

**NEMAHA COUNTY, KANSAS**  
**SOLDIER CREEK WIND FARM PROJECT**

**TERM SHEET**

**PUBLIC DISCUSSION WILL BE HELD ON:**

**1. APRIL 22, 2019**

**1:00 p.m. to 5:00 p.m.**

**at the Nemaha County Community Building  
1500 Community Drive, Seneca, Kansas**

**2. APRIL 25, 2019**

**6:00 p.m. to 10:00 p.m.**

**at the Nemaha County Community Building  
1500 Community Drive, Seneca, Kansas**

**PROCEDURAL RULES:**

- 1. Each speaker will be allowed 5 minutes of public discussion. However, speakers may sign up multiple times on the speaker list.**
- 2. Commissioners do not intend to respond to questions during the public discussion period.**
- 3. Please remember to be cordial and respectful of everyone's views and opinions.**

**TERM SHEET  
(Soldier Creek Wind Farm Project)**

This Term Sheet (this "Term Sheet") confirms the principal terms agreed to with respect to the development, construction, and operation of the Soldier Creek Wind Energy Project (the "Project") by Soldier Creek Wind, LLC (the "Company") agreed to by and between the Company and the County Commission of Nemaha County, Kansas (the "County"). The material terms and commitments set forth in this Term Sheet shall be included in the Road Use and Maintenance Agreement (the "RUA") contemplated herein.

**TERMS AND CONDITIONS**

1. **LANDOWNER PARTICIPATION:**

All wind turbines and related structures within the County shall be located on property that is owned by Company, or an affiliate thereof, or property for which Company or its affiliate has or will have executed a lease, easement or other agreement with the applicable landowner.

2. **TURBINE SETBACKS AND EXCLUSION ZONES:**

a. **NON-PARTICIPATING LANDOWNERS:**

- i. From non-participating occupied residential dwellings located in the County:

Unless otherwise agreed to by the landowner, 2,000 feet from the base of the tower to the nearest outside wall of such structure.

- ii. From non-participating property line located in the County:

Unless otherwise agreed to by the landowner, 500 feet from the base of the tower, or the total height of the wind turbine (including tower, turbine and blades) plus 100 feet, whichever is greater, to the nearest point on such property line.

b. **PARTICIPATING LANDOWNERS:**

From participating occupied residential dwellings located in the County:

Unless otherwise agreed to by the landowner, 1,400 feet from the base of the tower to the nearest outside wall of such structure.

c. PUBLIC ROADS:

1.1 times the height of the wind turbine (including tower, turbine and blades), measured from the base of the tower to the nearest point on any County, Township, State or Federal road located in the County, excluding private roads.

d. INCORPORATED MUNICIPAL BOUNDARIES:

1 mile from incorporated municipal boundaries, measured from the base of the tower to the nearest point on such boundary line.

e. UNINCORPORATED MUNICIPALITY:

1 mile from the city-center of Kelly, Kansas.

f. EXCLUSION ZONES:

No wind turbines may be constructed within Exclusion Zones located in the County. Exclusion Zones are (i) any area outside of the “footprint” attached as Exhibit A, including all areas north of US Route 36, or (ii) any designated “exclusion zone” on the footprint attached as Exhibit A.

3. COLLECTION LINES AND DEVELOPER-OWNED TRANSMISSION LINE TOWER

SETBACKS:

a. FROM ANY OCCUPIED RESIDENTIAL DWELLING LOCATED IN THE COUNTY:

1.5 times the height of the transmission line tower measured from base of the tower to the nearest outside wall of such structure.

b. MAXIMUM DEVELOPER-OWNED TRANSMISSION LINE TOWER HEIGHT:

130 feet.

c. COLLECTOR LINES:

Collection lines will be located within easements on participating landowner property, or located underground on public right of way crossings as approved by the County.

d. CONSENT:

Setbacks and height requirements can be modified with written consent of the County.

4. **FOOTINGS:**

Prior to construction a certified engineer shall certify that the footing designs to be used to erect the wind turbines meet applicable industry safety standards.

5. **SOUND LEVELS:**

a. **NON-PARTICIPATING DWELLINGS LOCATED IN THE COUNTY:**

Unless otherwise agreed to by the landowner, sound levels are not to exceed 50 dBa Leq, measured at the nearest outside wall of a sensitive receptor (schools, hospitals, churches, or public libraries) or non-participating occupied residential dwellings.

b. **PARTICIPATING DWELLINGS LOCATED IN THE COUNTY:**

Unless otherwise agreed to by the landowner, sound levels are not to exceed 55 dBa Leq at the nearest external wall of a participating occupied residential dwelling.

6. **SHADOW FLICKER, ADVERTISING, FAA, AND COLOR:**

a. **AT NON-PARTICIPATING OCCUPIED RESIDENTIAL DWELLINGS LOCATED IN THE COUNTY:**

Unless otherwise agreed to by the landowner, shadow flicker not to exceed a cumulative 30 hours/year.

b. **ADVERTISING:**

No logo or advertisement shall be located on turbines unless approved in advance by the County.

c. **FAA AND COLOR:**

Turbine coloring shall conform to aviation safety regulations and shall have a non-reflective matte finish.

7. **PUBLIC MEETING:**

a. **NOTICE:**

Company shall provide written notice of two open meetings of the County Commission to all parcel owners located in the County within 1000' of the

participating parcels within the Project, to be delivered via FedEx or such other means acceptable to the County.

b. OPEN MEETING:

During such open meeting, the County Commission will evaluate materials and site plan demonstrating compliance with all terms of this Term Sheet that are ripe for review at the time of the submission.

8. COMPLAINT RESOLUTION:

a. CONTACT:

Company or its affiliate will establish a “24/7” single point of contact for fielding and addressing Project claims or issues including road issues.

b. REPORTING:

A report of claims shall be delivered to the County:

- i. On an annual basis; or
- ii. Within thirty days of a written request by the County.

9. INSURANCE:

a. PRE-PROJECT ANALYSIS OF COVERAGE:

Insurance policy and coverage information (builder’s risk, general liability, transportation and long term policies) to be produced for review to identify any gaps.

b. GENERAL LIABILITY:

Project Construction Commercial General Liability \$3,000,000.

c. ADDITIONAL INSURED:

Applicable insurance policies shall name the County as an additional insured.

d. INDEMNIFICATION OPTION:

In lieu of such coverage, Company may at its option provide an indemnification agreement satisfactory to the client.

10. DECOMMISSIONING:

a. SECURITY:

A bond or letter of credit in the amount of \$60,000.00 (per turbine) issued by a party or financial institution reasonably acceptable to the County, which shall be maintained by Developer until decommissioning is complete and certified complete by a third-party engineer.

b. DECOMMISSIONING AND RECLAMATION:

Decommissioning and reclamation to include, unless otherwise requested by the applicable landowner: (1) soil replacement, (2) revegetation and seeding, (3) noxious weeds removal, (4) dust control (5) removal of wind turbine, tower, and foundation to a depth of 48”.

c. COMPLETION:

Decommissioning and reclamation of any turbine located in the County shall be required upon the discontinuation of use of such turbine, which shall be deemed to occur upon the County providing written notice to the Company of the failure of such turbine to produce electricity for 12 consecutive months. The Company shall have 60 days to cure such failure or to present a plan for approval by the County Commission outlining the steps and schedule for returning the turbine to service. If such failure is not cured or a plan is not approved within such 60 day period, the Company shall complete decommissioning and reclamation activities within one year. The Company will reimburse the County for the reasonable cost of a third-party engineer expert acceptable to both the County and Company to assist the County with evaluating such plan and monitoring the decommissioning process.

11. ROAD USE AND MAINTENANCE:

a. ROAD USE AGREEMENT:

Terms for the use of County roads and rights of way shall be set forth in a mutually agreeable RUA, and shall include:

- i. Site plan showing location of all turbines subject to final approval prior to execution of the Road Use Agreement by County. The proposed site plan shall be delivered to the Commission prior to the

last regularly scheduled Commissioners' meeting in June of 2019.

ii. Pre-construction assessment by County-selected professional engineer:

1. Roads and County infrastructure

2. Project sites and soils

iii. Needed improvements to Roads and County infrastructure

iv. Ongoing monitoring

b. NEW ROADS:

Any new roads required for the Project will be private roads and the County will not be responsible for the construction and maintenance thereof unless agreed to in advance by the County.

**12. EMERGENCY SERVICES, FIRE PROTECTION, AND HAZARDOUS MATERIALS:**

a. EMERGENCY MANAGEMENT:

Company or its affiliate will work in cooperation with the Nemaha County Director of Emergency Management to establish standards for fire protection and emergency response.

b. PUBLIC SAFETY:

Company or its affiliate will work in cooperation with the Nemaha County Director of Emergency Management to establish standards for the proper storage and handling of hazardous materials.

c. 911 ADDRESSES:

Company or its affiliate will work in cooperation with the County to establish 911 addresses for each wind turbine.

**13. DISCLOSURE OF ENVIRONMENTAL STUDIES:**

Company shall provide to the County Commission copies of any non-confidential and publicly available environmental studies conducted on the Project area, including those which address the following impacts, Noise, Illumination, Wildlife, and, Aviation safety.

**14. REIMBURSEMENTS TO COUNTY:**

a. COMPANY OR ITS AFFILIATE WILL REIMBURSE THE COUNTY:

- i. For Fees related to County-selected professional engineer contemplated under an agreed upon RUA:
  - 1. pre-project construction assessment:
    - a. Project sites and soils
    - b. Roads and County infrastructure on transportation routes
  - 2. Ongoing monitoring
- ii. For legal fees, not to exceed \$75,000.
- iii. For repairs to roads and infrastructure related to the construction of the wind farm, limited to damages caused by Company or its contractors during the construction or operation of the wind farm.

15. **CONTRIBUTION AGREEMENT:**

a. **CONTRIBUTION AGREEMENT:**

Upon execution of the RUA and receipt of all additional approvals from the County, if any, terms for an annual contribution to the County shall be set forth in a mutually agreeable Contribution Agreement (the “Contribution Agreement”) pertaining to the Project, and shall include:

- i. Company’s or its affiliate’s acknowledgement that the Project is subject to K.S.A. 79-201 *Eleventh*, which exempts all property actually and regularly used for the Project from taxation for the 10 taxable years following completion of the construction and installation of the Project and the commencement of operations, unless the project has obtained a CUP prior to December 31, 2016, in which case the project qualifies a lifetime property tax exemption.
- ii. In the event that the Kansas Board of Tax Appeals does not provide a certification of the lifetime exemption for the Project, the Project will be taxed according to the statutory tax regime and the Contribution Agreement shall be adjusted such that Company is not required to make payments under a contribution agreement (to be finalized in the executed documents) for any year that Company is

also required to pay taxes for the Project.

b. VOLUNTARY CONTRIBUTION PAYMENT:

- i. An initial payment shall be made by Company to the County prior the commencement of construction (the “Initial Payment”).
- ii. Subject to Section 15(a)(ii) above, an annual contribution payment from Company or its affiliate for the Project (the “Annual Payment”) shall be due on or before December 31 of each year following commercial operation of the Project and continue thereafter for the Term.

c. VOLUNTARY CONTRIBUTION PAYMENT AMOUNT:

- i. The Initial Payment amount shall be \$1,250,000.
- ii. The Annual Payment amount shall be in the amounts as set forth in Exhibit A attached hereto and incorporated herein by this reference.

d. FAILURE TO MAKE PAYMENTS.

- i. Failure to make payments after written notice and reasonable right to cure, shall constitute a default by the Company under all agreements with the County.

16. MANUFACTURER AND INTERCONNECTION SPECIFICATIONS:

a. SPECIFICATIONS:

- i. All wind turbines and related structures within the County shall be installed in compliance with manufacturer recommended specifications.
- ii. The Project shall meet the applicable interconnection and operation requirements set forth in the electric utility’s or regional transmission organization’s then current service regulations, as well as state and federal laws pertaining to transmission or distribution of electricity, once the Project is connected to an electric transmission grid.

17. COMPLIANCE WITH LAWS:

a. COMPANY AND ITS AFFILIATES SHALL COMPLY WITH ALL FEDERAL AND

STATE LAWS AND REGULATIONS APPLICABLE TO THE CONSTRUCTION AND OPERATION OF A WIND PROJECT, INCLUDING:

- i. Federal Aviation Administration statutes and regulations, including those pertaining to wind turbine lighting and the review of the impact of siting or modification of wind turbines and other structures air navigation;
- ii. Occupational Safety and Health Administration statutes and regulations;
- iii. United States Fish and Wildlife Service statutes and regulations, including those pertaining to impacts on endangered or threatened species or habitats;
- iv. U.S. Army Corps of Engineers statutes and regulations, including those pertaining to impacts on wetlands;
- v. Environmental Protection Agency statutes and regulations, including those pertaining to environmental impacts;
- vi. Federal Communication Commission (FCC) statutes and regulations, including those pertaining to wireless communications impacts;
- vii. Consultations with the Kansas Department of Wildlife, Parks, and Tourism, including those pertaining to impacts on endangered or threatened species or habitats;
- viii. Consultations with the Kansas Department of Health and Environment, including those pertaining to any environmental impacts;
- ix. Consultations with the Kansas Historical Society pertaining to surveys of any historical sites that may be located within the Project area; and
- x. Any other applicable regulations promulgated by these and any other federal and state agencies.

**18. CONTACTS:**

a. COUNTY:

The main point of contact for this Term Sheet will be Brad Lippert, County Attorney for Nemaha County, Kansas. Contact information is as follows:

Brad Lippert, Esq.  
County of Nemaha, Kansas  
607 Nemaha Street  
P.O. Box 213  
Seneca, KS 66538  
785-336-3526 OR 785-284-3805  
[bmlippert@rainbowtel.net](mailto:bmlippert@rainbowtel.net)

with a copy to:

James Neeld, Esq.  
Sandberg Phoenix & von Gontard P.C.  
4600 Madison Avenue  
Suite 1000  
Kansas City, MO 64112  
Phone Number: (816) 714-1041

b. COMPANY:

Contact information as follows:

Business Manager  
Soldier Creek Wind, LLC  
700 Universe Boulevard, FEW-JB  
Juno Beach, FL 33408  
Phone Number: (561) 694-3386

with a copy to:

Alan Claus Anderson, Esq..  
Polsinelli PC  
900 West 48th Place, Suite 900  
Kansas City, Missouri 64112  
Phone Number: (816) 572-4761

**19. DEFINITIVE AGREEMENTS:** As soon as reasonably practicable after the execution of this Letter, the Parties shall commence to negotiate definitive agreements (the “Definitive Agreements”) relating to Company’s construction of the Project. The Definitive Agreements would include the terms summarized in this Term Sheet and

such other representations, warranties, conditions, covenants, indemnities and other terms that are customary for transactions of this kind and are not inconsistent with this Term Sheet.

**20. TERM:**

Unless extended by mutual agreement of the Parties, earlier terminated, or the Project ceases to be in commercial operation, the terms set forth in this Term Sheet and all County approvals relating thereto shall extend for a period of 30 years from the commercial operation date of the Project.

**21. SEVERABILITY:** In the event that any term or provision of this Term Sheet is deemed to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Term Sheet. Upon a determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Term Sheet to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**22. MISCELLANEOUS:** This Term Sheet may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. The headings of the various sections of this Term Sheet have been inserted for reference only and shall not be deemed to be a part of this Term Sheet.

IN WITNESS WHEREOF, the parties have caused the Term Sheet to be executed in their respective names by their duly authorized officers and dated their signatures as shown below.

**COMPANY:**

SOLDIER CREEK WIND, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name: \_\_\_\_\_

**THE COUNTY:**

THE BOARD OF COUNTY COMMISSIONERS OF NEMAHA COUNTY, KANSAS

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name: \_\_\_\_\_  
County Commissioner

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name: \_\_\_\_\_  
County Commissioner

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name: \_\_\_\_\_  
County Commissioner

**ATTEST:**

By: \_\_\_\_\_ Date \_\_\_\_\_  
County Clerk

*Reviewed and approved by:*

By: \_\_\_\_\_  
County Attorney

\_\_\_\_\_ Date

## EXHIBIT A

Year	Contribution Amount
1	\$ 900,000.00
2	\$ 900,000.00
3	\$ 900,000.00
4	\$ 900,000.00
5	\$ 900,000.00
6	\$ 900,000.00
7	\$ 900,000.00
8	\$ 900,000.00
9	\$ 900,000.00
10	\$ 900,000.00
11	\$ 1,250,000.00
12	\$ 1,250,000.00
13	\$ 1,250,000.00
14	\$ 1,250,000.00
15	\$ 1,250,000.00
16	\$ 1,250,000.00
17	\$ 1,250,000.00
18	\$ 1,250,000.00
19	\$ 1,250,000.00
20	\$ 1,250,000.00
21	\$ 1,110,000.00
22	\$ 1,110,000.00
23	\$ 1,110,000.00
24	\$ 1,110,000.00
25	\$ 1,110,000.00
26	\$ 1,110,000.00
27	\$ 1,110,000.00
28	\$ 1,110,000.00
29	\$ 1,110,000.00
30	\$ 1,110,000.00
<b>SUM</b>	
<b>Including Initial Payment</b>	<b><u>\$ 33,850,000.00</u></b>