

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this 31<sup>st</sup> day of October, 2024 (the "Effective Date), by and between the Board of County Commissioners for Bourbon County, Kansas ("County") and Kingbird Solar Energy LLC ("Developer"). The County and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

### **RECITALS**

WHEREAS, Developer intends to construct in one or more phases (each, a "Phase") and operate a solar project, commonly referred to as the Kingbird Solar Project, to be located on privately-owned land within the County and consisting of assets which may include photovoltaic solar panels, battery storage, invertors, solar monitoring equipment, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Solar Project"); and

WHEREAS, Developer has or will enter into certain lease agreements, easement agreements, and forms of landowner consent documents (individually, a "Lease" and, collectively, the "Leases") with the participating landowners within the Solar Project area (the "Landowners"); and

WHEREAS, the County intends, through this Agreement, to consider the orderly development, construction, operation, and maintenance of the Solar Project in the County, pursuant to the terms and conditions set forth in this Agreement; and

WHEREAS, upon execution of this Agreement and the Definitive Agreements (defined below), the County acknowledges and agrees that all County permits and approvals required for the Solar Project have been granted and substantial amounts of work have been completed;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and promises herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledge, the Parties agree as follows:

### **SECTION I. RECITALS**

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

### **SECTION II. COUNTY APPROVAL AND FUTURE COOPERATION**

#### **A. COUNTY CONSENTS AND APPROVALS.**

1. Unless otherwise provided herein, whenever the consents or approvals of the County, or any of its employees, consultants, attorneys, officers, agents, or representatives are required to be secured or obtained by Developer under the provisions of this Agreement, the same shall not be unreasonably conditioned, withheld, or delayed unless otherwise set forth in the Definitive Agreements. The

County will reasonably cooperate with Developer in the development, construction, operation, maintenance, and decommissioning of the Solar Project and issue all permits, approvals, and authorizations required by local regulations or other law, if any, provided Developer files compliant applications, pays all applicable fees, and complies with all the requirements specified in this Agreement and is not otherwise in default under the terms of the Definitive Agreements.

2. The County acknowledges, understands and agrees that the development process associated with the Solar Project will take significant time and requires a substantial investment by the Developer. Therefore, in order to induce the Developer to make this commitment and investment, the County hereby agrees that it approves and authorizes the Developer to construct and operate the Solar Project in the County. The County acknowledges, understands and agrees that the Developer will undertake significant financial investment in reasonable reliance on the County's promises and obligations under the Definitive Agreements. The County agrees that the Developer's rights to construct and operate the Solar Project vest upon the execution of this Agreement. The County acknowledges and agrees that there are currently no local laws, requirements, regulations, permits, or approvals applicable to the construction or operation of the Solar Project. The County agrees that if at any time in the future any laws, requirements, regulations, permits or approvals are enacted that would otherwise prevent or limit the Developer's construction or operation of the Solar Project, the Solar Project shall be grandfathered for purposes of compliance with such future laws, requirements, regulations, permits, or approvals and the Solar Project shall be allowed to be developed or to continue operations in the County. In the event the County adopts zoning regulations, the County shall provide in said zoning regulations that the use of the Property for the Solar Project and the operation of the Solar Project shall be vested as provided for in K.S.A. 12-764.

B. FUTURE COOPERATION. The Parties shall cooperate with one another on an ongoing basis and shall make every reasonable effort (including the holding of hearings or meetings and the adoption of such resolutions as may be necessary) to further the implementation of this Agreement and the Definitive Agreements (as defined below) and the intentions of the Parties as reflected by the provisions of this Agreement and the Definitive Agreements. Without limiting the foregoing, in the event that the County adopts any zoning or other laws after the Effective Date that would make the development, construction, operation, repair, replacement, and maintenance of the Project a nonconforming use under such zoning or other laws, or that would otherwise materially interfere with such development, construction, operation, repair, replacement, and maintenance of the Project, or the decommissioning of the Project, the County agrees that it will take such actions, adopt such ordinances and do such other things as are necessary to exempt or exclude the Project from such zoning or other laws. The County acknowledges and agrees that, upon execution of this Agreement and the Definitive Agreements (defined below), no County permits and approvals are required for the Project, for any future O&M building, or for any crossings over or along County roads.

### **SECTION III. DEVELOPMENT REQUIREMENTS**

- A. DEFINITIVE AGREEMENTS. Concurrently with the execution of this Agreement, Developer shall enter into the following agreements with the County (collectively, the “Definitive Agreements”):
1. A Road Use Agreement (“Road Use Agreement”).
  2. A Decommissioning Agreement (“Decommissioning Agreement”).
- B. LANDOWNER PARTICIPATION. All photovoltaic solar panels, battery storage sites, and related structures within the County shall be located on public rights of way and property that is owned by Developer, or an affiliate thereof, or property for which Developer or its affiliate has or will have executed a lease, easement or other agreement with the applicable landowner.
- C. SETBACKS AND SITING.
1. Setbacks.
    - a. All photovoltaic solar panels and battery storage sites shall be setback at least fifty (50) feet from public roads and property lines of nonparticipating landowners and three hundred (300) feet from non-participating occupied residences in existence as of the Effective Date of this Agreement unless such impacted landowner provides a written waiver of such requirement.
    - b. On or before the completion of construction, the Project shall strategically install and augment vegetative buffers along non-participating landowner property lines as necessary to shield occupied, non-participating residences in existence as of the date of this Agreement, unless such impacted landowner provides a writer waiver of such requirement. Such vegetative buffers may include, but not be limited to, two rows of coniferous tress with staggered spacing. Developer will utilize existing natural visual barriers including pre-existing vegetation wherever possible. Such trees installed by the Developer as part of the vegetative buffer shall be a minimum of 5 feet tall at the time of planting.
  2. Above-ground Collection Lines Above-ground Collection Lines and Developer-Owned Transmission Line Tower Setbacks.
    - a. Above-ground collection lines and Developer-owned transmission line towers shall be setback at least one-and-a-half (1.5) times the height of the transmission line tower measured from base of the tower to the nearest outside wall of such structure from any non-participating occupied primary residential dwelling currently in existence in the County and may not be located in a County right of way without County approval, but above-ground transmission line wires may cross (and be located in) County right of ways as set forth in the Road Use Agreement.
    - b. Collection lines will be located within leases or easements on participating landowner property, or located underground on public right of way crossings as approved by the County in compliance with the Road Use Agreement.

- c. The setbacks and height requirements set forth in this Agreement can be modified with written consent of the Parties.
3. Sound Levels. Unless otherwise agreed to by the landowner, after commencement of operation the Project sound levels are not to exceed fifty (50) dBa Leq, measured at the nearest outside wall of an occupied primary non-participating residential dwellings currently in existence in the County.
4. Ground Cover and Vegetation Preservation.
  - a. Developer shall create a vegetation management plan prior to commencement of construction and shall implement vegetation management practices in accordance with this plan during construction and operations. Vegetation management practices will include, but not be limited to seeding the land immediately under and surrounding the solar photovoltaic panels with seed mix containing prairie grasses or forbs native to the Midwest United States (“Regeneration Seed Mix”) prior to Project operations.
  - b. In constructing the Solar Project, Developer shall seek to preserve mature trees, tree lines, streamways, ponds, and grasslands to the extent such efforts are reasonable and practicable.
5. Security Fencing. Developer shall enclose the Solar Project with a security fence of no more than twelve (12) feet in height. Developer shall, throughout the Term, reasonably maintain any fencing it or its affiliates erect.
6. Lighting. Developer shall limit its use of outdoor lighting to levels required for safety and security. Developer shall implement reasonable controls on lighting to prevent glare and light spillage offsite.
7. Insurance. Prior to the commencement of construction, Developer shall provide insurance as set forth in the Road Use Agreement.
8. Emergency Services, Fire Protection, and Hazardous Materials.
  - a. Developer or its affiliate will share applicable EPC and national electrical code guidelines for fire protection and emergency response with the Bourbon County Director of Emergency Management.
  - b. Developer or its affiliate will share applicable EPC guidelines on the proper storage and handling of hazardous materials with the Bourbon County Director of Emergency Management.
  - c. Developer or its affiliate will work in cooperation with the County to establish 911 addresses for each photovoltaic solar panel and battery storage site.
9. Reimbursements to the County. Developer or its affiliate will reimburse the County as set forth in the Definitive Agreements.

10. Compliance with Laws. Developer and its affiliates shall comply with, and if found to be out of compliance shall make commercially reasonable efforts to bring the Solar Project into compliance with, all federal and state laws and regulations applicable to the construction and operation of the Solar Project, including:

- a. Federal Aviation Administration statutes and regulations;
- b. Occupational Safety and Health Administration statutes and regulations;
- c. United States Fish and Wildlife Service statutes and regulations, including those pertaining to impacts on endangered or threatened species or habitats;
- d. U.S. Army Corps of Engineers statutes and regulations, including those pertaining to impacts on wetlands;
- e. Environmental Protection Agency statutes and regulations, including those pertaining to environmental impacts;
- f. Federal Communication Commission (FCC) statutes and regulations, including those pertaining to wireless communications impacts;
- g. Consultations with the Kansas Department of Wildlife, Parks, and Tourism, including those pertaining to impacts on endangered or threatened species or habitats;
- h. Consultations with the Kansas Department of Health and Environment, including those pertaining to any environmental impacts;
- i. Consultations with the Kansas Historical Society pertaining to surveys of any historical sites that may be located within the Solar Project area; and
- j. Any other applicable regulations promulgated by these and any other federal and state agencies.

11. Notices. All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given or made in writing (including by electronic mail) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by electronic mail with confirmation of receipt received, personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein.

To Developer:

Collin Brown  
Advanced Power Services (NA) Inc.  
155 Federal St, 17<sup>th</sup> Floor  
Boston, MA 02110

857-206-4175  
cbrown@advancedpowerna.com

Copy to:

Kelly Huffman  
Advanced Power Services (NA) Inc.  
155 Federal St, 17<sup>th</sup> Floor  
Boston, MA 02110  
617-406-9965  
khuffman@advancedpowerna.com

To County:

Bourbon County Clerk  
210 S National Ave # 3  
Fort Scott, KS 66701

#### **SECTION IV. REPRESENTATIONS AND WARRANTIES**

A. COUNTY. The County represents and warrants that:

1. the County has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
2. upon execution and delivery by the County and Developer, this Agreement shall be a valid, legal, binding and enforceable obligation of the County enforceable against the County in accordance with its terms, subject to any applicable laws of bankruptcy, insolvency or reorganization, laws affecting the enforcement of creditors' rights generally, and general principals of equity;
3. no approval or consent from any other person or entity is required for the County's execution of this Agreement; and
4. this Agreement is executed by duly authorized representatives of the County who are fully authorized to execute this Agreement on behalf of the County.

B. DEVELOPER. Developer represents and warrants that:

1. Developer has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
2. upon execution and delivery by Developer and the County, this Agreement shall be a valid, legal, binding and enforceable obligation of Developer enforceable against Developer in accordance with its terms, subject to any applicable laws of bankruptcy, insolvency or reorganization, laws affecting the enforcement of creditors' rights generally, and general principals of equity;

3. no approval or consent from any other person or entity is required for Developer's execution of this Agreement; and

4. this Agreement is executed by a duly authorized representative of Developer, who is fully authorized to execute this Agreement on behalf of Developer.

## **SECTION V. DEFAULT PROVISIONS**

If either Party fails to observe or perform any material condition or provision of this Agreement for sixty (60) days after receiving written notice of such failure from the other Party (the "Cure Period"), then the aggrieved Party shall have the right to terminate this Agreement upon thirty (30) days prior notice to the other Party and to pursue any remedy available to it at law or in equity; provided however, that for so long as the delinquent Party is diligently attempting to cure such failure and the failure is, in the aggrieved Party's discretion, reasonably capable of being cured, a default under this Section V shall not be deemed to have occurred. If the Developer fails to observe or perform any material condition or provision within Section III(C)(11) during an isolated instance where curing such a failure is not possible, termination will only be permissible in the event that Developer fails to comply with all relevant penalties associated with such a failure.

Notwithstanding the foregoing, a Party's failure to observe or perform any material condition or provision of this Agreement due to an Excusable Delay shall not constitute a breach of this Agreement. For purposes of this Agreement, "Excusable Delay" means any casualty to property or persons, inclement weather, epidemic or pandemic, inability to secure materials, strikes or labor disputes, acts of God, acts of the public enemy or hostile or terrorist action, civil commotion, and/or governmental actions, restrictions, regulations or controls, including, without limitation, any failure or refusal of any governmental authority to timely issue any required permit or approval for development of the Solar Project or any legal action or proceeding involving any such required permit or approval (whether arising out of any existing laws or changes in laws, including any such laws relating to annexation, zoning, platting, building or other codes or ordinances applicable to development and construction of the Solar Project), or any other cause beyond the reasonable control of that Party (other than financial inability) which affects development, construction, maintenance, operation, repair, replacement or decommissioning of the Solar Project (including, without limitation, any of the foregoing which affect a Party's contractors or subcontractors).

Notwithstanding the foregoing, upon termination of this Agreement for default as defined above, the Development Requirements (Section III) and the Road Use Agreement shall continue in full force and effect until final and complete cessation and decommissioning of the Project.

## **SECTION VI. SEVERABILITY**

In the event that any term or provision of this Agreement 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 Agreement. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement 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.

## SECTION VII. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to the conflict of law principles thereof and each Party waives all right to trial by jury for all suits or causes of action arising out of this agreement.

## SECTION VIII. MISCELLANEOUS

A. **NO WAIVER.** The failure of either Party to insist in any one or more instances on the performance of any of the obligations required by the other under this Agreement shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

B. **HEADINGS.** The headings used in this Agreement are for ease of reference only and shall not in any way be construed to limit or alter the meanings of any provision hereof.

C. **AMENDMENTS.** This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each Party. Any oral or verbal agreements between the Parties different from or in conflict with the provisions of this Agreement shall be null and void and of no force or effect where they are in conflict with the written provisions of this document.

D. **ASSIGNMENT.** This Agreement may be assigned only upon written consent of the Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except Developer may, upon notice to County, but without County's consent or approval, assign this Agreement to an affiliate, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Notwithstanding anything to the contrary, Developer may only assign this Agreement if the assignee agrees and acknowledges in writing that such assignee shall be bound by terms and obligations of this Agreement. Upon such assignment all of Developer's rights and obligations shall inure to the benefit of and shall be binding upon the Developer's assignee and its respective successors, assignees and legal representative.

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

F. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns, trustees and/or receivers of the Parties hereto.

G. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.



H. TIME IS OF THE ESSENCE. Time is of the essence of this Agreement, and of each and every provision hereof, and the Parties shall make every reasonable effort to expedite the subject matters hereof and to perform their respective obligations.

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

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed in their respective names by their duly authorized representatives and dated their signatures as shown below.

**DEVELOPER:**

KINGBIRD SOLAR ENERGY LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_


\_\_\_\_\_ Date

**THE COUNTY:**

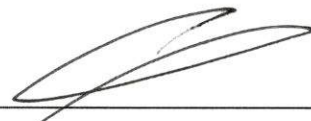
THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

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

Name: Brandon Whisenhunt, County Commissioner (District 1)

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

Name: Jim Harris, County Commissioner (District 2)

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

Name: Clifton Beth, County Commissioner (District 3)

ATTEST:

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

*Reviewed and approved by:*

\_\_\_\_\_