect to the Transmission Easement so long as such Transmission Easement shall lie within the Proposed Transmission Easement Area as depicted in Exhibit B hereto. Promptly following detailed siting and construction of the Transmission Facilities by Grantee, Grantee shall both: (a) provide to Grantor a survey meeting the ALTA/NSPS requirements and containing both a legal description and graphic depiction of the as-built location of the area in which the Transmission Easement is located (the “Transmission Easement Area”), as well as additional easement areas adjacent thereto needed for construction and maintenance purposes (the “Construction and Maintenance Easement Areas”, as described in Section 1.3 below). The Transmission Easement Area shall be no greater than one hundred fifty feet (150’) in width, and wherever possible will be located adjacent to either a public right of way or a parcel boundary; and the Construction and Maintenance Easement Areas shall be no greater than fifty feet (50’) in width and shall be located directly adjacent to the Transmission Easement Area, so as to provide access thereto for the purposes of construction and maintenance of the Transmission Facilities, as more particularly described in Section 1.3 below. Grantee shall also record an As-Built Addendum to this Transmission Easement Agreement substantially in the form attached hereto as Exhibit D, which will contain a new exhibit containing both legal descriptions and graphic depictions of both the Transmission Easement Area and the Construction and Maintenance Easement Areas, and a copy of which shall be provided to Grantor (the “As-Built Addendum”). In connection with the easement rights granted herein, Grantor acknowledges and agrees that Grantee shall have both: (a) the right to, grade, cut and fill all or any portion of the surface of the Transmission Easement Area and maintain slopes created thereby, for the purposes set forth herein, provided that such grading shall not create any erosion or flooding issues which negatively impact the Transmission Easement Area or the Property; and (b) all other rights and privileges necessary and incidental to the full use and enjoyment of the Transmission Easement for the purposes permitted in this Agreement.

**1.2. Construction and Maintenance Easement and Other Appurtenant Rights.** In addition to the foregoing, Grantor hereby grants and conveys to Grantee an exclusive easement adjacent to the Transmission Easement Area as generally depicted on Exhibit B hereof (the “Construction and Maintenance Easement”), on, in, along, over, across and under those

portions of the Property (the “Construction and Maintenance Easement Areas”), as reasonably necessary solely for the exercise of the following rights:

(a) vehicular and pedestrian ingress and egress directly to and from the Transmission Facilities (whether located on the Property, on adjacent property or elsewhere), over, along and through those portions of the Property reasonably necessary to gain access to such Transmission Facilities for the operation, maintenance, repair and replacement thereof;

(b) the right to clear and to keep clear the Transmission Easement Area free from any and all other structures and obstructions of any kind which, in the reasonable judgment of Grantee, may interfere with Grantee’s exercise of the right granted hereunder with respect to use of the Transmission Easement Area;

(c) the right to trim or remove brush, trees, combustible material or other hazards which, in the reasonable opinion of Grantee, may interfere with Grantee’s exercise of the right granted hereunder with respect to use of the Transmission Easement Area;

(d) the right during periods of construction and installation of the Transmission Facilities (and during periods of any maintenance, repair or replacement thereof) to use the Construction and Maintenance Easement Areas as well as the Transmission Easement Area for the storage of equipment and materials, the staging of construction work and the construction, installation, maintenance, repair or replacement of the Transmission Facilities, provided that after the use of such Construction and Maintenance Easement Areas and/or Transmission Easement Area (collectively, the “Easement Areas”), Grantee shall restore such area to the condition in which it existed prior to the use thereof for such purposes; and shall reimburse Grantor for any crop damage or lost use of grasslands for the purpose of restoration in accordance with the crop damage and grassland restoration formula contained in Section 15 of the Site Rules attached hereto as Exhibit C.

(e) all other rights and privileges necessary and incidental to the full use and enjoyment of the Construction and Maintenance Easement for the purposes permitted in this Agreement.

**1.3. Right of Grantee to Approve Shared Use of Easement Areas.** As provided in Sections 1.1 and 1.2 above, the intent of this Agreement is to provide Grantee with the exclusive right to use the Easement Areas for the purposes specified herein. Notwithstanding the foregoing, however, Grantor may, via written notice, seek Grantee’s consent for the use by third parties of specified portions of said Easement Areas (each a “Third Party Use”), and Grantee shall not unreasonably withhold such consent, provided the following conditions are met: (a) each such Third Party Use shall be for a purpose which does not compete with Grantee’s use of the Easement Areas for the Project; (b) such Third Party Use shall not materially impair the Project or impede either Grantee’s use of or operations within the Easement Areas, to be determined at the sole discretion of Grantee; and (c) any grant by Grantor to a third party permitting a Third Party Use of the Easement Areas or any portion thereof must be immediately revoked by Grantor in the event that Grantee provides notice to Grantor such Third Party Use has violated the terms of either subsections (a) or (b) above. The terms by which Grantor authorizes each such Third Party Use by a third party (the “Third Party Use Grant”) shall contain an express statement that the use by

such Third Party of the Easement Areas is subject to and subordinate to the terms of this Agreement, and that Grantee is deemed a direct beneficiary of such Third Party Use Grant and shall have the independent right to enforce the termination thereof.

**1.4. Site Rules.** Grantee agrees to use commercially reasonable efforts to comply with the site rules attached hereto as Exhibit C.

**1.5. Term of Agreement.** The term of this Agreement (the “Term”) shall consist of the “Option Period,” and, (to the extent Grantee exercises its rights thereto as provided in this Section 1.5), the “Initial Term,” and the “Extended Term(s)” (all as defined below). The Option Period (the “Option Period”) shall commence on the Effective Date hereof, and shall terminate on the earlier of: (a) Thursday, December 31, 2020; (b) the date upon which Grantor receives written notice from Grantee of its election to terminate this Agreement; or (c) the date (the “Option Exercise Date”) upon which Grantor receives written notice from Grantee of its election to exercise its right to extend this Agreement for the Initial Term hereof (the “Option Exercise Notice”); provided that such Option Exercise Notice must be received by Grantor no later than 5:00 PM Central Standard Time on Thursday, December 31, 2020. If exercised by Grantee, the Initial Term shall commence on the Option Exercise Date, and shall expire thirty (30) years thereafter (the “Initial Term”). The Term of this Agreement may be further extended, at Grantee’s sole option, for two consecutive periods of ten (10) years each (each, an “Extended Term”), upon written notice from Grantee to Grantor of Grantee’s election to so extend the term hereof (each, an “Extended Term Notice” and collectively with the Option Exercise Notice, the “Election Notices”), provided prior to the expiration of either the Initial Term or the first Extended Term, as applicable. Notwithstanding anything in the foregoing to the contrary, if Grantee fails to exercise its option to commence the Initial Term or any Extended Term (each, an “Option”) in a timely manner, as provided for above, Grantor shall give Grantee and its Mortgagee, if applicable, written notice that Grantor has not received an Election Notice from Grantee pertaining to the Initial Term of the next applicable Extended Term, as applicable (the “Non-Receipt Notice”) and that Grantee or Mortgagee shall have an additional thirty (30) days from the date of Grantee’s and Mortgagee’s receipt of the Non-Receipt Notice (the “Extension Period”) to exercise an applicable Option by sending an Election Notice to Grantor. If neither Grantee nor its Mortgagee has exercised an Option by sending Grantor an Election Notice within the Extension Period, then the Option shall be deemed not exercised and the Agreement shall terminate at the end of the then applicable Term. The Parties recognize that the Options have significant value to Grantee and that Grantee should not forfeit any such Option for inadvertence in giving notices, but should affirmatively choose whether to exercise an Option, and the Parties have accordingly provided for the above notices from Grantor so that Options will not be unintentionally lost.

**2. Payment for Transmission Easement.** As the consideration for this Agreement and the grant of the Transmission Easement, the Construction and Maintenance Easement and appurtenant rights granted hereunder, Grantee shall pay to Grantor a one-time payment in an amount equal to the product of (i) \$35,000.00 multiplied by (ii) the number of miles (prorated for fractional miles, where applicable) constituting the length of the Transmission Easement (the “Transmission Easement Payment”). An amount equal to ten percent (10%) of the Transmission Easement Payment, as estimated in good faith by Grantee prior to final determination of the Transmission Easement Area (the “Downpayment”) shall be paid by Grantee to Grantor within two (2) business days of the Effective Date hereof and shall be nonrefundable to Grantee. An

amount equal to the Transmission Payment, less the Downpayment (the “Option Exercise Payment”) shall be paid to Grantor within one hundred and twenty (120) days after the Option Exercise Date.

**3. Grantor’s Covenants, Representations and Warranties.** Grantor hereby covenants, represents and warrants that, as of the Effective Date and throughout the term of this Agreement:

**3.1. Grantor’s Authority.** Grantor(s) currently are the sole owner(s) of the Property, has good and marketable title to the Property, and has the unrestricted right and authority to execute this Agreement and to perform its obligations hereunder. Grantee shall have the right to quietly and peaceably hold, possess and enjoy the Transmission Easement and the Construction and Maintenance Easement (collectively, the “Easements”), without hindrance or molestation, and Grantor shall defend Grantee’s right of use and occupancy to the Easements under the terms as specified herein. When executed by Grantor, this Agreement constitutes a valid and binding agreement enforceable against Grantor in accordance with its terms. Grantor specifically reserves the right to sell, convey, mortgage, deed, will, convey, or transfer Grantor’s fee rights to the land underlying this Easement at any time, and without consent of Grantee. Any such action shall still be subject to the rights of Grantee as defined herein and in accordance with Kansas law.

**3.2. No Interference.** Grantor shall not construct, install, or permit to be constructed or installed, any improvements, fences, structures, buildings, foliage or vegetation, utility lines or other improvements of any type whatsoever (collectively, “Grantor Improvements”) upon, in, on, under or near the Transmission Easement Area, to the extent that such Grantor Improvements would materially inhibit or impair any of Grantee’s rights or benefits as set forth in this Agreement; provided, however, that Grantor may maintain and replace existing fences as needed.

**3.3. Cooperation.** Grantor shall fully cooperate with Grantee, at Grantee’s sole cost and expense, in applying for, complying with and/or obtaining any land use permits and approvals, building permits, environmental reviews, land use designations, or any other permits, licenses, approvals or consents (which may include a Conditional Use Permit) required for the financing, construction, installation, replacement, relocation, enlargement, maintenance, repair, operation or removal of the Transmission Facilities and any other improvements made by Grantee and permitted in this Agreement, including, but not limited to, executing any application for (or affidavits required in connection with) permits, entitlements or land-use designation changes as may be reasonably requested by Grantee.

**3.4. Liens.** Except as disclosed in the official real property records of the County Recorder of the county or counties in which the Property is located (“Official Records”) as of the Effective Date, or as disclosed in writing by Grantor to Grantee prior to the Effective Date, Grantor’s fee simple title to the Property is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, mineral, oil or gas rights, options to purchase, claims and disputes (collectively, the “Title Exceptions”). Grantor shall fully cooperate with Grantee in obtaining a subordination agreement, non-disturbance agreement or other appropriate agreement from each person having an interest in a Title Exception that, in

Grantee's reasonable opinion, might adversely affect Grantee's rights under this Agreement, in form and substance reasonably satisfactory to Grantee.

**3.5. Taxes and Assessments.** Grantor shall pay or cause to be paid prior to delinquency all real property taxes, assessments and other charges levied, assessed or imposed upon the real property constituting Grantor's Property (collectively, the "Grantor's Taxes"). In the event that Grantor shall be delinquent in the payment of Grantor's Taxes or any portion thereof, the Grantee may, at its option, pay such delinquent amounts, together with any interest and penalties also due with respect to such delinquency, provided that Grantor shall be obligated to reimburse Grantee for such amounts within thirty (30) days of request therefor. Grantee shall be solely responsible for the payment of: (i) any taxes imposed on the Transmission Facilities and (ii) any increase in real property taxes levied against the Property as a result of the installation of the Transmission Facilities; provided, however, that Grantee shall not be liable for any increase in property taxes attributable to facilities or improvements installed by Grantor or others on the Property, or attributable to the value of the land comprising the Property itself, including but not limited to the Easement Areas.

**3.6. Hazardous Materials.** As of the Effective Date and to Grantor's best knowledge, neither the Property nor Grantor is or has been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement relating to Hazardous Materials (collectively, the "Environmental Laws"), and Grantor has not received any notice or other communication from any governmental authorities alleging that the Property is in violation of any Environmental Laws. "Hazardous Materials" shall mean any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation. Further, and to the best knowledge of Grantor, no underground storage tanks and no Hazardous Materials are located on the Property. The phrase "to the best knowledge of Grantor" shall be deemed to refer to the actual knowledge of Grantor. Further, Grantee shall not use, dispose of or release on the Property or cause or permit to exist or be used, stored, disposed of or released on the Property as a result of Grantee's operations, any Hazardous Materials, except in such quantities as may be required in its normal business operations and only if such use is in full compliance with all Environmental Laws.

**3.7. Insurance.** During the term hereof, Grantee, at its sole cost and expense, shall maintain, or cause to be maintained, insurance policies for the Property (including, without limitation, the Easement Areas) naming Grantor as additional insured and including at least the following coverages: commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverages against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance to be on the so-called "occurrence" form and containing minimum limits per occurrence of One Million and No/100 Dollars (\$1,000,000.00), with a combined limit per policy year, excluding umbrella coverage, of not less than Two Million and No/100 Dollars (\$2,000,000.00) and covering, among other things, contractual liability of Grantor under this Agreement (including, without limitation, the indemnity provision of Section 8 hereof). All insurance provided for in this Section 3.7 shall be obtained under valid and enforceable policies (collectively, the "Policies"). Not less than ten (10) days prior to the effective dates of the foregoing Policies, Grantee shall

furnish to Grantor certificates of insurance evidencing the Policies; and Grantee shall provide certificates of insurance to Grantor upon written request thereafter.

**3.8. Ownership of Transmission Facilities.** Grantee and/or its assignees shall at all times retain all right, title and interest in and to the Transmission Facilities and shall have the right to remove them (or to allow them to be removed) from the Property at any time. Grantor shall have no ownership interest in or to any Transmission Facilities. Grantor acknowledges that Grantee or its assignees shall be the exclusive owner of any electricity (kWh) transmitted through the Transmission Facilities. Nothing in this Agreement shall be construed as (i) requiring Grantee to install or operate the Transmission Facilities or (ii) transferring fee title or any liability related thereto in the Property.

**3.9. Grantor's Sub-Surface Rights.** To the extent Grantor possesses sub-surface rights with respect to the Property, all prospecting for or development of geothermal substances, minerals, oils, gas, petroleum, or other substances on the Property shall be done from locations outside the Easement Areas and in such manner and by methods that will not penetrate a five hundred (500) foot deep zone directly beneath the surface of the ground in the Easement Areas, nor interfere with the exercise of the rights granted herein. Notwithstanding the foregoing, following Grantee's commencement of construction of the Transmission Facilities and at all times thereafter during the term of this Agreement, no blasting will be permitted within the Easement Areas and/or within forty (40) feet of any Transmission Facilities without prior approval and under arrangement satisfactory to Grantee.

#### **4. Nature of Easement; Overburdening.**

**4.1. Easement in Gross.** The easements and covenants contained in this Agreement are intended to be easements in gross and shall run with the Property. Grantor agrees that the easements may continue to be used for the purposes described herein by Grantee and Grantee's successors, assigns, and tenants.

**4.2. Abandonment.** Except as specifically provided in Section 5.2 below, no act or failure to act on the part of Grantee or its successors and assigns hereunder shall be deemed to constitute an abandonment, surrender or termination of the easement rights granted hereunder.

**4.3. No Overburdening.** No use of or improvement by Grantee to the Easement Areas or any portion thereof for purposes set forth in this Agreement, no assignment or transfer of all or any portion of the Easement Areas and rights as permitted under Section 6 hereof, and no use or improvement of the Easement Areas or any portion thereof for the purposes set forth in this Agreement resulting from any such transfer, shall, separately or in the aggregate, constitute an overburdening of the Easement Areas.

## **5. Termination.**

**5.1. Termination by Grantee.** Grantee and its successors or assigns shall have the right to terminate this Agreement and the easement rights granted hereunder at any time upon written notice to Grantor.

**5.2. Termination for Failure to Construct.** In the event of either of the following: (a) if Grantee does not commence the construction and installation of the Transmission Facilities on or before July 1, 2022; or (b) if, after completion of the construction and installation of the Transmission Facilities, such Transmission Facilities are not used by Grantee for the purpose of transmission of electrical power for a continuous period of three (3) years, then this Agreement and the easement rights granted hereunder shall be deemed terminated.

**5.3. Termination by Grantor for Monetary Default of Grantee.** Grantor and its successors or assigns shall have the right to terminate this Agreement and the easement rights granted hereunder, only if the following conditions occur: (a) Grantee fails to pay any monetary amounts owing hereunder when due; (b) Grantor notifies both Grantee or its successors and assigns as well as any “Mortgagee” of Grantee (as such term is defined in Section 7.1 below) of such default in writing (the “Default Notice”), which Default Notice sets forth in reasonable detail the facts pertaining to Grantee’s default and, if such default is monetary in nature, the amount owed to cure such default; and (c) neither Grantee or its successors or assigns or the Mortgagees, have cured such default within sixty (60) days after Grantee receives the Default Notice from Grantor.

**5.4. No Termination Right for Non-Monetary Default; Specific Performance.** Notwithstanding any rights or remedies which Grantor may otherwise have hereunder, at law or in equity, Grantor shall not (and hereby waives the right to) at any time during the term of this Agreement, commence, prosecute or participate in any action or proceeding in which termination, cancellation, rescission or reformation of this Agreement is sought or could be awarded as a remedy other than with respect to (i) a monetary default beyond applicable cure periods and (ii) the conditions as set forth in Section 5.2 above, and Grantor shall be limited to seeking and obtaining damages or specific performance in the event of any failure by Grantee to perform its non-monetary obligations hereunder. Both Parties agree that remedies at law may be inadequate to protect against any actual or threatened breach of this Agreement. In the event of any breach or threatened breach, either Party shall have the right to apply for the entry of an immediate order to restrain or enjoin the breach and otherwise specifically to enforce the provisions of this Agreement.

## **5.5. Actions Upon Termination.**

(a) **Recordable Termination.** Upon termination of this Agreement, Grantor and Grantee agree to execute a Termination of Transmission Easement Agreement, which shall be filed by Grantee in the public records.

(b) **Removal of Transmission Facilities.** Within twelve (12) months after the expiration, surrender or termination of this Agreement (the “Removal Period”), Grantee shall remove from the Easement Area all above-ground Transmission Facilities owned, installed and constructed by Grantee thereon, and shall leave the surface of the Easement Areas free from



debris; provided, however, that with regard to any Transmission Facilities located beneath the surface of the land (including footings and foundations), Grantee shall only be required to remove the same to the greater of (a) forty-eight (48) inches below the surface of the land or (b) the depth (if any) required by applicable law; and provided, further, that Grantee shall have a continuing easement to enter the Property for such purposes during such Removal Period.

(c) **Grantor's Right to Remove Transmission Facilities Upon Failure by Grantee to Remove.** If Grantee fails to remove any of the Transmission Facilities prior to expiration of the Removal Period, such Transmission Facilities shall be considered abandoned and Grantor may remove the remaining Transmission Facilities from the Property and dispose of them in Grantor's sole discretion without notice or liability to Grantee; provided, however, that Grantee shall reimburse Grantor for all reasonable costs of removing such Transmission Facilities within thirty (30) days after receipt of an invoice from Grantor.

(d) **Security for Removal.** Grantee shall maintain any and all security for removal of the Transmission Facilities required by Marion County with respect to the Projects once constructed and installed.

## **6. Assignment/Mortgage.**

**6.1. Right to Assign.** Grantee shall have the right, without Grantor's consent, at any time and from time to time, to sell, convey, lease, transfer or assign all or any portion of the Transmission Easement, this Agreement, or the Transmission Facilities on either an exclusive or nonexclusive basis, or to apportion, grant sub-easements, co-easements, separate easements, leases, licenses or similar rights, however denominated, to one or more persons or entities, provided, however, that upon such transfer or assignment, such assignee or transferee shall be obligated to assume and perform all of Grantee's obligations hereunder. Any member of Grantee shall have the right without Grantor's consent to transfer any membership interest in Grantee to one or more persons or entities. Notwithstanding the foregoing, however, during the Option Period, Grantee must obtain Grantor's consent for any such assignments to third parties, except for affiliates of Grantor or the Projects.

## **7. Mortgage Provisions.**

**7.1. Right to Mortgage Grantee Easement Interest.** Grantee intends to obtain debt and/or equity financing and other accommodations for the development, construction, installation, operation and maintenance of the Transmission Facilities from a financial institution or other person or entity, including any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender and their respective representatives, successors and assigns (each, a "Mortgagee") that will require collateral from Grantee. Grantee may at any time mortgage and/or enter into a collateral assignment of all or any part of Grantee's interest in, to and under the Transmission Easement and easement rights granted under this Agreement, to any Mortgagee without Grantor's consent. Grantee acknowledges and agrees that it holds no fee interest in or to the Property or the Easement Areas and that it shall not permit or record any instrument against the Property which creates a lien against the fee interest held by Grantor therein. A Mortgagee shall have no obligations under this Agreement unless such Mortgagee either acquires Grantee's interests through foreclosure or other "lender in charge" arrangement, or otherwise assumes

Grantee's obligations hereunder. Grantee will make a reasonable effort to provide written notice to Grantor of any new Mortgagees, but Grantee's failure to do so will not be considered a default under this Agreement.

**7.2. Amendment Requires Mortgagee Consent.** As the Mortgagee(s) will require assurances that this Agreement remains in place, the Parties agree that, once all or any part of Grantee's interests hereunder are mortgaged or assigned to a Mortgagee, neither Grantee nor Grantor will modify or terminate this Agreement without prior consent of the Mortgagee(s); or, in the case of a monetary default hereunder, without first providing such Mortgagee(s) with written notice and an opportunity to cure such default as provided in Section 5.3 above and Section 7.4 below.

**7.3. Mortgagee Right to Cure Grantee Default.** Grantor agrees that any Mortgagee shall have the right to act on Grantee's behalf hereunder so as to prevent or cure defaults, and that any such payment or act by a Mortgagee undertaken to effect such cure shall be effective to either prevent or cure a default of Grantee as if performed by Grantee itself.

**7.4. Notice from Grantor to Mortgagee in Case of Grantee's Default.** Grantee's Mortgagee will want notice if Grantee is in default under this Agreement. If Grantor is required to give Grantee notice of a default, Grantor shall also be required to give Mortgagee notice of default, provided that Grantor has been notified of the name and contact information for any such Mortgagee. If Grantor becomes entitled to terminate this Agreement due to an uncured monetary default by Grantee, Grantor will not terminate this Agreement unless Grantor has first given written notice of the uncured monetary default and Grantor's intent to terminate this Agreement to the Mortgagee (the "Mortgagee Default Notice"). Mortgagee shall have at least sixty (60) days after receipt of the Mortgagee Default Notice to cure the monetary default so as to prevent termination of this Agreement. If within such sixty (60) day period the Mortgagee notifies Grantor that it must foreclose on Grantee's interest or otherwise take possession of Grantee's interest under this Agreement in order to cure such monetary default, Grantor shall not terminate this Agreement. Grantor shall permit the Mortgagee a reasonable period of time necessary for the Mortgagee, with the exercise of due diligence, to foreclose or otherwise acquire Grantee's interests under this Agreement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Grantee hereunder. The time within which Mortgagee must foreclose or acquire Grantee's interest shall be extended to the extent Mortgagee is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

**7.5. Recognition of Mortgagee as Successor.** Any Mortgagee may acquire all or any part of Grantee's interests in the Agreement through foreclosure or other judicial or non-judicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure ("Mortgagee's Acquisition"). Such acquisition shall not require Grantor's consent nor constitute a breach or event of default under this Agreement by Grantee. Upon the Mortgagee's Acquisition and Mortgagee's cure of any existing defaults by Grantee and assumption of Grantee's obligations, Grantor shall recognize Mortgagee as Grantee's proper successor under this Agreement.

**7.6. New Agreement if Rejected.** In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding ("Agreement

Rejection”), Mortgagee may request to enter into a new easement agreement with Grantor within sixty (60) days of such rejection or termination. Grantor agrees to execute and deliver to Grantee or Mortgagee a new easement for the Easement Areas which (i) shall be effective as of the date of the Agreement Rejection, (ii) shall be for a term equal to the remainder of the Term before giving effect to the Agreement Rejection, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Grantee or Mortgagee prior to the Agreement Rejection). Prior to the execution and delivery of any such new easement, Grantee or Mortgagee, as applicable, shall (i) pay Grantor any amounts which are due to Grantor from Grantee, (ii) pay Grantor any and all amounts which would have been due under this Agreement but for the Agreement Rejection from the date of the Agreement Rejection to the date of the new easement and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Grantee under this Agreement to the extent Grantee failed to perform them prior to the execution and delivery of the new easement.

## **8. Miscellaneous.**

**8.1. Indemnification.** The Parties intend to reimburse one another for any loss suffered because of the other party’s actions or omissions. Each Party (the “Indemnifying Party”) agrees to defend, indemnify and hold the other Party and the other Party’s officers, directors, employees, representatives and agents (collectively the “Indemnified Party”) harmless against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys’ fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Easement Areas or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party with respect to this Agreement or the Easement Areas. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. This indemnification shall survive the termination of this Agreement.

**8.2. Condemnation.** All payments made on account of any taking or threatened taking of the Transmission Facilities or the Easements, or any part thereof (but not the fee interest in the underlying Property), by a governmental authority shall be made to Grantee. Grantee shall have the right to participate in any condemnation proceedings affecting the Property and Grantor shall not enter into any settlement agreement relating thereto without the prior written consent of Grantee, which consent shall not be unreasonably withheld.

**8.3. Complete Agreement; Amendments.** This Agreement is the final and complete agreement between the Parties concerning the Transmission Easement and Construction and Maintenance Easement and rights appurtenant thereto. Except for the recording by Grantee of the As-Built Addendum as referenced in Section 8.6 below, this Agreement shall not be modified or amended except in a writing signed by both Parties and consented to by the Mortgagee(s), if applicable.

**8.4. Estoppel Certificates.** Grantor shall execute estoppel certificates in commercially reasonable form (certifying as to factual matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment, and

non-disturbance agreements as Grantee or any Mortgagee may reasonably request at any time and from time to time. Grantor and Grantee shall cooperate in (a) amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee or Grantor or any Mortgagee to implement the provisions contained in this Agreement or to preserve a Mortgagee's security interest and (b) executing any documents which may reasonably be required by Grantee or a Mortgagee. Upon request by Grantee, Grantor shall cooperate with Grantee in obtaining an executed agreement of non-disturbance from any of Grantor's lenders with respect to Grantee's interest in the Easement Areas.

**8.5. Notices.** Notices allowed or required hereunder shall be in writing and shall be effective when served upon or personally delivered to the party to whom such notice is directed, or, if mailed, two (2) days after such notice is deposited in the United States mail, certified or registered, correct postage prepaid, and addressed to the parties at their respective addresses as set forth above, or at such other address as such party shall notify the other party beforehand.

**8.6. Attorney Fees.** This Agreement shall be governed by and interpreted in accordance with the laws of the state in which the Property is located. If an action, suit, or other proceeding is initiated to enforce or interpret terms of this Agreement, the party not prevailing shall pay all reasonable costs and expenses incurred by the prevailing party, including reasonable attorney fees at trial, on appeal, and any petition for review and in any other proceeding, including, without limitation, any bankruptcy or arbitration proceeding.

**8.7. Recording of Agreement.** Grantee may record an original of this Agreement in the Official Records at any time after execution of this Agreement, as well as a copy of the As-Built Addendum once the Transmission Facilities have been constructed and installed, so as to verify the final locations of both the Transmission Line Easement Area and the Construction and Maintenance Easement Area. Grantee and its successors and assigns may record assignments or other transfers of this Agreement in the Official Records at any time after recordation of this Agreement.

**8.8. Severability and Parties Bound.** The enforceability, invalidity, or illegality of any provisions of this Agreement shall not render the other provisions hereof unenforceable, invalid or illegal. This Agreement shall bind and inure to the parties and their respective successors and assigns.

**8.9. Further Acts and Assurances.** Each Party hereby agrees that each shall execute such additional documents or instruments, and shall undertake such actions as are necessary and appropriate to effectuate the intent of this Agreement.

**8.10. Counterparts; Headings.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document. Each Party shall be entitled to rely upon executed copies of this Agreement transmitted by facsimile or email to the same and full extent as the originals, provided that the parties agree to provide original, ink signatures as required for the purposes of assembling an original, ink signature counterpart for recording purposes. The Section headings used herein are inserted only for convenience of reference and shall in no way define, limit or describe the scope or intent of any provision of this Agreement.

**8.11. Time is of the Essence.** Time is of the essence with respect to all provisions of this Agreement.

**The remainder of this page is intentionally blank.**



GRANTEE:

**EXPEDITION WIND, LLC,**  
a Kansas limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Patrick Pelstring, the CEO of Manager of Expedition Wind, LLC, a Kansas limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

This document was prepared by:  
Winthrop & Weinstine, P.A. (JWD)  
Capella Tower - Suite 3500  
225 South Sixth Street  
Minneapolis, Minnesota 55402

**EXHIBIT A**

**THE PROPERTY**

That certain real property situated in the County of Marion, State of Kansas, described as follows:



## **EXHIBIT B**

### **GRAPHIC DEPICTION OF PROPOSED EASEMENT AREAS**

The Proposed Transmission Easement Area is represented by the cross-hatched area roughly 300 feet wide and shown in the depiction below. Both the “Transmission Line Easement Area” and the “Construction and Maintenance Easement Area,” as defined herein shall fall within such Proposed Transmission Easement Area.

*If we have a situation where there is an additional area outlined as a Construction and Maintenance Easement Area, the language should instead read as follows:*

The Proposed Transmission Easement Area is represented by the cross-hatched areas as shown in the depiction below. Both the “Transmission Line Easement Area” and the “Construction and Maintenance Easement Area,” as defined herein shall fall within the approximately 300 foot wide [blue] cross-hatched area shown below. Additionally, the [red] cross-hatched area shows an additional Construction and Maintenance Easement Area we may site for access purposes during such times of construction and maintenance of the Transmission Facilities.

## **EXHIBIT C**

### **SITE RULES**

**Grantor agrees to cooperate with Grantee to bar further access to the Property as to any individual who commits repeated violations of these Site Rules.** (“Grantee” includes all affiliated persons directed and controlled by Grantee)

1. When not in active use by Grantee, all access gates and interior gates that do not have cattle guards shall remain closed at all times.
2. Grantee shall be respectful of grazing animals on the Land and shall avoid, to the extent reasonably possible, any contact with any animals on the Property, provided that Grantor shall take reasonable measures to relocate grazing animals from any areas where Grantee is working when possible.
3. At no time shall Grantee bring any of the following onto the Property:
  - a. Weapons of any type, including but not limited to, guns, bows and arrows or sling shots;
  - b. Animal calling devices;
  - c. Fishing equipment or nets;
  - d. Dogs, cats or other animals;
  - e. Alcoholic beverages; or
  - f. Illegal drugs or related paraphernalia.
4. Smoking is prohibited on the Property. Grantee will employ reasonable precautions to prevent fires and shall be responsible for all damage caused by Grantee.
5. Grantee and all affiliated persons shall take commercially reasonable steps to keep the Property free and clear of all trash and litter which may emanate from Grantee. Under no circumstances will Grantee bury or burn trash, debris or other foreign material of any nature on the Property.
6. Grantee shall use reasonable efforts to confine development activities on the Property to the access routes contained in the site plan provided to Grantor and to the areas where development activities are occurring.
7. Grantee shall not remove any wood, plants, animals (dead or alive), artifact or any other item from the Property that was not originally brought onto the Property by Grantee, except for removal of wood and plants needed in order to construct or maintain Grantee’s improvements.
8. Grantee shall not hunt or fish on the Property and shall have no right to use the Property for any recreational purpose.

9. Grantee shall strictly observe the following speed limits on the Property: 30 miles per hour during daylight and 20 miles per hour after dark.
10. Within one thousand five hundred feet (1,500') of any existing water wells on the Property, Grantee shall use commercially reasonable construction techniques that avoid cracking of bedrock caused by pressure and vibration during installation of foundations and other project facilities. In the event any existing water wells on the Property are damaged by Grantee's construction activities, Grantee shall undertake corrective measures to repair such damage, to replace such well structures, equipment or facilities (collectively, "Well Facilities") to the extent they are irreparable, or to assist Grantor in obtaining access to an alternative water supply and constructing new Well Facilities if such existing Well Facilities cannot be repaired or replaced.
11. Grantee shall use reasonable efforts to use roads existing on the Property. Any new roads constructed by Grantee shall be constructed in such a manner as to reasonably allow farm and ranch equipment to cross such roads and to maintain, to the extent commercially reasonable, the land contour features, terraces and drainage that existed upon the Effective Date. Grantee will not impede the natural flow of surface water or affect the flow of surface water which has been redirected by Grantor in the past. Other than as reasonably needed during construction and for repairs to turbines after construction, Grantee shall require that all of Grantee's vehicles on the Property be confined to roads, whether currently existing or installed by Grantee. Grantee shall maintain, repair and upgrade all roads utilized by Grantee on the Property so that such roads remain in good working condition. Within one hundred and eighty (180) days of the date Grantee completes construction of the Project and except as reasonably necessary for maintenance and operations or pursuant to manufacturer requirements (which may require a thirty two (32') width in some areas): (a) all roads constructed or existing roads that are widened by Grantee shall be reduced to a width of no greater than twenty feet (20') wide and those portions of such roads in excess of twenty feet (20') wide shall be repaired, to the extent reasonably possible, to the elevation and contour as existed on the Effective Date, and if pastureland, reseeded.
12. Grantee shall make commercially reasonable efforts to control all weeds, and will control all noxious weeds in accordance with the law, at and within a four foot (4') radius of the any of Grantee's improvements including all roads, lines, support structures or equipment, etc., so as to prevent the growth of weeds as well as the maturation and spread of seeds from such weeds. As used herein the term "weeds" is defined as any undesired, uncultivated plants in the area.
13. Grantee agrees to pay the fair market value as determined for a similar animal at the Farmers & Ranchers Livestock, in Salina, KS or comparable event in the region for any animals that die or incur any injury which renders the animal essentially worthless or substantially reduces its fair market value which is directly caused by Grantee's operations or equipment.

14. All underground electric distribution lines will be buried and backfill used for cable installation will be compacted. All underground electric lines or conduits that become exposed by erosion shall be promptly reburied and additional erosion control measures will be implemented.
15. Grantee will employ prudent precautions to prevent fires, including avoiding the build-up of plant material under vehicles. In the event a grass fire is started by Grantee, Grantor will be promptly notified, as well as emergency personnel, if necessary. For fire damage caused by Grantee, Grantee agrees to pay Grantor a reasonable fee for (i) existing crops and/or pasture land (per acre) in accordance with the Crop Damage Formula set forth below, (ii) fences, and (iii) trees and other foliage. Such payment shall be due and payable within thirty (30) days of such fire. Such payment shall in no way limit or waive Grantor's right to obtain payment for fire damage to animals, structures, equipment or other items located on the Property at the time of the fire.

Crop Damage Formula: Crop damages will be calculated by the following formula:

$$\text{Price} \times \text{Yield} \times \text{Percentage of Damage} \times \text{Acreage} = \text{Crop Damages}$$

Prices for damaged or destroyed crops or grassland will be based on the average of the last previous March 1st and September 1st prices for that crop, or with respect to grassland, the average rental rate, in the county where the Property is located (or other commonly used price information available for the area, e.g. for grassland, the most recent published survey of county rental rates as provided by USDA National Agricultural Statistics Service, "USDA-NASS"). Yield will be the average of the previous two (2) years' yields of the same crop as the damaged crop, according to Grantor's records, as received from and certified by Grantor, for the smallest parcel of land that includes the damaged area. Grantor's records may include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines. If Grantor does not have yield records available, Grantor will provide FSA records for the county in which the Property is located (or other commonly used yield information available for the area) for the smallest parcel of land which includes the damaged area. The Parties hereto shall try in good faith to agree to the extent of damage and acreage affected. If the Parties hereto cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent. Payment of crop damages shall be made within thirty (30) days after determining the extent of damage.

Grassland Restoration Formula: In recompense for any and all lost grazing rights as a result of grassland damage due to the installation, construction or maintenance of Transmission Facilities, Grantee shall compensate Grantor according to the following calculation:

$$\text{Number of Acres Damaged} \times \text{Average County Rental Rates} \times \text{Three (3) Years} = \text{Grassland Restoration Payment}$$

In the event that USDA-NASS does not indicate the rate for Marion County, the average of the published rates provided by USDA-NASS for any of the immediately adjacent counties shall be used. Such Grassland Restoration Payment shall be due per occurrence of damage and shall be made within 30 days after determining the extent of damage.

If Grantor is a party to a Conservation Reserve Program contract or other similar contract (“**CRP Contract**”) with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410, prior to any physical impact by Transmission Facilities, Grantor shall provide Grantee with a true and complete copy of such CRP Contract, together with all amendments and modifications, and if applicable, Grantee shall reimburse Grantor for (a) any rental payments, or portion thereof, Grantor would have received from the U.S. Department of Agriculture but for the construction of the Transmission Facilities on the Property and (b) the penalties and interest, if any (including for any past payments received by Grantor that must be repaid by Grantor), assessed by the U.S. Department of Agriculture as a result of the construction of the Transmission Facilities on the Property. Grantor shall cooperate with Grantee in completing and submitting documents to obtain any exemptions allowed under the Conservation Reserve Program for the use of Transmission Facilities on the Property covered by a CRP Contract.

16. Grantee will attempt to minimize, to the extent reasonably possible, the creation of dust and the introduction of noxious plants or vegetation to the Property.
17. No Transmission Facilities will be erected upon the Property within 1,200 feet of any residence existing at the time of construction or 300 feet from any barn or corral existing on at the time of construction without Grantor’s prior written consent; provided, however, that Grantee may construct overhead cables immediately adjacent public roads without regard to the foregoing.
18. If the Transmission Facilities contain underground wires, Grantee will bury all wires, cables and lines on the Property that are required to be buried at least thirty inches (30”) below the surface of the Property. If such wires, cables, or lines become exposed at the surface or are not buried at least thirty inches (30”) below the surface regardless of the cause, Grantee will take all actions necessary to cause the wires, cables, and lines to be buried at least thirty inches (30”) below the surface of the Property.
19. Unless operations and maintenance buildings (including storage) are authorized by Grantor to be located on the Property, Grantee will not use the Property for storage except for materials, construction equipment and vehicles directly associated with construction or maintenance of the Project.
20. Grantee acknowledges that livestock may roam the entire Property freely. Grantor shall not be responsible for any damage that Grantor livestock may cause to the Transmission Facilities. Grantor authorizes Grantee to take reasonable safety measures to reduce the

risk of damage to the Transmission Facilities or the risk that the Transmission Facilities will cause damage, injury or death to people, livestock, other animals or property.

**EXHIBIT D**

**FORM OF AS BUILT ADDENDUM**

(Space above line for recording information)

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**AS-BUILT ADDENDUM**  
**TO**  
**TRANSMISSION EASEMENT AGREEMENT**

THIS AS-BUILT ADDENDUM TO TRANSMISSION EASEMENT AGREEMENT (“Addendum”), dated as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), is entered into by Expedition Wind, LLC, a Kansas limited liability company, whose address for purposes hereof is 1907 Wayzata Boulevard, Suite 220, Wayzata, MN 55391 (together with its successors and assigns, “Grantee”).

**RECITALS**

A. \_\_\_\_\_, (“Grantor”) and Grantee entered into that certain Transmission Easement Agreement dated as of \_\_\_\_\_ and recorded on \_\_\_\_\_, 2018 in the real property records of Marion County, Kansas, in Liber \_\_\_\_\_, Page \_\_\_\_\_ (the “Easement Agreement”), against that certain real property, more particularly described on Exhibit A attached hereto and by this reference incorporated herein (the “Property”).

B. As provided in Section 1.2 of the Easement Agreement, Grantee has installed the Transmission Facilities, enabling Grantee to determine the exact location of both the Transmission Easement Area and Construction and Maintenance Easement Area (as such terms are defined in the Easement Agreement).

C. Grantee therefore wishes to record this Addendum so as to memorialize the locations of both the Transmission Easement Area and the Construction and Maintenance Easement Area of record, in accordance with the provisions of Section 8.6 of the Agreement, As provided in Section 8.6 of the Agreement.

1. **Recitals.** The foregoing recitals are incorporated herein by reference.
2. **Defined Terms.** Any capitalized terms used herein shall have the same meaning as given in the Easement Agreement unless otherwise specifically defined herein.



3. **Transmission Easement Area and Construction Maintenance Easement Area.** Notwithstanding anything to the contrary contained in the Agreement, Grantee hereby confirms that the Transmission Easement Area and Construction Maintenance Easement Area are on those portions of the Property as legally described on Exhibit B hereto, and as graphically depicted on Exhibit B-1 hereto.

4. **No Other Modifications.** Except as specifically modified by this Addendum, the Easement Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Grantee has executed this Addendum as of the date first above written.

[remainder of page left intentionally blank]

GRANTEE:

**EXPEDITION WIND, LLC,**  
a Kansas limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Patrick Pelstring, the CEO of Manager of Expedition Wind, LLC, a Kansas limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

This document was prepared by:  
Winthrop & Weinstine, P.A. (MCT)  
Capella Tower - Suite 3500  
225 South Sixth Street  
Minneapolis, Minnesota 55402

**EXHIBIT A**

**TO**

**AS-BUILT ADDENDUM TO TRANSMISSION EASEMENT AGREEMENT**

**THE PROPERTY**

That certain real property situated in the County of Marion, State of Kansas, described as follows:

**EXHIBIT B**

**TO**

**AS-BUILT ADDENDUM TO TRANSMISSION EASEMENT AGREEMENT**

**LEGAL DESCRIPTION OF EASEMENT AREAS**

TRANSMISSION LINE EASEMENT AREA:

*[insert legal description]*

CONSTRUCTION AND MAINTENANCE EASEMENT AREA:

*[insert legal description]*

**EXHIBIT B-1**

**TO**

**AS-BUILT ADDENDUM TO TRANSMISSION EASEMENT AGREEMENT**

**GRAPHIC DEPICTION OF EASEMENT AREAS**

TRANSMISSION LINE EASEMENT AREA:

*[insert graphic depiction]*

CONSTRUCTION AND MAINTENANCE EASEMENT AREA:

*[insert graphic depiction]*