

ROAD USE AND CROSSING AGREEMENT

This **ROAD USE AND CROSSING AGREEMENT ("Agreement")** is entered into this _____ day of _____, 2021 by and between **MONTGOMERY COUNTY**, a municipal corporation in the State of New York, having a mailing address of County Highway Building, P.O. Box 1500, 6 Park Street, Fonda, NY 12068 Attn: Commissioner ("**Municipality**"), and **High River Energy Center LLC**, a Delaware limited liability company, with an address of 700 Universe Blvd, Juno Beach FL 33408 ("**Utility**"). Municipality and Utility are hereinafter sometimes referred to individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Utility is developing a solar energy generating facility located in the Town of Florida, Montgomery County, New York commonly known as the High River Energy Project (the "**High River Energy Center Project**");

WHEREAS, Utility and its contractors and subcontractors (collectively, "**Representatives**") intend to develop, construct, own, operate and maintain the solar generating facilities and related appurtenances making up the High River Energy Project pursuant to Public Service Law Article 10 and orders of the New York State Board on Electric Generation Siting and the Environment (collectively, "**Development Activities**");

WHEREAS, in connection with the Development Activities, the Parties desire to address certain issues relating to the highways, roads, bridges, and other fee-owned land, rights-of-way or easements owned, operated, and/or maintained by the Municipality (collectively, the "**Roads**") over which it will be necessary for High River and its Representatives to, among other things: (i) traverse with heavy machinery, including but not limited to, trucks, construction machinery and equipment and other related items; (ii) transport heavy equipment and materials which may be in excess of local design limits of certain Roads; (iii) transport locally sourced materials, such as concrete and gravel; (iv) make specific modifications and improvements (both temporary and permanent) to the Roads (including various improvements associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; to construct or improve with an entrance, driveway, or connection to certain Roads; and (v) place certain electrical and communication lines and cables for the High River Energy Project adjacent to, under, over or across Roads for the purposes of carrying electrical current and data and information from the High River Energy Project to the point of interconnection substation and Operation and Maintenance facility (collectively "**Road Activities**");

WHEREAS, Utility will need to conduct certain construction, improvement and restoration activities and locate certain electrical and communication lines and cables within the Municipality and/or within the Municipality Right-Of-Way (ROW), some of which may involve construction, improvement and restoration activities in, on, under, over or across Roads;

WHEREAS, Utility further acknowledges that the nature of heavy vehicular traffic during Development Activities may exceed the normal and anticipated use of public roadways and/or exceed the design criteria for said roadways within the Municipality's limits, potentially causing distress to said Roads which may either be structural or functional and which in turn may increase overall maintenance, oversight, repair, and replacement costs to the Municipality; and

WHEREAS, the Municipality seeks assurances from High River Energy Center that Utility will pay and/or otherwise indemnify the Municipality for damage to the Roads arising from or related to Utilities Development Activities.

NOW, THEREFORE, in consideration of these promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, High River Energy Center and the Municipality, each intending to be legally bound, agree as follows:

1. High River Energy Center LLC Responsibilities.

a. Utility shall be responsible for obtaining any other approvals or permits that are required by applicable law to use and cross the Roads and conduct other Development Activities not otherwise granted under this agreement. This Agreement provides permission to Utility to conduct all contemplated activities in Municipality Roads or ROWs.

b. Utility agrees that it shall be responsible for ensuring that all debris, garbage, and waste upon the Roads and ROWs related to Mohawk's Development Activities are disposed of in accordance with applicable law. Utility will have onsite at all times an industrial road broom and will monitor all roads to keep free of waste and debris. Failure to keep clear may result in rescinding permits for road use.

c. Except under emergency circumstances, Utility shall not block or obstruct or interfere with the flow of traffic in both lanes of traffic except to the extent necessary on a temporary basis while work is actively being performed in the vicinity thereof. Will use any flaggers when traffic is impacted.

d. Utility shall require that its Representatives comply with the terms and conditions of this Agreement.

e. Utility shall not permit any excavation made in or upon any Road to remain open or uncovered either day or night, without having or causing the same to be properly barricaded by day and night and, in addition thereto, shall place at such location flares, red lanterns or other warning devices, by night, so as to properly warn all persons of the danger of such hole or excavation, and any such actions must meet all NYSDOT and Municipality safety requirements where applicable. Municipality must be notified in advance when roadway is to be effected after work hours, weekends or holidays. Under no circumstances can any excavation take place on a roadway during a winter storm event.

f. In the event of a road closure, Municipality is to be given no less than Five (5) days' notice to set up and notify of detour route to Emergency, School, Postmaster, and local traffic.

2. Road Status and Permitted Routes.

a. Exhibit A attached hereto provides an overview map and describes the Roads and ROWs that Utility and its Representatives have the Municipality's consent to use during Development Activities (collectively, "**Designated Roads**"). In the event Utility determines it is necessary for the High River Energy Solar Project to use roads and highways of the Municipality not identified on Exhibit A, then Utility or its representatives, shall notify the Municipality, describing in detail such use and the reasons therefore. Utility shall provide the Municipality reasonable written notice of at least seven (7) business days that it anticipates the use of substitute roads. Substitute roads may only be used on consent of the Municipality and such consent shall not be unreasonably withheld, conditioned, or delayed. In the event that the Municipality does not respond within seven (7) business days of a request to use a substitute road, the Municipality shall be deemed to have agreed to such substitute road being used. The Parties agree that the restrictions in this Agreement pertaining to the Roads do not apply to usage by passenger vehicles and light duty trucks that are properly licensed for use on public roadways in the State of New York.

b. Exhibit B attached hereto provides an overview map and plan and profile views of the Roads and ROWs over which Utility and its Representatives have the Municipality's consent upon application for and approval of highway work permit by the Commissioner of Highways for the Municipality, to place certain electrical and communication lines and cables for the Utility Solar Project adjacent to, under, over or across Roads and within the Municipality or Municipality's Right-of-Way.

c. Exhibit C attached hereto provides an overview map and plan and profile views of the Roads over which Utility and its Representatives have the Municipality's consent to construct or improve with a gravel access road entrance or connection to certain Roads upon application for and approval of Highway Work Permit by the Commissioner of Highways for the Municipality.

d. Prior to the commencement of Road Activities, Utility will prepare a preconstruction status report for the Roads identified in Exhibit A. Such status report must be found acceptable by the Municipality in its reasonable discretion before High River Energy Center begins Road Activities within the Municipality.

3. Road Damage.

a. High River shall be responsible for the cost of any necessary improvements or repairs of the Roads required as a result of damage caused by the Development Activities; provided, however, that Utility shall not be responsible for the cost of any improvements or repairs (i) routinely performed on the Roads by the Municipality or (ii) to remedy damage caused by anyone other than Utility or its successors, assigns, agents, subcontractors, subsidiary or any person or entity affiliated with or acting under the direction of Utility, or resulting from weather or routine snow and ice removal.

b. At no expense to the Municipality, the Municipality shall notify High River Energy of any improvements or repairs required as a result of damage caused by Development Activities. The Parties shall, within ten (10) days after High River's receipt thereof, meet to inspect the subject Roads, and agree in writing on all such necessary improvements or repair work and the schedule for the performance thereof. High River Energy may either (i) perform such work with its own

work forces, or with contractors or subcontractors chosen by Utility upon approval of the Municipality, or (ii) authorize the Municipality to perform such work and reimburse the Municipality for the cost thereof. If Utility elects to authorize the Municipality to perform such work, then the Municipality shall provide Utility with a cost estimate therefor, and no work shall be commenced at Utilities' expense until Utility has provided the Municipality with written approval thereof, which approval shall not be unreasonably withheld. The Municipality shall, upon completion of said work, provide Utility with an invoice detailing the costs incurred in the performance of such work.

c. Notwithstanding the foregoing, if any damage occurs to Roads during Development Activities and such damage is, in the reasonable opinion of the Municipality, an immediate danger to the public using said Road, then the Municipality shall undertake immediate emergency repairs to said Road and Utility shall be responsible for reimbursing the reasonable cost of such repairs following receipt of an invoice from the Municipality and Utility waives any right to dispute these immediate emergency repairs.

d. High River Energy shall pay all undisputed invoiced amounts within forty-five (45) days from receipt of the invoice. If Utility disputes any amounts set forth on an invoice, or if Utility disputes that it caused the damage it is being invoiced for, it shall provide a written statement as to its basis for contesting the disputed amount(s) and/or alleged damage within thirty (30) days after receipt of the invoice. In the event of a dispute, then both Parties shall abide by the procedure set forth herein for dispute resolution in Section 6 below.

4. Insurance.

During the construction of the High River Energy Project and for a period of one year after the completion thereof, High River Energy shall maintain commercial general liability insurance with a minimum limit of \$5,000,000 per occurrence and in the aggregate annually (which limit may be achieved using a combination of a commercial general liability policy and an excess or umbrella liability policy). During such time period, High River shall cause the Municipality to be an additional insured under any such policy, with a waiver of subrogation, and shall deliver a certificate of insurance demonstrating such coverage upon request.

5. Indemnification; Liability.

High River Energy hereby agrees to indemnify and hold harmless Municipality and its representatives, administrators, agents, employees, directors, officers, successors and assigns from and against any and all claims, suits, actions, damages, costs of every name and description to the extent arising out of or resulting from the negligence or willful misconduct of Utility, except to the extent any said claim, suit, action, damage, or liability is attributable to the negligence or willful misconduct of Municipality. Except to the extent arising from a third-party claim for which Utility is obligated to indemnify Municipality pursuant to this Section 4, in no event shall Utility or Municipality be liable to the other Party for any incidental, consequential, or punitive damages, whether at law or in equity.

6. Dispute Resolution.

a. In the event of a dispute regarding the allocation of responsibility for any debris, garbage, or waste removal or disposal from the Roads, any improvement, repair or restoration of the Roads, or the schedule or cost thereof ("**Dispute**"), the Parties may elect (but shall not be required) to submit to non-binding mediation with a neutral mediator approved by all parties to the Dispute during which each party will have their authorized representatives attempt to negotiate a resolution of the Dispute for a period of thirty (30) days. Unless otherwise agreed to by the Parties, mediation proceedings shall be conducted in Montgomery County, New York. High River Energy and the Municipality shall initially equally split the costs and expenses of the mediator and mediation venue.

b. If the Parties do not mutually agree to mediation, or if the Dispute is not resolved by mediation or mutual agreement, the Dispute shall be resolved in the United States District Court for the Northern District of New York or in any court of competent jurisdiction located in Montgomery County, New York.

7. Term and Termination. The term of this Agreement shall commence on the date of mutual execution and continue through the completion of remediation/repair of the Roads as required under this Agreement. Notwithstanding the foregoing, upon the occurrence and continuation of a default by either Party under this Agreement, this Agreement may be terminated by the non-defaulting Party upon thirty (30) days' prior written notice following the defaulting Party's failure to initiate, within thirty (30) days after receiving written notice from the non-defaulting Party, reasonable steps to cure any default under this Agreement.

8. Notice. Unless otherwise specifically provided herein, all notices to be given hereunder shall be in writing and sent to each Party by personal delivery, nationally-recognized overnight courier, or certified mail, return receipt requested, which shall be addressed to each Party's respective address set forth in the recitals hereof, or to such other address as said Party shall designate by notice given to the other Party hereto in accordance herewith, and shall be deemed to have been received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of nationally-recognized overnight courier, on the next business day after the date when sent, and (c) in the case of mailing, on the fifth (5th) business day following the date of the postmark on the piece of mail containing such communication.

To Montgomery County:

Montgomery County
County Highway Building
P.O. Box 1500
6 Park Street
Fonda, New York 12068
Attn: Commissioner

To High River Energy:
700 Universe Blvd

High River Energy Center

Juno Beach FL 33408

With a copy to:

Avangrid Renewables,
LLC
c/o Contract
Administration
1125 NW Couch
Street, Suite 700
Portland, Oregon 97209

With a copy to:

Avangrid
Renewables, LLC
c/o Land
Management
1125 NW Couch Street,
Suite 700
Portland, Oregon 97209

10. Binding Effect. This Agreement, and the terms and conditions hereof, shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns.

11. Entire Agreement. This Agreement sets forth the entire understanding between the Parties concerning the subject matter of this Agreement. There are no covenants, promises, agreements, conditions, or understandings, either oral or written, between the Parties relating to the subject matter of this Agreement other than those set forth herein. No representation or warranty has been made by or on behalf of either Party (or any officer, director, employee, or agent of either Party) to induce the other Party to enter into this Agreement or to abide by or consummate any transactions contemplated hereby, except representations and warranties, if any, expressly set forth herein. No alteration, amendment, change or addition to this Agreement shall be binding upon either Party unless in writing and signed by the Party to be charged.

12. Severability. If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null and void, such provision, or such portion of a provision, deemed null and void shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect.

13. Further Assurances. Each Party hereby agrees to execute such further instruments or agreements and take such further actions as may be reasonably requested by the other Party at any time after the execution hereof to give effect to this Agreement and the transactions contemplated hereby, including, without limitation, the Development Activities.

14. Counterpart Signatures. This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which shall be deemed an original for all purposes, but all of which together shall constitute one and the same instrument.

15. Authority of Parties. The individuals who have executed this Agreement on behalf of the respective Parties expressly represent and warrant that they are authorized to sign on behalf of such Parties for the purpose of duly binding such Parties to this Agreement.

16. Assignment. Utility shall have the right to assign this Agreement in whole or in part to National Grid, the New York Power Authority, to any affiliate of Utility, or to any party obtaining ownership of all or a portion of the High River Energy Solar Project (specifically including the electric transmission supporting the High River Energy Solar Project) lines within the Municipality.

IN WITNESS WHEREOF, the Parties have caused their respective, duly authorized officers to execute this Agreement under seal as of the day and year first above written.

MONTGOMERY COUNTY

By: _____

Name: _____

Title: _____

High River Energy CenterLLC,
a Delaware limited liability company

By: _____

Name: _____

Title: Authorized Representative

By: _____

Name: _____

Title: Authorized Representative

EXHIBIT A

DESIGNATED ROADS

[Must be Agreed to Prior to Road Activities]

The following is a list and overview map of the Municipality's roads and ROWs that Utility and its Representatives will use for haul routes during Development Activities (Designated Roads):

- Pattersonville Rd (CR 152)
- Thayer Rd (CR 165)
- Bullshead Rd (CR 151)
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