

**ROAD USE AND MAINTENANCE MEMORANDUM OF UNDERSTANDING**

THIS ROAD USE AND MAINTENANCE MEMORANDUM OF UNDERSTANDING ("**Agreement**") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ ("**Effective Date**") by and between the City of Norman, Oklahoma, a Municipal Corporation, whose address for purposes of this Agreement is 201 W. Gray, Attn: Norman City Attorney's Office ("**City**") and NextEra Energy Transmission Southwest, LLC, a Delaware limited liability company, whose address for purposes of this Agreement is 700 Universe Boulevard, Juno Beach, FL 33408 ("**User**").

**RECITALS**

WHEREAS, User is developing an electrical transmission facility ("**Project**") on a site located in the City of Norman, Cleveland County, Oklahoma; and

WHEREAS, User intends to obtain the necessary approvals to build, operate and maintain the Project; and

WHEREAS, in connection with the construction, operation and maintenance of the Project, User desires to use public roadways within the City during its ongoing construction, operation and maintenance of the Project.

WHEREAS, User acknowledges that the City's roads were not designated for and will not withstand the certain heavy truck traffic and overweight equipment vehicles of User's operations; and

WHEREAS, the public roadways to be used by User are identified on "**Exhibit A**" hereafter as "**Roads**"; and

WHEREAS, as a condition of the use of the roadways by User the Municipality is requiring the User to execute this agreement to obligate the User to maintain the Roads which it makes use of, in the same or better conditions the Roads had prior to the commencement of User's operations, and to maintain the roadways in a good state of repair during the User's operations and maintenance; and

WHEREAS, User's obligation is expected by the Parties to include specific construction, modification and/or improvements (both temporary and permanent) to the Roads (including to various associated culverts, bridges, crossings, road shoulders and other fixtures);

WHEREAS, User and the City wish to set forth their understanding for the purpose of entering into later more detailed agreements relating to the User's use of Roads during the construction, maintenance and operation of the Project; and

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

### TERMS AND CONDITIONS

1. **User's Duties:** User will undertake the following activities in accordance with the terms of this Agreement:

a. At all times, have an identified designated company representative with authority to represent User. As of the date of the Agreement, the company representative is Nick Fuhr (phone: 561-427-4308).

b. At least forty-five (45) days prior to planned beginning construction of the Project, provide the City with a pre-use construction design, including a preliminary site plan identifying proposed site access points, and road crossings, to be attached as **Exhibit B**, along with the proposed transportation route(s) for the Project equipment attached as **Exhibit C**, subject to amendment. To the extent that said route(s) or plan necessitate User obtaining regulatory approvals requiring more than forty-five (45) days to obtain, construction shall not commence until said regulatory approvals are obtained by User. Said design must include:

- i. Current load-bearing capacities of Roads, including any implicated bridges or culverts;
- ii. Duration and schedule of proposed use, including weather conditions and subsurface hydrology;
- iii. Proposed inspection and repair intervals;
- iv. Stormwater and runoff improvements resulting from flow increases;
- v. Submit floodplain permit application for any installation located in any floodplain
- vi. Environmental responses to dust, snow or ice;
- vii. Detailed ongoing maintenance plan based on road classification;
- viii. Number and weight of vehicles and which roads will be used by each vehicle (this may be demonstrated on preliminary site plan);
- ix. Identify all Roads upon which widening of any corner radius necessary to facilitate the turning movements of the transport trucks used by User during construction of the Project; make any necessary improvements; and at the conclusion of construction, remove any such improvements as the City directs and restore the affected property to its original condition;

Following provision of this proposed information by User, the parties shall negotiate reasonably and in good faith to reach a final agreement regarding the terms of User's road use as it relates to the Project prior to User's construction of the Project.

c. During construction, User shall:

i. Notify the City Public Works Director in advance of all oversize transportation and crane crossings over, across or along any Road;

ii. Transport or cause to be transported the tower segments and other oversize loads in a reasonable effort to minimize adverse impact on the local traffic and Road condition;

iii. Provide reasonable advance notice to the City when it requests that a Road to be closed due to a crane crossing or for any other reason relating to the construction of the Project. Notwithstanding the foregoing, User will provide no less than seventy-two (72) hours' notice and will provide all materials necessary to support its request to close the Road, and as requested by the City. Upon timely provision of notice and necessary information, the Public Works Director, or its Designee, shall promptly review and respond to the request for closure;

iv. Provide signage of all road closures and work zones in compliance with the Manual on Uniform Traffic Control Devices and as may be required by the City, including obtaining signed approval of the City of Norman Transportation Engineer;

v. Purchase and deliver applicable road materials for repairs to Roads that are damaged by User and/or a User Representative during the hauling of materials and/or construction of the Project and bear the reasonable costs to restore any Roads that are damaged by User and/or an User Representative during the hauling of materials and/or construction of the Project to the condition enjoyed immediately prior to such damage occurring, to the extent reasonably possible, and according to applicable standards, including but not limited to those set forth in City regulations;

vi. Ensure that facilities crossing any Road must meet the minimum above ground height and setback requirements;

d. Following construction, and during any operation, maintenance, or repair of the Project as constructed, User shall give the City no less than sixty (60) days' notice where oversized or overweight vehicles may require use of City roads and/or Crossings so that the parties may determine the need for an inventory and the terms of an agreement, if any, required to facilitate the operation, maintenance or repair. In the event immediate work is required by emergency circumstances, and only where necessary to ensure proper operation of the Project, User may use best efforts to give the City less advance notice where oversized or overweight vehicles may require more immediate use of City roads and/or Crossings. In any case, User shall give the City

the maximum notice practicable under the circumstances and shall nonetheless be obligated to make any or all repairs necessary to return the roads to a pre-use condition, at its sole cost and expense, and pursuant to applicable standards, including but not limited to applicable City regulations.

e. User may authorize agents or representatives to act on its behalf in furtherance of its duties under paragraphs b-d of this section without prior written approval of City, subject to the terms in Section 5 of this agreement. User shall identify said authorized agents or representatives to City in writing prior to expiration of any deadline by which any act by User must be performed herein.

2. **City's Duties:** The City, in accordance with the terms of this Agreement, agrees that it shall:

a. Within fifteen (15) days following the Effective Date of this Agreement, designate a City representative with authority to represent the City and may be reached at (405) 307-7118 for the duration of this Agreement and for the purpose of executing any final agreements, as set forth herein;

b. Timely perform routine and regular maintenance of the Roads which would have been performed in absence of this Agreement including: grading, snow removal, striping, routine signage, and regularly scheduled maintenance and repair. However, City shall not be responsible for any maintenance associated with damage to the Roads occasioned by the construction, maintenance or operation of the Project. User shall perform daily maintenance of the Roads, as necessary, to support its construction, maintenance and operation of the Project, and as set forth herein. User may authorize agents or representatives to perform such maintenance on its behalf without prior written consent of City, subject to the terms in Section 5 of this agreement. User shall identify said authorized agents or representatives to City in writing prior to expiration of any deadline by which any act by User must be performed herein;

c. Timely review all Project-related information, including access points and road crossings, and proposed utility encroachment on City rights-of-way; which are submitted by User in **Exhibits A** through **C**, and reasonably and in good faith pursue a final agreement regarding User's use, maintenance and repair responsibility pursuant to the terms of this Agreement.

### 3. **Planning Inventory**

#### a. Road Inventory

1. Pre-Construction Inventory. No later than August 1, 2023 and at User's sole expense, the Parties shall cooperate to jointly perform a survey to record the condition of the pavement surface of the Roads which will be used in the transport of equipment to the Project. During this survey, the entire length of the roads shall be videotaped and if deemed necessary by the parties, photographs may also be taken. In addition, the City will provide User, if available, with copies of any plans, cross-sections and specifications relevant to the existing Roads structure. Copies of all pre-construction documentation shall be provided to each of the Parties. City's

inability to provide any requested documentation shall not relieve User of any obligations hereunder. User shall reimburse the City for all incurred costs associated with the Pre-Construction Inventory.

2. Post-Construction Inventory

i. Upon completion of construction of each phase of the Project, representatives of the City and User will perform a post-construction inventory, the methods and terms of which shall be similar to those of the Pre-Construction Inventory described above. The two sets of pre and post-construction data will be compared and if there is any wheel lane rutting, cracking or other damage in excess of the original survey, the City and User will determine the extent of the repairs or improvements needed to return the roads to a pre-construction condition. All costs incurred by either Party associated with the Post-Construction Inventory shall be borne solely by User.

ii. User shall be obligated to, make any or all repairs necessary to return the roads to a pre-construction condition, at its sole cost and expense, and pursuant to applicable standards, including but not limited to applicable City regulations. Within five (5) calendar days following the completion of the Post-Construction Inventory, User shall provide notice to the City identifying those repairs which User proposes to undertake and the expected date by which such repairs shall be completed. City shall have fifteen (15) days to respond or otherwise provide a counter-proposal to User's proposal.

iii. User may authorize agents or representatives to perform post-construction inventory tasks on its behalf without prior written consent of City, subject to the terms in Section 5 of this agreement. User shall identify said authorized agents or representatives to City in writing prior to expiration of any deadline by which any act by User must be performed herein.

b. Crossings Inventory. The inventories detailed in Section 3(a) shall include an evaluation of existing bridges, culverts and other crossings (collectively "Crossings") found along the roads. The User and City must come to a final agreement regarding the terms and conditions of User's use of impacted Crossings. User acknowledges that it has been provided with information from the City regarding the maximum load allowed for each such crossing and hereby warrants and affirms that it is prepared to and shall comply with all said maximum load allowances in its construction, repair and maintenance of the Project. The City may require measures such as repairs, temporary stabilization, or maintenance work as a condition of User's use of Crossings. The City may also require route limitations and alterations to avoid use of Crossings where, in City's discretion, potential damage to City infrastructure is such that repair, stabilization or maintenance is insufficient to adequately protect the public health safety and welfare or otherwise risks the City's interest and investment in the public infrastructure.

c. Routing and Access Approval. As soon as practical after execution of this Agreement and as necessary throughout the construction of the Project, or operation, maintenance or repair of the Project thereafter, User and City shall meet to discuss routing for the transportation of equipment to the Project, Project-related access points, road crossings and the City shall review the same in accordance with this Agreement.

4. **Failure to Later Agree.** The City and User shall reasonably and good faith negotiate to reach final agreements regarding the User's proposals provided pursuant to Sections 1 and 3 herein, and according to any applicable timelines provided by this Agreement. Should the parties fail to come to a final agreement on the terms of each said proposal, then this agreement shall not be interpreted as City's provision of authorization or permission for User to use the roads or routes identified herein. Unless an agreement is reached prior to User's construction of the Project, or thereafter within forty-five (45) days following User's submittal of a proposal, except where an extension is agreed to by mutual written agreement of the parties, or by an emergency situation affecting one or more of the Parties, this Agreement shall terminate and no longer have any force or effect, except as to User's responsibility for the cost of any pre- or post-construction inventories pursuant to Section 3 herein.

5. **Indemnification/Hold Harmless and Liability Insurance Provisions.**

a. **Indemnity.** User shall indemnify, defend and hold harmless the City and its officers, employees, agents, successors in interest or representatives ("City Indemnitees") against any and all losses, direct or indirect damages (including consequential damages), claims, expenses, and other liabilities, including, without limitation, attorneys' fees, resulting from or arising out of (i) any negligent act or negligent failure to act on the part of the User, its officers, employees, agents, successors in interest, or representatives or anyone else engaged in doing work for User, or (ii) any breach of this Agreement by User. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by any negligent or willful act or omission on the part of the City Indemnitees.

To the extent permitted by applicable law, including the Constitution of the State of Oklahoma, the City shall defend and hold harmless the User and its officers, employees, agents, successors in interest or representatives ("User Indemnitees") against any and all actual and direct damages resulting from (i) any negligent act or negligent failure to act on the part of the City, its officers, employees, agents, successors in interest, or representatives, or (ii) any breach of this Agreement by City.

b. **Required Insurance.** User shall upon commencement of construction of the Project and for the period of construction of the Project, maintain in full force and effect commercial general liability insurance, in the aggregate amount equal to Three Million Dollars (\$3,000,000), and the City shall be listed as an additional insured to said polic(ies). User may utilize any combination of primary and/or excess insurance to satisfy this requirement and may satisfy this requirement under existing insurance policies for the Project. Following construction, and at all times that the Transmission Line is thereafter maintained and operated, User shall maintain general liability insurance limits as otherwise required by all applicable regulations, and shall provide the City proof of the same.

6. **Miscellaneous**

a. **Due Authorization.** User hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of User. The City hereby represents, and

warrants that this Agreement has been duly authorized, executed and delivered on behalf of the City.

b. Severability. If any provision of this Agreement proves to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected by such finding, and in lieu of each provision of this Agreement that is illegal, invalid, or unenforceable a provision may be added by agreed mutual modification of the parties as may be necessary to accurately reflect the intentions of the original intentions of the parties Parties and so as to make the unenforceable provision legal, valid, and enforceable from the inception of the Agreement.

c. Amendments. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by both Parties to this Agreement.

d. Notices. All notices shall be in writing and sent (including via facsimile transmission) to the Parties hereto at the addresses set forth in the Preamble (or to such other address as either such Party shall designate in writing to the other Party at any time).

e. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page to this Agreement by electronic mail shall be as effective as delivery of an originally signed counterpart to this Agreement.

f. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oklahoma, irrespective of any conflict of laws provisions. Both parties desire that the transactions contemplated hereby be effected and carried out in a manner that is in compliance with all laws.

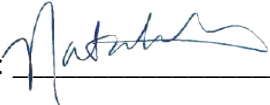
g. Successor and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors, assignees, and legal representatives. Neither Party shall assign this agreement without the written approval of the other Party.

h. Strict Performance. Failure of City or User to insist on strict performance of any of the conditions or provisions of this Agreement, or to exercise any of their rights hereunder, shall not waive such rights.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in their respective names by their duly authorized officers.

**User:**

NextEra Energy Transmission Southwest, LLC  
a Delaware limited liability company

Signed:  \_\_\_\_\_

Name: Natalie F. Smith

Title: Assistant Vice President

**City:**

By: \_\_\_\_\_  
Larry Heikkila, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Brenda Hall, City Clerk

Approved as to Form:

By: \_\_\_\_\_  
City Attorney's Office



**EXHIBIT A**

**Identification of "Roads"**

**EXHIBIT B**  
**Proposed Site Plan**

**EXHIBIT C**

**Proposed Transportation Route**