

Road Repair Reimbursement Agreement

This agreement (Agreement) is entered into as of the _____ day of _____, 20____, between the Village of Ridgeway, a municipality organized and existing under Wis. Stat. chs. 66 and 61 (Village), with its offices located at 208 Jarvis Street, Ridgeway, Wisconsin 53582, and American Transmission Company LLC, by its corporate manager, ATC Management Inc., a limited liability company organized and existing under the laws of the State of Wisconsin with its offices located at W234 N2000 Ridgeview Parkway Court, Waukesha, Wisconsin 53188-1022 (Collectively “ATCLLC”). The Village and ATCLLC may be referred to as “Party” or “Parties” as the context may require.

The Parties represent as follows:

- A.** ATCLLC is a “public utility” as that term is defined in Wis. Stat. §196.01(5) and is a “transmission company” within the meaning of Wis. Stat. § 196.485(1) (ge).
- B.** ATCLLC is in the process of performing certain work on its facilities located in or in the area of the Village during the period commencing on or about November 2021 and ending with the completion of the work associated with the construction of certain electric transmission facilities generally referred to as the “Cardinal – Hickory Creek” project (Project) and may, as a result of that work, need to have certain of its vehicles and equipment, or vehicles and equipment of ATCLLC’s contractors, subcontractors, suppliers, material men, or assigns (collectively “Contractors”), use roads, bridges and culverts (collectively “Roads”) that are maintained by the Village or over which the Village has jurisdiction and authority.
- C.** Village, in accordance with the Village Code, has adopted Wis. Stat. ch. 348 and has the authority to issue permits, under conditions determined by the Village, for the use of Village Roads for vehicles and equipment that exceed the weight limits determined for such Roads.
- D.** ATCLLC seeks a permit or permits for the use of the Roads of the Village by certain vehicles and equipment operated by ATCLLC or on its behalf, and the Village is willing to issue the required permit or permits, but only upon certain terms and conditions.
- E.** The Parties have determined that it is in their mutual interest to set forth the terms and conditions relating to the issuance of the required permits for the use of the Roads of the Village.

Therefore, the Parties agree as follows:

1. Preliminary Assessment. The Parties have determined that an independent party, EMCS Inc. (EMCS), shall perform a preliminary assessment (“Preliminary Assessment”) of the condition of the Roads set forth on Attachment A. EMCS shall provide a text summary and videotape of the condition of the Roads set forth on Attachment A to the Village and ATCLLC. All expenses related to activities by EMCS incurred as a result of the Preliminary Assessment are to be paid by ATCLLC.

2. Permits. The Village shall, upon the execution of this Agreement, issue such permits as are necessary to permit ATCLLC or its Contractors to use the Roads of the Village identified on Attachment A for certain overweight vehicles and equipment, up to and exceeding 80,000 lbs. gross vehicle weight (GVW), necessary for transporting material, equipment or machinery

used by ATCLLC or its Contractors in the construction or erection of facilities used in the transmission of electricity. The permits shall conform to the requirements of Wis. Stat. ch. 348, and shall be displayed in accordance with the requirements of Chapter 348.

3. Fees. Pursuant to Wis. Stat. §348.25(8)(f), for the general permit to operate overweight vehicles and equipment, ATCLLC shall pay Village a permit issuance fee in the amount of Five Thousand And No/100 Dollars (\$5,000.00) payable upon the execution of the Agreement. Each load exceeding 80,000lbs GVW is subject to an additional fee of five hundred dollars (\$500.00). For purposes of this Section, should the vehicle or equipment exit the Road onto adjacent or nearby property and then re-enter the Road, each re-entry onto the Road is included as part of the original load (and not subject to an additional \$500 fee).

4. Roads to be used under the Permits/Use Suspension. The permits issued shall authorize ATCLLC or its Contractors to use the Roads of the Village set forth on Attachment A to this Agreement, which is incorporated into this Agreement in its entirety as though fully set forth herein, subject to reasonable conditions the Village may impose for the public safety, including, but not limited to, flagging, route escort, and intersection closure.

5. Authorized Vehicles and Equipment. The vehicles and equipment authorized on the Roads of the Village set forth on Attachment A are listed on Attachment B. Attachment B identifies the types of vehicles and equipment that ATCLLC anticipates it or its Contractors may employ at this time. The Parties acknowledge that ATCLLC or its Contractors may employ other vehicles and equipment in the course of its work.

6. Term/Subsequent Assessment. Permits issued to ATCLLC are valid from the execution of this Agreement by both Parties until completion of the work to be performed for or on behalf of ATCLLC on its facilities or the facilities of others for which it is obligated to perform work associated with the Project. At the request of either party, EMCS shall perform a subsequent assessment ("Subsequent Assessment") of the condition of the Roads of the Village set forth on Attachment A in the manner provided in Section 1. All expenses related to any activities by EMCS incurred as a result of the Subsequent Assessment performed by EMCS shall be paid by ATCLLC.

7. Maintenance of Roads during Term of Permits. From the date of issuance of the permits provided for in this Agreement, until the completion of the work associated with the Project, ATCLLC shall be solely responsible for the cost of repair, prevention measures or containment of potholes and similar damage on those Roads set forth on Attachment A caused by ATCLLC or its Contractors. In the event any damage is caused by ATCLLC or its Contractors, as determined in accordance with this Agreement, such damage shall be repaired in accordance with the directives of Village. The Village shall complete the repair, prevention measures or containment of any damage done to the Roads caused by ATCLLC or its Contractors.

8. Damage and Payment upon Expiration of Permit. Upon the expiration of the permit(s) and in the event that the Roads of the Village set forth on Attachment A are damaged as a result of the use of such Roads by ATCLLC or its Contractors, then ATCLLC shall pay the Village the cost of repairing such damage. If a Subsequent Assessment is performed, the difference between the condition of the Roads of the Village as shown in the Preliminary Assessment and in the Subsequent Assessment shall be the basis upon which the Village determines whether any damage has occurred to the Roads set forth on Attachment A. The Village shall estimate the cost to repair the Roads set forth on Attachment A and shall provide that estimate in writing to ATCLLC and EMCS. Within thirty (30) days of receipt of the cost

estimate, ATCLLC shall pay the amount estimated by the Village, unless ATCLLC exercises its rights under Section 9 of this Agreement. Within thirty (30) days of completion of the road repairs discussed in Section 8, the Village shall provide, in writing, a reconciliation of the estimated costs with the actual costs incurred. If the actual cost of repairs is less than the estimated amount and ATCLLC has paid the estimated costs, then the Village shall refund any excess payment to ATCLLC. If the actual costs are more than the estimated costs paid by ATCLLC, then ATCLLC shall pay such additional amount. Any refund or payment shall be made by the responsible Party within thirty (30) days of the reconciliation. ATCLLC may exercise its rights under Section 9 of this Agreement to dispute the estimate, reconciliation or actual costs incurred, as well as the existence of or responsibility for any damage to the Roads.

Notwithstanding the language of the previous paragraph, in the event damage occurs that the Village reasonably determines necessitates emergency repairs for the public safety or welfare, the Village may immediately undertake such repairs and invoice ATCLLC, which shall pay all such invoices within thirty (30) days of receipt. ATCLLC may exercise its rights under Section 9 of this Agreement to dispute these repairs and the cost. In the event of any such dispute, however, ATCLLC shall pay the Village for the repairs as provided in this Section with a right to recoup such payments after a favorable determination by the Arbitrator.

9. Dispute Resolution. The Parties acknowledge that they may disagree as to the existence or cost of repairing any damage or whether any damage may be the result of the use of such Roads by others. ATCLLC shall have the right to dispute the existence of, the cost to repair, or ATCLLC's or its Contractors' responsibility for the damage to the Roads set forth on Attachment A. If ATCLLC disputes the existence of, the cost to repair, or ATCLLC's or its Contractors' responsibility for such damage, ATCLLC shall notify the Village within thirty (30) days of the receipt of the estimate, reconciliation, or invoice provided for in Section 8. Upon receipt of ATCLLC's notice under this Section, the parties shall select an arbitrator ("Arbitrator") that is acceptable to both Parties to resolve the dispute. The Parties shall have ten (10) business days to agree upon an Arbitrator. In the event that the Parties cannot agree upon an Arbitrator, either Party may apply to a court of competent jurisdiction to appoint an Arbitrator in accordance with Wis. Stat. § 788.04. Within twenty-one (21) days of the selection of an Arbitrator, the Village and ATCLLC may provide such information as each deems necessary or appropriate to the Arbitrator and the other Party. Either Party has the right to request a hearing or request that the Arbitrator make a determination without a hearing. Any such hearing requested shall be held at the Village Hall at a mutually agreeable time following receipt of the information provided in accordance with this Section 9, however, no later than sixty (60) days from the date of the request. The Arbitrator's determination(s) shall be considered an arbitration award under the provisions of Wis. Stat. ch. 788, shall be binding upon both Parties, and shall be enforceable in accordance with Wis. Stat. §788.09. All arbitration expenses incurred as a result of this Section shall be the sole responsibility of ATCLLC.

10. Hold Harmless and Limitation of Liability. ATCLLC shall indemnify, protect, defend, and hold harmless the Village from and against any damage to the Roads set forth on Attachment A, which may arise out of or be caused by any act of ATCLLC or its Contractors in the performance of work associated with the Project. ATCLLC shall indemnify, protect, defend and hold harmless the Village from and against any and all losses, claims, lawsuits, judgments, and demands whatsoever, including the cost of investigation and attorneys' fees, which may arise out of or be caused by any negligence of ATCLLC or its Contractors in the use of the Roads set forth on Attachment A in the performance of work associated with the Project.

The Village acknowledges that ATCLLC is a regulated utility that operates pursuant to an Open Access Transmission Tariff (the "Tariff") approved from time to time by the Federal Energy Regulatory Commission. Further, the Village agrees that no provision in this Agreement is intended to alter or modify the Tariff in any way and that therefore no contractual indemnification or other liability is created or imposed on ATCLLC by this Agreement in excess of the liability imposed on ATCLLC by such Tariff.

Except as otherwise specifically provided for in this Agreement, neither Party will be liable to the other Party for any indirect, special, incidental or consequential damages that are not a reasonably foreseeable consequence of the breaching Party's breach of this Agreement.

11. Insurance. ATCLLC represents that it is self-insured for the first \$2,000,000 for any personal injury and property damage that may occur in connection with operation under the permits and for which ATCLLC might be legally responsible for and has additional insurance coverage in the amount of \$50,000,000 in excess of \$2,000,000, which is deemed sufficient insurance coverage by the Village under this Agreement. (See Attachment C.)

12. Additional Permits. This Agreement shall permit ATCLLC the use of Roads within the Village set forth on Attachment A. ATCLLC must obtain any and all other permits necessary for completion of the work.

13. Springtime Freezing and Thawing Period. This Agreement does not permit the use of Roads that may be posted with weight limitations during the seasonal springtime freezing and thawing period, unless the Village grants a permit for use during such period after determining when the Roads are either frozen or thawing and whether sections should be posted for weight limitations.

14. General Provisions.

A. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior written or oral understandings or agreements. Failure of ATCLLC or Village to insist on performance of any of the terms and conditions of this Agreement, or to exercise any right or privilege contained in this Agreement, shall not be considered as waiving any such terms, conditions, rights or privileges. No waiver shall be effective unless reduced to writing and executed by both Parties. This Agreement and its Exhibits may be modified only in a writing signed by the Parties hereto.

B. No Third-Party Beneficiaries. This Agreement is intended to be solely for the benefit of ATCLLC and the Village and their successors and permitted assigns and is not intended to and shall not confer any rights or benefits on any third party not a signatory to this Agreement.

C. Severability. In the event that any provision of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void portion of such provision shall be deemed severed from this Agreement, unless the removal of the unenforceable provision materially alters the rights or obligations of either Party under this Agreement. Even if there is a material alteration in the remainder of the Agreement, the Agreement shall continue in full force and effect as if such provision was not contained in the Agreement, but the Parties shall negotiate in good faith a new provision that will, to the extent practicable, restore the benefit of the bargain contained in such provision.

D. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

E. Headings. The headings set forth in this Agreement are inserted for convenience and shall have no effect on the interpretation or construction of this Agreement.

F. Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart shall have the same force and effect as the original instrument.

G. Notice. All notices or other communications required or desired to be given under this Agreement by either Party must be in writing, and will be deemed to have been fully given by email, addressed to the Party receiving notice, upon confirmation by Delivery Receipt or Read Receipt. Notice shall be given to the following:

For ATCLLC: Jon Callaway, Local Relations Consultant
jcallaway@atcllc.com

For Village: _____

H. Authority. The Parties hereby warrant and represent that they are acting with full authority of the principals they may represent and/or upon all proper approvals from the entities on behalf of whom they are signing for.

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THIS AGREEMENT IS ENTERED INTO BY THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES WHOSE SIGNATURES ARE SET FORTH BELOW.

American Transmission Company LLC
By ATC Management Inc., its corporate manager

BY: _____
Jon Callaway, ATC Local Relations

Village of _____, _____ County, WI

BY: _____
[Village Representative], [Title]

ATTEST:

[Village Clerk or other representative], [Title]

Attachment A

Insert a map identifying roads to be used here.

Attachment B

Insert list of vehicles and weights here.

The vehicles with license plates are the plated weights. The off road equipment are the actual weights. The weights are approximate.

Attachment C

Insert a copy of the ATC Excess Liability Policy here.