Host Community Agreement

between the

Town of Ellenburg

and

Bull Run Energy LLC

**TABLE OF CONTENTS**

Page

Article I Definitions 2

Article II Representations and Warranties 6

Section 2.1 Town Representations and Warranties. 6

Section 2.2 Company Representations and Warranties. 6

Article III Term 7

Section 3.1 Effective Date 7

Section 3.2 Term 7

Article IV Host Community Payments 7

Section 4.1 Construction Period Payment 7

Section 4.2 Annual Host Fee 7

Section 4.3 Termination of Host Fee for Decommissioned Turbines 8

Section 4.4 Late Payment 8

Section 4.4 NO Offset 8

Section 4.5 USE OF REVENUES 8

Article V Road Use and Repair 9

Section 5.1 Access and Improvement 9

Section 5.2 Municipal Franchise in Roads, Road Permits and Curb Cuts 9

Section 5.3 Pre-Construction Inspection Report 9

Section 5.4 Design and Safety 10

Section 5.5 Temporary Repair Activities During Construction 10

Section 5.6 Repair activites 10

Section 5.7 Use by Oversized Vehicles 11

Section 5.8 Operating, Maintaining and Decommissioning the Project 12

Section 5.9 Road Construction Contractors 12

Section 5.10 Indemnity and Insurance 12

Section 5.11 Road Repair Escrow 12

Section 5.12 Additional Road Use Requirements 13

Article VI Compliance With Law 14

Section 6.1 Compliance with Laws 14

Article VII Complaint Management Program 14

Section 7.1 Wind Farm Hotline 14

Section 7.2 Complaint Log 15

Section 7.3 Investigation of Complaints 15

Section 7.4 Reporting 15

Article VIII POST-CONSTRUCTION NOISE MONITORING PROGRAM and NOISE TESTING 15

Section 8.1 Noise Monitoring Program 15

Section 8.2 Compliance With Noise Setbacks 16

Section 8.3 Non-Compliance With Noise Setbacks 16

Section 8.4 Noise Test Escrow Account 17

Article IX On-Site Monitor, MONITORING AND REPORTING REQUIREMENTS 18

Section 9.1 On-Site Monitor 18

Section 9.2 Town Engagement of On-Site Monitor 18

Section 9.3 Reports 18

Section 9.4 Emergency Notifications 18

Article X Certificates, CONSTRUCTION OVERSIGHT, AND CERTIFICATES OF COMPLETION 19

Section 10.1 On-Site Monitor and Construction Oversight 19

Section 10.2 Prompt Review and Issuance of Permits 19

Section 10.3 Completion Notice and Evaluation Period 19

Section 10.4 Certificate of Completion 19

Section 10.5 Temporary Certificate of Completion 20

Section 10.6 Commercial Operation 20

Section 10.7 Denial of Permits or Disputes Regarding Certificates of Completion 21

Section 10.8 Limitation of Section 21

Article XI Decommissioning Plan 21

Section 11.1 Decommissioning 21

Section 11.2 Restoration and Standard of Decommissioning 22

Section 11.3 Voluntary Decommissioning 22

Section 11.4 Failure to Perform Decommissioning and Restoration 22

Section 11.5 Expense of DecommissioninG 22

Section 11.6 Decommissioning Security 22

Article XII Fire Protection Control, Security, and Safety 23

Section 12.1 Quarterly Meetings With Fire Chief 23

Section 12.2 Fire Protection Plan 24

Section 12.3 Security 24

article XIII Liability Coverage and Indemnification 24

Section 13.1 Insurance 24

Section 13.2 Indemnification of Town 24

Section 13.3 Indemnification of Company 25

Section 13.4 Cooperation in Defense Against Litigation 25

Article XIV Dispute Resolution 26

Section 14.1 Dispute Resolution 26

Article XV PSC Certificate ConDitions 26

Section 15.1 PSC Conditions 26

Article XVI Breach and Remedies 27

SeCtion 16.1 Notice of Breach 27

Section 16.2 Company Right to Cure 27

Section 16.3 Remedies Cumulative 27

Section 16.4 Town Breach and Right to Cure 27

Section 16.5 Mortgagee Right to Cure 27

Article XVII Severability 28

Section 17.1 Severability 28

Section 17.2 Reformation 29

Article XVIII Reimbursement of Town Expenses 29

Section 18.1 Reimbursement of Town Expenses 29

Section 18.2 No Fiduciary Relationship 30

Article XIX Notices 30

Section 19.1 Notices 30

Article XX Miscellaneous 31

Section 20.1 No Waiver 31

SeCtion 20.2 Applicable Law and Venue 31

Section 20.3 No Recourse 31

Section 20.4 Entire Agreement 31

Section 20.5 Amendment 31

Section 20.6 Binding Effect 31

Section 20.7 Headings 31

Section 20.8 Assignment by Town 32

Section 20.9 Assignment by Company 32

Section 20.10 Counterparts 32

Section 20.11 Filing With Town Clerk 33

Section 20.12 Force Majeure 33

**HOST COMMUNITY AGREEMENT**

This **HOST COMMUNITY AGREEMENT**, is made as of February \_\_, 2023 (this “**Agreement**”) by and between Bull Run Energy LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, and having its corporate offices at One South Wacker Drive, Suite 1800, Chicago, Illinois 60606 (the “**Company**”), and the Town of Ellenburg, a municipal corporation duly organized and existing under the laws of the State of New York and having its offices at 16 St. Edmunds Way, Ellenburg Center, New York 12934 (the “**Town**”). The Company and the Town may sometimes be referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties**”.

**WHEREAS**, the Company is applying to the New York State Office of Renewable Energy Siting for a Siting Permit authorizing a wind energy electric generating facility, including the equipment required to connect the generating facility to the electric transmission system (**“Interconnection Facilities”**) the Company is developing on various parcels of land located in the Town and in neighboring towns in Clinton County, New York (the “**Project**”); and

**WHEREAS**, the Company has requested the Clinton County Industrial Development Agency (the “**IDA**”) provide financial assistance for the development and operation of the Project. Such assistance would include, among other things, the IDA’s lease or sub-lease from the Company of the Company’s interests in the land and the improvements comprising the Project; and a lease back of the Project from the IDA to the Company, and a payment-in-lieu-of-taxes (“**PILOT**”) agreement (“**PILOT Agreement**”) between the IDA and the Company pursuant to which the Company will make annual payments as described in the PILOT Agreement; and

**WHEREAS**, the Company’s PILOT payments attributable to any wind turbines in the Town will be allocated among the Town, the school district serving the parcel in which the wind turbine is located, and Clinton County in the percentages to be set forth in the Project PILOT Agreement; and

**WHEREAS**, the Company will use the Town’s roadways identified in Exhibit “G”, as may be modified or supplemented from time to time, (the “**Roads**”) to transport materials and equipment to and from the sites and for other purposes permitted hereafter; and

**WHEREAS,** the Town has agreed to allow the Company to inspect and reinforce the Roads and appurtenant structures such as culverts, manholes, other drainage features, guardrails, bridges, utilities, and signage (“**Road Structures**”), in advance of Project construction to verify if they can adequately support the loads necessary for such transportation and operation activities; and

**WHEREAS**, following completion of the Project, the Company has agreed to inspect, repair, and reconstruct each of the Roads and Road Structures to at least the condition that existed immediately prior to the Commencement of Construction of the Project or by paying a lump sum to the Town so that it can perform such repairs; and

**WHEREAS**, the Company and the Town believe their mutual best interests will be served by the execution of this Agreement which specifies their respective rights, interests, and obligations relative to the construction, operation, and decommissioning of the Project; and

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

# Article IDefinitions

The terms of this Agreement shall have the meanings ascribed to them herein, for all purposes of this Agreement, unless the context clearly indicates some other meaning. Words in singular shall include the plural and words in the plural shall include the singular where the context so requires.

“**Agreement**” means this Host Community Agreement and any and all exhibits or schedules attached hereto.

“**Ancillary Facilities**” shall have the meaning set forth in the recitals.

“**Certificate of Completion**” shall have the meaning set forth in Section 10.4.

“**Certificate of Restoration**” shall have the meaning set forth in Section 5.6.

 “**Commencement of Construction”** means when unlimited and continuous construction of the Project has begun and does not include testing or surveying (including geotechnical drilling and meteorological testing) to determine the adequacy of the site for construction, tree clearing, or meteorological tower erection.

“**Commercial Operation Date**” shall have the meaning set forth in Section 4.2.

“**Commissioning Completion Certificate**” shall have the meaning set forth in Section 10.6.

“**Company**” shall mean Bull Run Energy LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, and its successors and assigns.

“**Company Civil Engineer**” shall have the meaning set forth in Section 5.3.

“**Completion Notice**” shall have the meaning set forth in Section 10.3.

**“Construction Commencement Date**” shall mean the date specified in the Notice of Commencement of Construction as the date after which Project construction activities may commence.

“**Construction Period Payment**” shall have the meaning set forth in Section 4.1.

“**CPI**” shall mean the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for the Northeast Region, expressed as a percentage, for the last full calendar year for which inflation statistics were published; *provided*, *however*, that if the CPI percentage is negative, the CPI for purposes of this Agreement shall be zero percent (0%). In the event the “CPI” is no longer available or issued, then any adjustment for inflation will be two percent (2%).

“**Decommissioning**” shall have the meaning set forth in Section 11.1.

“**Decommissioning Amount**” shall have the meaning set forth in Section 11.6.

“**Decommissioning Notice**” shall have the meaning set forth in Section 11.3.

“**Decommissioning Security**” shall have the meaning set forth in Section 11.6.

“**Deficiency Notice**” shall have the meaning set forth in Section 10.3.

**“Detailed Noise Test”** shall have the meaning set forth in Section 8.1.

“**Effective Date**” shall have the meaning set forth in Section 3.1.

“**Evaluation Period”** shall have the meaning set forth in Section 10.3.

“**Extended Cure Period**” shall have the meaning set forth in Section 16.5.

“**FAA DNH**” shall have the meaning set forth in Section 10.6.

“**Fees**” shall have the meaning set forth in Section 18.1.

 “**Force Majeure**” shall have the meaning set forth in Section 20.12.

“**Foundation Certification**” shall have the meaning set forth in Section 10.3.

“**GHD**” shall mean GHD Consulting Services, Inc., an independent engineering firm with wind project experience.

 “**Host Fee**” shall have the meaning set forth in Section 4.2.

“**IDA**” means the Clinton County Industrial Development Agency.

“**Initial Noise Test**” shall have the meaning set forth in Section 8.1 and Exhibit “H”.

“**Interconnection Facilities**” shall have the meaning set forth in the recitals.

“**Lender**” shall have the meaning set forth in Section 20.9.

“**Lender’s Lien**” shall have the meaning set forth in Section 20.9.

“**Local Agency Account**” shall mean the account established by Executive Law §94-c and administered pursuant to 19 NYCRR §900-5.

 “**Losses**” shall have the meaning set forth in Section 13.2.

“**MW**” means Megawatt, a unit of power equal to one million watts.

“**Mechanical Completion Certificate**” shall have the meaning set forth in Section 10.4.

“**Mortgage**” shall have the meaning set forth in Section 16.5.

“**Mortgagee**” shall have the meaning set forth in Section 16.5.

“**Noise Complaint Screening**” shall have the meaning set forth in Section 8.1.

“**Noise Meter**” means an ANSI Type 2, 1/3 octave band analyzer or similarly sophisticated noise meter.

“**Noise Setback**” shall have the meaning set forth in Section 8.1.

“**Noise Test Escrow Account**” shall have the meaning set forth in Section 8.4.

“**Notice of Breach**” shall have the meaning set forth in Section 16.1.

“**Notice of Commencement of Construction**” shall have the meaning set forth in Section 4.1.

“**NYISO**” shall have the meaning set forth in Section 4.2.

“**On-Site Monitor**” shall have the meaning set forth in Section 9.1.

**“ORES”** shall mean the New York State Office of Renewable Energy Siting.

“**Parties**” shall mean the Company and the Town.

“**Payment Rate**” shall have the meaning set forth in Section 4.2.

“**PILOT Agreement**” shall have the meaning set forth in the recitals.

“**Pre-Construction Inspection Report**” shall have the meaning set forth in the recitals and Section 5.3.

“**Post-Construction Inspection Report**” shall have the meaning set forth in Section 5.6.

“**Project**” shall mean the Bull Run Energy Wind Farm described in the recitals, including all Interconnection Facilities and Ancillary Facilities.

“**Project Towns**” shall mean the towns hosting Project components.

“**Random Noise Testing**” shall have the meaning set forth in Section 8.1.

“**Repair Activities**” shall have the meaning set forth in Section 5.1.

“**Repair Estimate**” shall have the meaning set forth in Section 5.6.

“**Replenishment Amount**” shall have the meaning set forth in Section 8.4.

“**Restoration**” shall have the meaning set forth in Section 11.2.

“**Roads**” shall have the meaning set forth in the recitals.

“**Road Repair Escrow**” shall have the meaning set forth in Section 5.11.

“**Road Structures**” shall have the meaning set forth in the recitals.

 “**Scope of Services**” shall have the meaning set forth in Section 9.1, as further defined and limited by Exhibit “J”.

“**State**” means the State of New York.

“**Successor**” shall have the meaning set forth in Section 20.9.

“**Suspect Turbine**” shall have the meaning set forth in Exhibit “H”.

“**Temporary** **Certificate of Completion**” shall have the meaning set forth in Section 10.5.

“**Town**” shall mean the municipal corporation located in the Town of Ellenburg, County of Clinton, State of New York.

“**Town Board**” means the Town Board of the Town and/or the Alternative Energy Board of the Town.

“**Town CEO**” shall have the meaning set forth in Section 9.1.

“**Town Highway Superintendent**” means the Highway Superintendent of the Town.

“**Town Noise Consultant**” shall have the meaning set forth in Section 8.1.

 “**Town Supervisor**” means the Town Supervisor of the Town.

“**Turbine**” shall have the meaning set forth in the recitals and is sometimes referred to herein or in the Local Law as a WECS.

“**Validation Test**” shall have the meaning set forth in Section 8.1 and Exhibit “H”.

“**WECS**” means an individual wind energy conversion system or tower as such term is defined by the Local Law and is sometimes referred to herein as a Turbine.

“**Wind Farm Hotline**” shall have the meaning given it in Section 7.1.

# Article IIRepresentations and Warranties

## Section 2.1 Town Representations and Warranties.

The Town represents, warrants, and agrees as follows:

### a. Existence and Good Standing. The Town is a validly existing political subdivision of the State of New York.

### b. Approval and Authorization. The Town has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Town Board has duly authorized the execution and delivery of this Agreement and the Town’s performance of all of its duties and obligations contained herein, and this Agreement constitutes a valid and legally binding obligation of the Town, enforceable in accordance with its terms. A copy of the Town Board’s resolution approving this Agreement and authorizing its execution by the Town Supervisor (the “**Town Supervisor**”) is attached hereto as Exhibit “C”.

### c. Signatory. The Town represents and warrants that the Town Supervisor has executed this Agreement pursuant to a resolution adopted by the Town Board (Exhibit “C”), at a meeting thereof, and the Town Supervisor, whose signature appears hereafter, is both duly authorized and empowered to execute and enter into this Agreement on behalf of the Town.

### d. All Statements True. No statement, information, representation or warranty of the Town contained in this Agreement or furnished by or on behalf of the Town in connection with the transactions contemplated contains any untrue statements of a material fact or omits to state a material fact necessary in order to make a statement contained herein not misleading.

## Section 2.2 Company Representations and Warranties.

The Company represents, warrants, and agrees as follows:

### a. Existence and Good Standing. The Company is, and will continue to be, throughout the term hereof, validly existing as a limited liability company authorized to do business within the State of New York.

### b. Approval, Authorization and Enforcement. The Company has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Company is duly authorized to execute and deliver this Agreement and perform all of its duties and obligations contained herein.

### c. Signatory. The Company represents and warrants that its signatory, whose signature appears hereafter, is both duly authorized and empowered to execute and enter into this Agreement on behalf of the Company.

### d. All Statements True. No statement, information, representation or warranty of the Company contained in this Agreement or furnished by or on behalf of the Company in connection with the transactions contemplated contains any untrue statements of a material fact or omits to state a material fact necessary in order to make a statement contained herein not misleading.

# Article IIITerm

## Section 3.1 Effective Date

This Agreement will become effective (the “**Effective Date**”) upon the execution by the Company and the Town Supervisor of the Town of Clinton.

## Section 3.2 Term

The term of this Agreement shall commence with the Effective Date and expire upon completion of Decommissioning and Restoration for all Turbines comprising the portion of the Project located within the Town. Notwithstanding the foregoing, the Parties’ obligations to defend and indemnify each other as set forth in this Agreement and to maintain liability insurance will continue in full force and effect through Decommissioning and any obligations by a Party to defend and indemnify another Party shall survive termination of this Agreement for a period of six (6) years.

# Article IVHost Community Payments

## Section 4.1 Construction Period Payment

In consideration of impacts associated with construction of the Project, the Company shall make a one-time payment to the Town (the “**Construction Period Payment**”) in the amount of the product of six-hundred dollars ($600.00) times the total number of megawatts of nameplate generating capacity of the Turbines installed in the Town pursuant to the terms of the Siting Permit. The Company shall provide the Town written notice of its intent to commence construction of the Project (the “**Notice of Commencement of Construction**”) and such notice shall state the date upon which construction activities associated with the Project may commence (the “**Construction Commencement Date**”). The Construction Period Payment shall be due with the Notice of Commencement of Construction.

## Section 4.2 Annual Host Fee

### a. Payment Rate. The Company shall annually pay the Town a host community fee (the “**Host Fee**”) in an amount of $5,000 per MW, including any fractional share thereof, of nameplate rated capacity for each Turbine installed by the Company in the Town as part of the Project (the “**Payment Rate**”) for each year each such Turbine is not Decommissioned.

### b. Inflation Adjustment to Payment Rate. Starting with the sixth annual Host Fee payment, the Host Fee shall be adjusted annually for inflation by a rate equal to the lesser of: (a) two percent (2%), or (b) the CPI.

### c. Due Date. Host Fee payments shall be due on or before six (6) months after the Commercial Operation Date (as defined below) and shall thereafter be due on the anniversary of the first Host Fee payment. The date on which the Project becomes commercially operational, as evidenced by its notice to the New York Independent System Operator (“**NYISO**”), shall be referred to as the Commercial Operation Date (the “**Commercial Operation Date**”). Within fifteen (15) days after its notice to the NYISO, the Company shall provide notice to the Town of the Commercial Operation Date. For example, if the Commercial Operation Date occurs on October 15,2021, the first Host Fee payment shall be due on or before April 15, 2022.

## Section 4.3 Termination of Host Fee for Decommissioned Turbines

The Company shall pay an annual Host Fee in accordance with Section 4.2 hereof with respect to each Turbine installed by the Company in the Town as part of the Project until and including the calendar year in which such Turbine is Decommissioned.

## Section 4.4 Late Payment

Any Host Fee not paid as of the date due shall be deemed late without any requirement of notice from the Town. Late fees shall be assessed at a rate of two percent (2%) for the first month or a portion of a month due, and one percent (1%) for each subsequent month or a portion of a month on the original amount outstanding, until the Host Fee is paid; provided however, such amount shall not exceed the amount permitted by applicable law. Any penalty hereunder shall be due within ten (10) days of the Company’s receipt of written notice from the Town. Late payment of penalties shall be subject to the same penalties as late payment of fees. As and for security for the Host Fee, the Company shall grant to Town a security interest in the form of a UCC Filing. The cost of filing and perfecting the agreement shall be paid by Company.

## Section 4.4 NO Offset

### No payment due under this Agreement shall be offset against any other fee, payment, tax, or payment in-lieu of taxes due under any other agreement, even in the event that any federal, state, county or local law is enacted which would otherwise allow the Company to reduce or otherwise discontinue such payments.

## Section 4.5 CREDIT FOR TOWN TAXES FOLLOWING EXPIRATION OF PILOT AGREEMENT

 In each year following expiration of the term of the PILOT Agreement, and any extended term thereof, the Host Fee shall be adjusted such that in each such year the Total Payment to the Town in such year, consisting of: (a) the general fund and highway fund ad valorem taxes levied on the Project by the Town in such year and (b) the adjusted Host Fee for such year, is equal to the Total Payment paid per MW in the last prior year times 1.02. In the first year following expiration of the PILOT Agreement, the Total Payment shall equal the sum of the Town’s portion of the Company’s payment made pursuant to the PILOT Agreement payment in the final year of the PILOT Agreement plus the adjusted Host Fee in such year. For the purposes of the Section, the “Project” shall only include Turbines originally installed as part of the Project and maintained in accordance with commonly accepted business practices but shall not include re-powered Turbines.

## Section 4.6 USE OF REVENUES

Revenues generated by the Agreement may be used by the Town for any purposes allowed by law.

# Article VRoad Use and Repair

## Section 5.1 Access and Improvement

The Town hereby grants the Company and the Company’s contractors and subcontractors, and their respective employees, agents, permitted assigns, and contractors, a non-exclusive license to enter upon the Roads and Road Structures during the term of this Agreement for the purposes of (a) making investigations and inspections thereon, including, without limitation, investigations related to the load-bearing and structural characteristics of the Roads and the Road Structures, (b) reinforcing, modifying, improving, and/or expanding the Roads and the Road Structures as the Company deems necessary to support construction, operation, maintenance and decommissioning of the Project, including construction of improved turning radii for oversized vehicles within Road rights-of-way and access road improvements within Road rights-of-way, (c) transporting personnel, equipment, and materials to and over the Roads to support construction, operation, maintenance and decommissioning of the Project, and (d) repairing the Roads and the Road Structures to a condition at least as good or better as existed immediately prior to the Commencement of Construction of the Project, as established in the Pre-Construction Inspection Report (“**Repair Activities**”). No use or rights herein granted with respect to this Agreement shall create or vest in the Company any easement or any other ownership rights of any nature whatsoever in the Roads or Road Structures, nor does this Agreement grant rights to use any right-of-way or property owned by a private party.

## Section 5.2 Municipal Franchise in Roads, Road Permits and Curb Cuts

It is anticipated that power collection and transmission lines associated with the Project will need to be located above, below or within the Roads provided such location does not conflict with existing easements or utilities and that access roads constructed in connection with the Project will intersect the Roads. To the extent permitted by applicable law and approved by the Town Highway Superintendent, the Town hereby grants to the Company (a) all municipal franchises and/or road permits necessary to locate and operate Project facilities above, below or within Roads, and (b) all curb cuts necessary to connect Project access roads to Roads. A schedule of all Project facilities anticipated to require such municipal franchises, road permits, and curb cuts will be identified in Exhibit “E”. Exhibit “E” may be modified by the Company from time to time with the approval of the Town Highway Superintendent (the “**Town Highway Superintendent**”), which approval shall not be unreasonably withheld or delayed. Nothing in this Section shall grant rights to use any right-of-way or property owned by a private party.

## Section 5.3 Pre-Construction Inspection Report

The Company shall, at its sole cost and expense, retain an independent New York licensed professional civil engineer (the “**Company Civil Engineer**”) to prepare the Pre-Construction Inspection Report and to inspect the Roads and Road Structures, including performance of visual inspections, core testing, or other standard road evaluation practices, prior to the Commencement of Construction of the Project to determine whether the Roads, taking into account road surface, base, sub-base, cross-section, and shoulder, and Road Structures are in a condition sufficient to support the construction activities (the “**Pre-Construction Inspection Report**”). The Company Civil Engineer shall take videos and colored photographs for the Pre-Construction Inspection Report taken at a maximum interval of two hundred (200) feet, and at substantially lesser intervals in the vicinity of all access road intersections, to document the condition of all Roads and Road Structures that may be impacted by traffic relating to construction of the Project. The results of the Pre-Construction Inspection Report shall be set forth in a written report certified to the Town by the Company Civil Engineer, and such report shall be subject to the approval of the On-Site Monitor and the Town Highway Superintendent. The On-Site Monitor shall approve, approve with comments or exceptions, or disapprove the Pre-Construction Inspection Report within fourteen (14) days following receipt of same from the Company.

## Section 5.4 Design and Safety

Except to the extent that the Company may be responsible for safety of Roads and Road Structures during the Company’s performance of Repair Activities and temporary repairs as provided in Section 5.5, nothing herein shall give rise to liability or create responsibility on the part of the Company for the adequacy of Road and Road Structure design and Road and Road Structure safety in relation to construction, reinforcement, improvement, reconstruction, repair, and later use of Roads and Road Structures. The Company will prepare designs of planned Repair Activities or modifications for Roads and will meet with the Town Highway Superintendent and On-Site Monitor thirty (30) days prior to the Commencement of Construction to review the Roads listed in Exhibit “G”. The Town agrees that the Town Highway Superintendent, in consultation with the On-Site Monitor, will be responsible for approving such designs, and except as otherwise provided herein the Town shall have safety responsibility for improved, modified, reinforced, or repaired Roads and Road Structures following such approval, except as set forth herein. The Town Highway Superintendent, in consultation with the On-Site Monitor, shall approve, approve with comments or exceptions, or disapprove such designs within fourteen (14) days following receipt of same from the Company.

## Section 5.5 Temporary Repair Activities During Construction

During construction, the Company, at its sole expense shall perform all temporary repairs to Roads (including but not limited to: filling potholes, removing washboarding in dirt roads by grading, or other similar repair work.) To address damage to Roads caused by construction vehicles performing work on the Project that in the opinion of the Town Highway Superintendent or the On-Site Monitor (with reference to the condition of the Roads and Road Structures documented in the Pre-Construction Inspection Report), creates a safety concern, notice shall be provided by telephone to the Company followed by email from On-Site Monitor or Town Highway Superintendent. The Town Highway Superintendent may choose to erect temporary warning signs to address the concern. In the event of an immediate safety concern, repairs shall be performed within twenty-four (24) hours unless an agreement has been reached between the Company and the Town Highway Superintendent as to necessary course of action and timing of same. The On-Site Monitor shall meet with the Company on a weekly basis as needed to discuss any issues relating to Roads and Road Structures and any requested temporary repairs.

## Section 5.6 Repair activitIes

### a. Repair Standard. Following construction of the Project (but in no event later than twelve (12) months following installation of all Turbines), the Company shall repair the damage to the Roads and Road Structures caused by construction of the Project.

### b. Post-Construction Inspections. To determine what repairs are necessary, the Company shall, following the Company’s receipt of all certificates of completion (as defined below) in connection with the Project, conduct a post-construction inspection of the Roads, taking into account the pre-existing road surface, base, sub-base and shoulder, and Road Structures, to identify any damage done to them. The results of the post-construction inspection shall be set forth in a written report certified to the Town by the Company Civil Engineer and detailing items of damage separately from items of normal wear and tear (the “**Post-Construction Inspection Report**”), and such report shall be subject to approval of the On-Site Monitor. If the Post-Construction Inspection Report identifies damage to the Roads and Road Structures, measured against the condition established in the Pre-Construction Inspection Report and the inspection of the On-Site Monitor, such report shall include plans and designs of the activities the Company deems are appropriate to repair such damage, i.e., the Repair Activities. The Post-Construction Inspection Report shall also include an estimate of the cost to complete the Repair Activities (the “**Repair Estimate**”).

### c. Party to Perform Repairs. The Town shall have the option to select one of the following options: (i) have the Company perform the Repair Activities at the Company’s cost, or (ii) have the Company pay the Town a single lump sum payment equal to the Repair Estimate.

### d. Lump Sum Payment Terms. If the Town elects to receive a payment equal to the Repair Estimate, then within 30 days of receipt of such request, the Company shall pay the Town the Repair Amount. The Town Highway Superintendent can use the funds to perform the Repair Activities at his discretion and schedule, which may extend for more than 12 months. Upon payment of the lump sum to the Town, the Company will have no further obligation or liabilities related to the Repair Activities or conditions of the Roads, regardless of whether the Town elects to use the funds received to perform the Repair Activities.

### e. Certificate of Restoration. If the Town elects to have the Company perform the Repair Activities, then following performance of the Repair Activities, the Company shall provide the Town with the Company Civil Engineer’s certification (or the certification of the Company’s road contractor) of such repair as called for by the Post- Construction Inspection Report. The On-Site Monitor shall review such certification and Repair Activities. If the Town Highway Superintendent, in consultation with the On-Site Monitor, is satisfied in his reasonable discretion with such Repair Activities, the Town shall issue to the Company a Certificate of Restoration (“**Certificate of Restoration**”) within sixty (60) days following the On-Site Monitor’s receipt of the Repair Activities completion notice. Upon issuance by the Town of the Certificate of Restoration, the Company’s obligations with respect to repair of Roads and Road Structures shall be deemed to have been satisfied.

## Section 5.7 Use by Oversized Vehicles

The Company agrees that oversized vehicles, dump trucks, concrete trucks, and construction vehicles with a gross vehicle weight over 10,000 lb that are related to the Project (“Heavy Construction Vehicles”) shall be restricted to traveling on the Roads specified Exhibit “G”. Such haul routes may be modified or supplemented from time to time, in coordination with the Town Highway Superintendent. The Town waives all posted weight limitations and seasonal limitations on Road use for Project-related vehicles during construction of the Project and Company agrees to repair damages to the Roads caused by this use as specified in Section 5.6. In addition, the Company’s transportation activities on the Roads for Turbine components, main step-up transformers, and the substation control building module shall be conducted so as to minimize the effects on local transportation and in compliance with their individual haul permit for route and allowable hours. Nothing in this section shall permit the use of Roads at times inconsistent with the Local Law or any approved waiver thereof (i.e., delivery schedules will minimize delivery during periods of school bus activity). The Company shall be liable to the Town for any and all damages to Town Roads and Road Structures from any use of oversized vehicles off the Roads. In addition, Company agrees that it shall pay liquidated damages to Town in the amount of $1,000.00 dollars per occurrence in the event construction related oversized vehicles continue to travel off specified Roads. Said liquidated damages may be deducted from the Road Repair Escrow as contained in paragraph 5.11 of this agreement.

## Section 5.8 Operating, Maintaining and Decommissioning the Project

In the event operating, maintaining or decommissioning of the Project requires use by the Company of Heavy Construction Vehicles, prior to entry upon Roads with such vehicles the Company shall inspect the affected Roads, and document the condition of the affected Roads to the Town Highway Superintendent in a manner set forth in Section 5.3 hereof. In the event of subsequent damage caused by operating, maintaining or decommissioning of the Project (measured against the condition of the impacted Roads immediately prior to such use) the Company shall repair such damage in a manner consistent with Section 5.6 hereof. Neither transport for operating, maintaining or decommissioning activities that does not involve overweight loads, nor Road use by cranes facilitating operation, maintenance, or decommissioning of the Project, will be subject to this Section 5.8.

## Section 5.9 Road Construction Contractors

The Company may contract with bonded and insured third party contractors to perform work covered by this Agreement in relation to the Repair Activities. Nothing in this Agreement shall make the Company or said third party contractors, agents or employees of the Town.

## Section 5.10 Indemnity and Insurance

The Company’s indemnification and insurance obligations set forth in this Agreement shall cover all work performed by the Company and its agents, employees, and contractors pursuant to this Article. If the Town performs Repair Activities, the Company shall have no obligation relative to indemnity and insurance for the Town and the Town shall be responsible for its own insurance protection.

## Section 5.11 Road Repair Escrow

### a. If, in accordance with Section 5.6, the Town elects to have the Company perform the Road Repair Activities, then within thirty (30) days after the Town’s notification to the Company of such election, but in no case prior to the Commercial Operation Date, the Company shall deposit an amount equal to the product of $80,000.00 times the number of miles the Roads specified Exhibit “G” in an interest-bearing escrow account to be established for the benefit of the Town at a local banking institution (the “**Road Repair Escrow**”), with interest accruing to the Company’s benefit, to be used by the Town. The purpose of the Road Repair Escrow shall be to ensure funds are available for the Town to perform the Road Repair Activities in the event that the Company does not perform them.

### Before drawing funds from the Road Repair Escrow, the Town shall: (i) provide the Company written notification of the repairs the Town deems incomplete and the Town’s desire to have the Company perform them, (ii) allow the Company reasonable time to perform the repairs (with such time accounting for possible weather restrictions on repairs), and (iii) if the repairs are not completed in a reasonable time, providing the Company a written notice of its intent to draw funds, the amount of the funds to be drawn and the basis for this amount, and the date on which funds will be drawn, which shall be 30 days or more after the date of the notice of intent to draw funds.

### If a Town draw from the Road Repair Escrow exceeds the principal balance of the Road Repair Escrow, the Company shall have no obligation to (i) provide additional funding for or replenish such Road Repair Escrow, (ii) reimburse the Town for any such amounts, or (iii) perform any Repair Activities.

### Upon the later of (i) twelve (12) months after the Commercial Operation Date, or (ii) three (3) months after completion of the Road Repairs by the Company, the Road Repair Escrow shall be closed and any monies remaining therein shall be returned to the Company.

b. If, in accordance with Section 5.6, the Town elects to receive a lump sum payment, then no Road Repair Escrow shall be required.

## Section 5.12 Additional Road Use Requirements

### a. Haul routes will be established before use (current haul routes are identified on Exhibit “G”). Town Roads will not be used until surveyed and bonded (or repair reimbursement in place in accordance with Section 5.11 hereof).

### b. All Heavy Construction Vehicles must stay on Roads identified on Exhibit “G”. No short cuts on other Town Roads hauling in or out.

### c. Roads that are widened will need ditching plus culverts, or ditches cleaned where filled in so as to maintain proper drainage and in accordance with Sections 5.1 and 5.6 hereof.

### d. All shoulders that are damaged need to be fixed in accordance with Sections 5.1 and 5.6 hereof.

### e. Before any excess road building or other construction materials of any kind are offered to the public free of charge, the Town shall have first right to take what the Town needs for Town purposes free of charge, provided such materials are at road intersections or other locations easily accessed from public right of ways.

### f. Culvert pipe sizing will be performed by a qualified Registered Engineer hired by the Company. For any installation of culverts on Town Roads, the Town Highway Superintendent will be consulted for specifications, scheduling, sizing, placement, and any other concerns he may have affecting the temporary or permanent installation of culvert pipes associated with Town Roads.

### g. Proper signs need to be in place during construction. Proper signs include those notifying road users of areas where construction may affect normal road use by the public.

### h. Reserved

### i. During construction, all Roads must be fixed to the extent required by Section 5.5 hereof. Black topped roads need to be fixed with black top. Pot holes or any problems on dirt and seasonal roads need to be fixed in kind to the extent required by Section 5.5 hereof.

### j. Reserved

### k. Reserved

### l. Permanent entrances on each access road on blacktopped roads must be blacktopped eighteen (18) feet from the edge of the Road, unless land owner specifies a lesser extent.

### m. There shall not be Road closures for the benefit of the Project without the consent of the Town. Any requests for Road closures for the benefit of the Project shall be communicated to the On-Site Monitor. In the event a Road closure is authorized by the Town, it shall be communicated and coordinated by the Company or its agent with the Town Highway Superintendent, the County Emergency Personnel as well as coordinated with the authority having jurisdiction for that Road.

# Article VICompliance With Law

## Section 6.1 Compliance with Laws

The Company agrees that the Project shall be constructed and operated in compliance with all applicable State and federal laws, rules, and regulations, and in compliance with all applicable permits and other authorizations issued by the Town and ORES.

# Article VIIComplaint Management Program

## Section 7.1 Wind Farm Hotline

### a. Establishment and Maintenance. The Company shall implement the complaint resolution procedure see Exhibit “N”. At least one (1) week before the Construction Commencement Date, the Company will establish a local wind farm hotline telephone number (the “**Wind Farm Hotline**”) which will be in operation and accessible on a 24 hours a day, 7 days a week basis (except for telephone outages and other circumstances beyond the Company’s control) for the receipt of citizen complaints regarding Project construction and operations, including, but not limited to noise, traffic and other issues. The Wind Farm Hotline shall be maintained by the Company until three (3) months following the Commercial Operation Date.

### b. Publication and Posting. The Wind Farm Hotline telephone number will be (i) posted by the Town where Town notices are normally posted, and (ii) posted by the Company on the Project’s website.

## Section 7.2 Complaint Log

All complaints received by the Company on the Wind Farm Hotline will be recorded in a complaint log, showing the date and time of the complaint, the name of the complainant and telephone and address, if furnished, location, nature and duration of the circumstances giving rise to the complaint and other supporting details. The Company will also record in the complaint log, the details of its investigation and its findings, including whether any mitigation or corrective measures are planned and/or were undertaken as a result of the complaint.

## Section 7.3 Investigation of Complaints

The Company will timely investigate the complaint and determine the appropriate response, if any, to address and mitigate, where necessary and appropriate, the conditions giving rise to the complaint. The Company will implement reasonable corrective measures to eliminate or mitigate the conditions giving rise to the complaint, if such condition is the result of non-compliance with the Local Law or Siting Permit.

## Section 7.4 Reporting

In any month during which a complaint is received by the Company by way of the Wind Farm Hotline, the Company will provide a copy of the complaint log to the Town Supervisor, including the results of investigative activities and the ultimate resolution of the complaint.

# Article VIIIPOST-CONSTRUCTION NOISE MONITORING PROGRAM and NOISE TESTING

## Section 8.1 Noise Monitoring Program

The Parties recognize that the Turbines constructed by the Company are subject to noise limitations by the Siting Permit. The Company shall conduct such testing as required by the Siting Permit and as required to show compliance with the Siting Permit. The Company agrees to fund an escrow account in accordance with terms set forth herein to fund post-construction noise testing. The post-construction noise testing shall be conducted as follows.

### a. Purpose. The purpose of noise testing shall be to demonstrate compliance with the terms and conditions of the Siting Permit and/or any permits, licenses or other permissions issued to the Company (the “Permits”), and to evaluate any complaints received by the Town regarding noise emanating from the Project.

### b. Noise Setback. The Permits may establish a distance from each Turbine at which the noise emanating from such Turbine must be equal to or below a certain decibel level (a “**Noise Setback**”). If the Permits do not include such a criterion, the Parties hereby agree that it shall be a one-hour L10 of 50 dBA or less measured at the exterior of a non-participating residence.

### c. Noise Testing. Following the Commercial Operation Date, on a periodic basis, the Town may conduct tests of the Company’s compliance with Noise Setbacks (“**Noise Testing**”).

### d. Noise Setback Testing in Response to a Complaint. Following the Commercial Operation Date, in the event the Town receives a complaint from a Town resident regarding alleged non-compliance of the Project with a Noise Setback, the Town may investigate such complaint using a Noise Meter at its own cost and expense (“**Noise Complaint Screening**”) (each Noise Complaint Screening and Noise Testing shall be referred to as an “**Initial Noise Test**”).

### e. Noise Testing Plan. Noise Testing and Noise Complaint Screening shall be performed in accordance with the noise testing plan attached hereto as Exhibit “H”.

### f. Validation Test. If an Initial Noise Test indicates non-compliance with the terms and conditions of an applicable Permit, the Town shall repeat the noise test on another date at its own cost and expense (the “**Validation Test**”). A Company representative must be present during any Validation Test. The Town shall notify and coordinate with the Company regarding the performance of any Validation Test.

### g. Town Noise Consultant. If a Validation Test performed in accordance with the noise testing plan set forth in Exhibit “H” indicates that the Project is not in compliance with a Noise Setback, the Town may engage a qualified independent third-party acoustical measurement consultant (“**Town Noise Consultant**”) using funds from the Noise Test Escrow Account to conduct a detailed noise test pursuant to the protocol attached hereto as Exhibit “I” (“**Detailed Noise Test**”).

### h. Reports of Town Noise Consultant. Any report generated by the Town Noise Consultant shall be provided to the Company at the same time any such report is provided to the Town.

## Section 8.2 Compliance With Noise Setbacks

In any case where a Noise Setback is tested and found to be in compliance, for a period of at least three (3) years from the date of the result of such test, the Company (a) shall be deemed to be in compliance with such Noise Setback, and (b) shall not be responsible for the costs of any additional testing by the Town in response to complaints about the same Noise Setback and involved Turbine during such period.

## Section 8.3 Non-Compliance With Noise Setbacks

If, as a result of a Detailed Noise Test, the Town Noise Consultant determines that a Turbine is in violation of a Noise Setback, the Town shall issue to the Company a written notice to cure any deficiency. The Company shall have fifteen (15) days after receiving such written notice to provide the Town with a written response with the Company’s plan to address such deficiency, and ninety (90) days after receiving such written notice to cure any deficiency. The Company may request that the Town perform a second Detailed Noise Test using funds from the Noise Test Escrow Account, and, if the Company so requests, the Company may also request an extension of the ninety (90) day period for up to a total one hundred eighty (180) days prior to performance of the second Detailed Noise Test, which extension shall be granted by the Town Board in its reasonable discretion, but the total cure period may not exceed one hundred eighty (180) days. The failure of the Company to cure any defect within ninety (90) days, or one hundred eighty (180) days if an extension is granted, shall be considered a breach of this Agreement.

## Section 8.4 Noise Test Escrow Account

Unless the Amended and Restated Escrow Agreement provides funds to cover the expenses incurred by the Town in implementing Article 8, the following shall apply.

### a. Initial Deposit. Within thirty (30) days after the Commercial Operation Date, the Company shall deposit $10,500 in an interest-bearing escrow account to be established by the Town at a local banking institution (the “**Noise Test Escrow Account**”), with interest accruing to the Company’s benefit. The Noise Test Escrow Account is to be used for the expenses associated with the retention of the Town Noise Consultant retained pursuant to Section 8.1(g), but not for expenses associated with any Initial Noise Test or Validation Test.

### b. Maintenance of Account and Return of Account Balance. The Parties agree that the principal balance of the Initial Noise Test Escrow Account shall be maintained for the entire term of this Agreement. Upon the termination or expiration of this Agreement, the Town shall promptly return to the Company any monies remaining in the Noise Test Escrow Account.

### c. Withdrawals. At any time during the term hereof, the Town may withdraw from the Noise Test Escrow Account any amounts necessary to reimburse the Town Noise Consultant for Detailed Noise Test activities, but not for Initial Noise Test or Validation Test activities.

### d. Replenishment of Account. The Town shall inform the Company, of the cost of any testing performed by the Town Noise Consultant (the “**Replenishment Amount**”). The Company shall pay into the Noise Test Escrow Account the Replenishment Amount within thirty (30) days of its receipt of written notice of such amount.

### e. Annual Statements. The Town shall provide annual Noise Test Escrow Account statements to the Company, together with an itemized accounting of monies disbursed from the Noise Test Escrow Account, if applicable.

### f. Disputes. In the event the Company disputes or objects to any item set forth in the annual accounting, the Company shall identify the disputed item and the basis for the dispute, in writing, within thirty (30) days of the receipt of such accounting. The Company and the Town agree to communicate expeditiously and in good faith with each other to resolve any such billing dispute as promptly as possible. In the event the Parties are unable to resolve their dispute, the Parties shall proceed with mediation in accordance with Section 14.1 hereof.

# Article IXOn-Site Monitor, MONITORING AND REPORTING REQUIREMENTS

## Section 9.1 On-Site Monitor

The Town will engage the services of a qualified independent engineer or engineering firm (the “**On-Site Monitor**”) who shall be responsible for: (a) review of the Company’s applications, (b) recommending issuance of building permits to the Company, (c) assisting the Town codes enforcement officer (“**Town CEO**”) and/or any of the representatives of the Town with oversight of the Company’s compliance with the Siting Permit, any permits, applicable Town codes, approved Project plans, and Town conditions, (d) recommending issuance of Certificates of Completion and Temporary Certificates of Completion, (e) assisting the Town Highway Superintendent with Roads and Road Structures and Repair Activities review and (f) such other and further activities as the Town may reasonably request in order to insure compliance with terms of this agreement, the permits, licenses and other authorizations (collectively, the “**Scope of Services**”). The Company agrees to reimburse the Town for all costs and expense of the On-Site Monitor in accordance with Section 18.1 hereof. In addition, while the Project is under construction and until all restoration work is complete, the Company agrees to provide on-site office space for the On-Site Monitor at Company’s expense.

## Section 9.2 Town Engagement of On-Site Monitor

The Town has engaged GHD to serve as the On-Site Monitor for the Project. The Company has no objection to the Town’s engagement of GHD, provided GHD has sufficient personnel to appropriately staff its responsibilities as On-Site Monitor and employees engaged on the Project are subject to approval by the Company. Such selected firm must be a qualified independent engineering firm with wind farm and road construction experience. The Company agrees to reimburse the Town for all costs and expense of the On-Site Monitor in accordance with Section 18.1 hereof.

## Section 9.3 Reports

The On-Site Monitor shall provide copies of his or her reports to Town Supervisor, Town Highway Superintendent, Town CEO, Town Board, Town Alternative Energy Board, or other Town representative. Provided any action is taken by the Town as a result of an On-Site Monitor report, the On-Site Monitor shall provide copies of such report to the Company. Such disclosure shall not include any materials prepared for litigation subject to the Attorney-Client privilege. To the extent the Company disputes the findings of any reports of the On-Site Monitor, such disputes shall be resolved pursuant to the processes set forth in Sections 5.6(c) and 10.6 hereof, and to the extent disputes remain, pursuant to Article XIV.

## Section 9.4 Emergency Notifications

In the event of an emergency which requires the Company to notify ORES, the New York State Department of Environmental Conservation, the New York State Department of Health, the Clinton County Department of Health or any federal, county or local emergency service or agency, the Company will immediately thereafter notify the Town Supervisor and the Chairman of the Alternative Energy Board of the circumstances and events requiring the initial reporting to the previously-referenced entities. All written reports and documents regarding such notifications will be made available to the Alternative Energy Board and the Town Board, along with any responses or further written directions received from the entities to which the Company initially reported.

# Article XCertificates, CONSTRUCTION OVERSIGHT, AND CERTIFICATES OF COMPLETION

## Section 10.1 On-Site Monitor and Construction Oversight

In conformity with the Scope of Services, the On-Site Monitor, working with the Town CEO, and/or the Town Highway Superintendent, as the case may be, shall be responsible for the Town’s (a) review of the Company’s applications, (b) issuance of licenses and permits to the Company, (c) oversight of the Company’s compliance with permits, the Siting Permit, applicable Town codes, approved Project plans, and Permit conditions, (d) issuance to the Company of Certificates of Completion, and (e) issuance to the Company of Temporary Certificates of Completion.

## Section 10.2 Prompt Review and Issuance of Permits

The Town will review the Company’s permit applications and issue building permits within ten (10) days of the Company’s submission of an application.

## Section 10.3 Completion Notice and Evaluation Period

When the Company has completed installation of a foundation associated with a Turbine in accordance with all applicable Town codes, it shall submit a certification from an independent engineer regarding such compliance (a “**Foundation Certification**”) which certification shall certify to the Town that it has done so and request that a Town Certificate of Completion be issued (together with the Foundation Certification, the “**Completion Notice**”). The Town will by the end of the fifth (5th) business day following its receipt of a Completion Notice (the “**Evaluation Period**”) issue either a Certificate of Completion or a Temporary Certificate of Completion as outlined in Sections 10.4 and 10.5 hereof or a notice of deficiency. If the Town does not issue a Certificate of Completion or a Temporary Certificate of Completion for any Turbine foundation for which a Completion Notice was provided to the Town, the Town shall deliver to the Company a written list of all alleged deficiencies for any such Turbine foundation (“**Deficiency Notice**”) by the expiration of the Evaluation Period. If the Company agrees with the Deficiency Notice (in part or in whole), it shall address the identified deficiencies it agrees with and deliver a new Completion Notice to the Town. To the extent of any Company disagreement with respect to items covered by a Deficiency Notice, the procedures of Section 10.7 shall apply.

## Section 10.4 Certificate of Completion

In the event the Town finds that a Turbine foundation has been constructed in accordance with the applicable Town codes, approved Project plans, and Town Permit conditions, the Town will issue to the Company a Certificate of Completion confirming that the Turbine foundation has been constructed in accordance with the applicable codes and permit conditions (a “**Certificate of Completion**”). The Town agrees that the scope of its review is limited to construction of Turbine foundations and does not extend to erection, installation, or assembly of Turbines, Turbine components, or Turbine towers, provided the Company presents to the Town a certification of an independent engineer, at the Company’s sole cost and expense, that such erection, installation, and assembly were performed to the specifications of the Turbine manufacturer (the “**Mechanical Completion Certificate**”).

## Section 10.5 Temporary Certificate of Completion

### a. If during the Evaluation Period the Town determines that a Turbine foundation has been constructed in accordance with the applicable Town codes, approved Project plans, and Town Permit conditions, except for certain outstanding conditions such as landscaping, restoration, or other items that cannot be completed due to weather or similar reasons, the Town will issue to the Company a temporary certificate of completion confirming that the Turbine foundation has been constructed in accordance with the applicable codes and permit conditions (a “**Temporary Certificate of Completion**”). A Temporary Certificate of Completion may be issued by the Town for a six-month period and renewed by the Town Board for up to six months at a time, as long as efforts are being made to complete compliance with all conditions.

### b. When the Company has satisfied all outstanding conditions in accordance with the applicable Town codes, approved Project plans, and Town Permit conditions relative to a Turbine foundation for which the Town has issued a Temporary Certificate of Completion, the Company shall submit a Completion Notice to the Town. In the event the Town finds that the Company has satisfied such conditions, the Town will issue to the Company, within seven (7) days of its receipt of the Completion Notice, a Certificate of Completion confirming that the involved Turbine foundation has been constructed in accordance with the applicable codes and permit conditions.

## Section 10.6 Commercial Operation

No power shall be sold from any Turbine for commercial purposes except in the context of construction-period testing, until a Certificate of Completion or a Temporary Certificate of Completion has been issued by the Town for that Turbine foundation; *provided*, *however*, that power may be generated and sold from any Turbine for which (a) the Evaluation Period has expired and the Town has not issued a Certificate of Completion, a Temporary Certificate of Completion, or Deficiency Notice, (b) the Town has issued a Deficiency Notice that the Company agrees with, and the Company has addressed the deficiencies and delivered a new Notice of Completion to the Town, or (c) the Town has issued a Deficiency Notice and the Company disputes some or all of the Deficiency Notice by written notice to the Town (in which case power may be sold until the independent engineer completes its analysis pursuant to Section 10.7 hereof as to any disputed items). Notwithstanding anything to the contrary in this Agreement, the Company may operate and sell power for commercial purposes from any Turbine if the Company has provided the Town and/or the On-Site Monitor copies of or access to the following documents for such Turbine: (a) United States Federal Aviation Administration Determination of No Hazard (“**FAA DNH**”), (b) Foundation Certification, and (c) Mechanical Completion Certificate, and (d) a statement documenting that the Company has completed the turbine manufacturer’s commissioning procedure for the Turbine (“**Commissioning Completion Certificate**”).

## Section 10.7 Denial of Permits or Disputes Regarding Certificates of Completion

### a. If the Company and the On-Site Monitor do not agree that either a Certificate of Completion or Temporary Certificate of Completion should be issued for a Turbine foundation, at the Company’s election the Company and the Town shall engage a third party independent engineer with wind project experience to review the Company’s Completion Notice pursuant to Section 10.3 and inspect the Turbine foundation(s) in question. The cost of the independent engineer shall be borne by the Company. The independent engineer shall have seven (7) days to complete its analysis. If the independent engineer is satisfied with the completeness of the Turbine foundation installation, the Town shall immediately issue a Certificate of Completion. If the independent engineer is not satisfied with the completeness of the installation, the Town shall either issue a Temporary Certificate of Completion or the Company shall cure the indicated deficiencies as required by the independent engineer as quickly as reasonably practicable.

### b. Any denial or approval with conditions of a building permit, Certificate of Completion or a Temporary Certificate of Completion, shall be in writing and shall be issued prior to expiration of the Evaluation Period. The Company will have up to thirty (30) days to cure the indicated deficiency, and upon effecting the cure must submit a Completion Notice to the Town pursuant to Section 10.3, following which the Evaluation Period will begin. Notwithstanding any remedy otherwise available, the Parties agree that the denial or approval with conditions of a building permit, Certificate of Completion or a Temporary Certificate of Completion, may be appealed to the Alternative Energy Board, which shall issue a final determination of the appeal within thirty (30) days from the application of appeal, and if the Alternative Energy Board upholds the denial or approval with conditions the Company finds unacceptable, the Company will have satisfied its administrative remedies and may commence an Article 78 proceeding against the Town to review such denial or approval action.

### c. The Parties acknowledge the issuance of a building permit, Certificate of Completion or a Temporary Certificate of Completion is a government function, and this Section is intended to agree upon a dispute resolution procedure, but in no way waives the rights of any Party under law.

## Section 10.8 Limitation of Section

Nothing in this Article shall be read as making the On-Site Monitor the engineer for the Company or the engineer of record for the Project, nor in anyway limit the Company’s obligation under New York law to use a licensed engineer where required.

# Article XIDecommissioning Plan

## Section 11.1 Decommissioning

The Parties acknowledge that Turbines may, from time to time, need to be decommissioned and removed from the Project, either at the Company’s discretion for any reason, for replacement of Turbines, at the end of their useful lives, or following damage (“**Decommissioning**”). All Decommissioning work shall be governed by the Decommissioning Plan attached hereto as Exhibit “K”, which includes special conditions for agricultural land.

## Section 11.2 Restoration and Standard of Decommissioning

Decommissioning shall also involve site restoration activities (“**Restoration**”) to include removal of all footings, concrete pads, anchors, guy wires, fences, towers, access roads and other fixtures (with such removal to a depth of at least four (4) feet underground, covering or filling of all holes, trenches and other excavations made by the Company, replacement of any topsoil that was removed during construction of wind monitoring equipment and Turbines, and re-seeding of impacted areas with native grasses, unless the underlying landowner requests in writing that the access roads or other land surface areas not be restored. In all cases, disturbed areas shall be stabilized. The Company’s standards of Decommissioning and Restoration are outlined in more detail in the Decommissioning Plan attached hereto as Exhibit “K”, which includes special condition for agricultural land.

## Section 11.3 Voluntary Decommissioning

If the Company determines to decommission a Turbine, it shall so notify the Town Supervisor in writing (a “**Decommissioning Notice**”). The Turbine shall stop generating electricity as of the date stated in the Decommissioning Notice.

## Section 11.4 Failure to Perform Decommissioning and Restoration

In the event the Company fails to perform necessary Decommissioning activities and the Town has to carry out such Decommissioning activities in accordance with the terms herewith, the Company hereby acknowledges, agrees and authorizes in such incidences that it will use its commercially reasonable efforts to ensure the Town has the necessary access rights to carry out such Decommissioning, including granting the Town the right to use the Company’s easements and access rights to carry out any Decommissioning the Town has a right to conduct; *provided*, *however*, that the Town’s rights as granted herein shall be concurrent with and derived from the Company’s rights set forth in, and shall be subject to the terms of, the agreements originally granting the Company such easement or access rights. The Company, to the extent permitted, will not allow its access rights or easements to any particular facility to expire until Decommissioning and Restoration of the site have been completed. The Company certifies that it has access through and by easements over access roads to the Turbine locations, and in such cases described in and to carry out the purposes of this Section, the Company agrees to provide the Town with copies of easements in order to carry out Decommissioning Activities.

## Section 11.5 Expense of DecommissioninG

In the event the Town has to carry out Decommissioning activities, it shall be entitled to draw on the Decommissioning Security posted by the Company for expenses reasonably incurred by the Town in connection with Decommissioning, net of any salvage value for a decommissioned Turbine.

## Section 11.6 Decommissioning Security

### a. Establishment of Decommissioning Security. On or before the Commercial Operation Date, the Company shall provide to the Town financial security (the “**Decommissioning Security**”) in an amount equal to the product of (a) the amount established in Exhibit “K” per Turbine and (b) the number of Turbines in the Project in the Town (the “**Decommissioning Amount**”).

### b. Form of Decommissioning Security. The Decommissioning Security shall be in the form of an irrevocable letter of credit, cash deposit governed by an escrow agreement, a surety bond, or other form of security, with the type of security determined by the Company and the form of the instrument subject to the reasonable approval of the Town.

### c. Use of Decommissioning Security. The Town shall have immediate and unrestricted access to the Decommissioning Security for the purpose of carrying out and completing Decommissioning whenever the Company fails to do so as required by this Agreement. The Town is to be the named and intended beneficiary of the security.

### d. Adjustment to Decommissioning Amount. The Decommissioning Amount shall be recalculated by the Parties every five (5) years during the first twenty (20) years of the term hereof and every two (2) years following such period, with the first recalculation occurring on the fifth anniversary of the Commercial Operation Date or date that power is first sold which ever occur first. The Company shall reimburse the Town for the cost of such recalculation. If the Decommissioning Amount decreases, the Company may provide replacement Decommissioning Security in such lower amount, and if the Decommissioning Amount increases, then within thirty days of receiving the revised Decommissioning Amount, the Company shall provide Decommissioning Security in such higher amount. If the Parties do not agree on the recalculated Decommissioning Amount, the Parties shall resolve the dispute pursuant to the dispute resolution procedure set forth in Section 14.1, but, to the extent a surety bond is employed with an expiration date, any additional or replacement Decommissioning Security shall not expire for at least two (2) years after the date on which the Company submits a written statement that it does not agree with the revised amount.

### e. Expiration. The Decommissioning Security shall not expire for at least two (2) months after the end of the year for which it is provided. The Company shall provide replacement Decommissioning Security as necessary to meet this requirement, and the failure to do so shall be a breach of this Agreement. Upon such breach, the Town may secure replacement Decommissioning Security and all costs associated with such replacement shall be the sole responsibility of the Company.

### f. Bankruptcy. The Decommissioning Security and any escrow account established by this Agreement shall not be subject to disclaimer or rejection in a bankruptcy proceeding.

# Article XIIFire Protection Control, Security, and Safety

## Section 12.1 Quarterly Meetings With PUBLIC SAFETY OFFICIALS

The Company will meet, on a quarterly basis, or as mutually agreed otherwise by the Parties, with the fire chief of each fire district in which Turbines are located and appropriate EMS staff, to review current access, fire suppression, water supply placement, training needs, and other related issues. The initial meeting with the fire district will take place within ninety (90) days of the Effective Date.

## Section 12.2 Fire Protection Plan

Within ninety (90) days after the initial meeting with the fire chief, the Company will submit to the fire chief and to the Town a fire protection plan which identifies and addresses any reasonable and necessary concerns raised by the fire chief. If necessary, such plan shall be updated within thirty (30) days after each subsequent meeting. The Company must take commercially reasonable steps to mitigate any reasonable and necessary concerns raised by a fire chief.

## Section 12.3 Security

Company shall take reasonable steps to ensure that all construction sites associated with the Project remain secure from trespassing members of the public during both the Construction Phase and during Commercial Operation. The Company shall maintain locks on doors to Turbines starting when they are first assembled during construction and continuing through operation. It shall also lock gates to the construction laydown yard and electrical yards during off-work hours. In the event a site is found in an unsafe or unsecure condition which poses a threat to public safety, the Town shall notify the Company of such condition. If the Company does not appropriately remedy the situation, the Town may take such reasonable and necessary steps, at Company’s expense, to cure any such condition.

# article XIIILiability Coverage and Indemnification

## Section 13.1 Insurance

The Company will maintain insurance for claims arising out of injury to persons or property, relative to either sudden and accidental occurrences or non-sudden and accidental occurrences, resulting from operation of the Project. The Company shall maintain or cause to be maintained insurance against such risks and for such amounts (but not less than $5,000,000) as are customarily insured against by businesses of like size and type. The Town shall be named as an additional insured to the extent of the liabilities assumed under this Agreement by the Company and only up to the minimum required insurance limit of $5,000,000. The Company will provide proof of such insurance in the form of a certificate of insurance or proof of self-insurance upon request of the Town.

## Section 13.2 Indemnification of Town

### a. Indemnification. Except to the extent caused by the, gross negligence, illegal or willful misconduct of the Town or its officers, agents, employees or subcontractors, and except with respect to special or consequential damages, the Company agrees that it will indemnify and hold harmless the Town and its officers and employees from and against any and all liability, actions, damages, claims, demands, judgments, losses, cost, reasonable expenses and fees, including reasonable attorneys’ fees (collectively, “**Losses**”), to the extent such relates to injury or death to persons or for loss or damage to property, and will defend the Town and its officers and employees in any court action, administrative proceeding or appeal in connection with such Losses, whether or not finally adjudicated and including any settlement thereof, provided such Losses result from or arise out of any act, omission, negligence or other fault of the Company or its officers, agents or employees; and further provided such Losses arise out of or occur in connection with this Agreement or the construction and operation of the Project. In the event a claim, action, demand, suit or proceeding is instituted against the Town by any third party for a money judgment only, pursuant to which the Town is entitled to be indemnified hereunder, the Town shall immediately notify the Company in writing and contemporaneously provide the Company with a copy of the written documents presented by such third party. Nothing herein shall obligate the Company to indemnify, hold harmless and defend the Town and its officers and employees in connection with any litigation commenced against the Town and/or its officers or employees by reason of the Town’s entering into this Agreement, including but not limited to any litigation commenced against the Town or any improvement district therein, by any entity relating to the payments to be made by the Company to the Town hereunder.

### b. Hold Harmless and Defense Against Actions Concerning the Project or Town Permits. Without limiting the foregoing, in the event a claim, action, demand, suit or proceeding is instituted against the Town by any third party challenging the exercise of the Town’s municipal powers or obligations in connection with the Project or the Town’s issuance of Town Permits, pursuant to which the Town is entitled to be indemnified hereunder, the Town shall immediately notify the Company in writing and contemporaneously provide the Company with a copy of such written documents presented by such third party.

### c. Right to Control Defense. The Company will have the right to control the defense of any such actions or claims indemnified and will have the right to settle such actions or claims on such terms as it may deem reasonable so long as such defense and/or settlement are approved, not be unreasonably withheld, by the Town and the Company releases and indemnifies the Town. The Town shall be entitled to its own counsel in defense of such action.

### d. Exclusion. Notwithstanding anything in this Agreement to the contrary, the Company shall have no obligation to indemnify the Town for costs and fees associated with any action, demand, suit or proceeding initiated by the Town against the Company or in which the Town takes a position against the Project or in opposition to this Agreement.

## Section 13.3 Indemnification of Company

The Town shall indemnify, hold harmless and defend the Company and its owners, affiliates, officers, directors, employees, subcontractors, successors and assigns, and agents from and against any and all Losses, arising out of or incurred as a result and to the extent of: (a) the acts or omissions or willful misconduct of the Town, (b) willful breach of any obligation, covenant or undertaking of the Town contained herein, or (c) any misrepresentation or breach of warranty on the part of the Town pursuant to this Agreement, except to the extent caused by the gross negligence, illegal or willful misconduct of the Company or its officers, agents, employees or subcontractors, and except with respect to special or consequential damages.

## Section 13.4 Cooperation in Defense Against Litigation

Should any third party bring a federal or state suit or proceeding, including a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules regarding the Project or the Town Permits, the Company and the Town shall cooperate in the defense of said action. The Town shall have the right to select its counsel, but the Company shall have the right to control the defense against such action, to the extent permitted by Section 13.2(c) hereof. The Company shall be responsible for reasonable legal fees and costs.

# Article XIVDispute Resolution

## Section 14.1 Dispute Resolution

Except for disputes resolutions outlined specifically in other sections of this Agreement, in the event of a dispute concerning compliance with this Agreement, the Company and the Town agree that they will engage in alternative dispute resolution in the form of non-binding mediation with a mutually agreed mediator. The Parties recognize that certain disputes are not amenable to mediation. In the event that a Party determines to proceed with resolution of the dispute through judicial litigation, this agreement to submit disputes to mediation will not be used against any Party in the judicial forum. In the event the dispute concerns the Host Fee payment amount owed, the Company shall pay the Town the Host Fee amount not in dispute and shall deposit the disputed amount with an escrow agent mutually agreeable to both Parties, pending the outcome of the alternative dispute resolution.

# Article XVSiting Permit ConDitions

## Section 15.1 Siting Permit Conditions

The Parties recognize ORES’s role in wind power siting, monitoring, and control, and any requirement or condition of the Siting Permit that is in conflict with this Agreement shall prevail. The Parties agree that they will work cooperatively, using best efforts, to insure the following conditions shall be incorporated in the Siting Permit:

### a. Hours of operation during the construction period shall be between the hours of 7:00 a.m. and 8:00 p.m., except upon approval by the Town’s On-Site Monitor, CEO or Supervisor.

### b. Company shall take all necessary and reasonable steps to avoid conflicts with school bus traffic during times schools are in session.

### c. Company shall take reasonable steps to hire qualified local labor at fair market rates for project positions both during construction and operation of the facilities. Company shall advertise for positions locally.

### d. Company and Town recognize the importance of farming to the Town and its residents and shall take reasonable and prudent steps to ensure that all setbacks are established to provide for maximum productivity and comfort to farm operations with the Town and in accordance with current NY Ag & Markets Guidelines for Wind Power Projects.

# Article XVIBreach and Remedies

## SeCtion 16.1 Notice of Breach

Except in those circumstances in which public safety is jeopardized, in any case where a Party breaches this Agreement, a non-breaching Party shall provide written notice to the breaching Party within ten (10) days of such breach (“**Notice of Breach**”). Each monetary Notice of Breach given by the Town to the Company or any Mortgagee will state the amounts, to the extent known, of any payments herein provided that are then claimed to be in Default.

## Section 16.2 Company Right to Cure

The Company shall have the right to cure any breach and must cure such breach within ninety (90) days of its receipt of a Notice of Breach, unless such breach is not capable of cure within ninety (90) days, in which event the Companymay request an extension of the ninety (90) day period for up to a total one hundred eighty (180) days, which extension shall be granted by the Town Board. In the event the breach continues to remain uncured, the time may be enlarged by the Town to the lesser of the: (a) extension period allowed by the Local Law, or (b) a time period established by the Town Board.

## Section 16.3 Remedies Cumulative

No remedy herein conferred upon or reserved to the Town is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any breach shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## Section 16.4 Town Breach and Right to Cure

The Town shall cure all breaches within forty-five (45) days of its receipt of the notice unless such breach is not capable of cure within forty-five (45) days, in which event the Company shall give the Town an additional sixty (60) days to cure provided the Town has commenced a cure and proceeded diligently to affect such cure. If the Town fails to cure such breach within the time allowed, the Company’s payment obligations under this Agreement shall be deposited in escrow, with such escrow broken and such escrowed payments paid to the Town within ten (10) days after such breach is cured.

## Section 16.5 Mortgagee Right to Cure

The Town agrees, notwithstanding any other provision herein, whenever any breach hereof shall have occurred and be continuing with respect to this Agreement, the Mortgagees (as defined below) shall have the same right as the Company to cure any such breach as set forth below.

### a. Mortgagee. For the purposes of this Agreement, the terms “**Mortgage**” or “**Mortgages**” shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments secured by the Project and used in the jurisdiction in which the Project is located, such as, without limitation, mortgages, deeds of trust, financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a lender may require, and the term “**Mortgagee**” shall mean the secured party under any of the foregoing instruments. With respect to any such Mortgage, so long as such Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Mortgagee to the Town, the following provisions shall apply.

### b. Service of Notices on Mortgagee. The Town shall simultaneously serve a copy of any Notice of Breach upon the Mortgagee, and no such notice or other communication to the Company shall be deemed received unless a copy is so served upon the Mortgagee in the manner provided in this Agreement for the giving of notice. This subparagraph shall only apply to any Mortgagee that the Company has identified in writing to the Town in the manner provided in this Agreement for the giving of notice.

### c. In the event of any breach by the Company under this Agreement, the Mortgagee shall have thirty (30) days following the Company’s cure period for a monetary breach, and ninety (90) days following the Company’s cure period for any other breach, after Notice of Breach is received by the Mortgagee, to cure or to cause to be cured the breach complained of. Each Notice of Breach given by the Town with respect to a monetary breach will state the amounts of any payments that are then claimed to be in Default.

### d. If, before the expiration of Mortgagee’s cure period as provided above, Mortgagee shall have notified the Town in writing of its agreement to pay or cause to be paid to the Town, within ten (10) days after the expiration of Mortgagee’s cure period, in the case of a monetary breach, all payments in this Agreement provided for and then in default, and/or in the case of non-monetary breach, shall have agreed within forty five (45) days to commence or cause to be commenced the cure of such non-monetary breaches, if any are then in breach (other than breaches which by their nature cannot be cured), and shall prosecute or cause the prosecution of curing to completion with reasonable diligence (respectively, the “**Extended Cure Period(s)**”), then the Town shall not exercise any of its rights and remedies under this Agreement until expiration of the applicable Extended Cure Period.

### e. The Company (and not the Town) shall give the Mortgagee notice of any arbitration or other proceeding or dispute by or between the Parties hereto, and the Mortgagee shall have the right to intervene therein and be made a party to any such arbitration or other proceeding.

### f. Nothing in this Section shall toll the running of interest or late fees while either the Company or the Mortgagee is attempting to cure a monetary breach.

# Article XVII

**ACKNOWLEDGEMENT OF STATE LAW; SEVERABILITY**

SECTION 17.1 SUPREMACY OF EXECUTIVE LAW SECTION 94-C

(a) The Parties acknowledge that pursuant to Executive Law §94-c, the Town is prohibited from requiring that the Company obtain “any approval, consent, permit, certificate, contract, agreement, or other condition for the development, design, construction, operation, or decommissioning of a major renewable energy facility with respect to which an application for a siting permit has been filed.”

(b) The Parties intend that in all respects this Agreement be applied and interpreted so that the requirements it imposes on the Company not conflict with or add to the requirements imposed on the Company by: Executive Law §94-c, 19 NYCRR Part 900, an order of the Executive Director or a ruling of an administrative law judge of ORES, or a Siting permit issued to the Company, and that they will cooperate in ensuring that the Company complies with the requirements of any Siting Permit ORES may grant the Company.

(c) By entering into this Agreement, the Company does not waive, surrender or diminish any rights it may have as an applicant for or a recipient of a Siting Permit.

(c) The Company shall notify and keep the Town informed of the status of any application it submits to ORES, assist the Town in participating in the ORES review process, and consult with the Town in preparing required compliance filings prior to submitting them to ORES pursuant to Section 900-10 of the ORES regulations.

## Section 17.2 Severability

If any clause, provision, section or article of this Agreement, or a portion thereof, is held invalid, inoperative or unenforceable by any court or regulatory authority of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by applicable law.

## Section 17.3 Reformation

Notwithstanding the foregoing, if any clause, provision, section or article of this Agreement, or a portion thereof, is held invalid, inoperative or unenforceable by any court or regulatory authority of competent jurisdiction, the Parties shall:

### a. Promptly meet and negotiate a substitute for such clause, provision, section or article, which will to the greatest extent legally permissible, effect the original intent of the Parties therein.

### b. Negotiate such changes in, substitutions for, or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with Section 17.2(a) hereof to effect the original intent of the Parties in the clause, provision, section or article declared invalid.

# Article XVIIIReimbursement of Town Expenses

## Section 18.1 Reimbursement of Town Expenses

Unless the Amended and Restated Escrow Agreement provides funds to cover the expenses incurred by the Town in implementing described in this Article 18, the following shall apply.

### a. Fees of On-Site Monitor. The Company shall reimburse the Town for all reasonable costs, fees and expenses paid to the On-Site Monitor (the “**On-Site Monitor Fees**”) incurred in connection with retaining, employing, and/or engaging the On-Site Monitor pursuant to the terms and conditions of this Agreement. On-Site Monitor Fees shall be invoiced on a monthly basis. The On-Site Monitor shall present detailed monthly invoices to the Town regarding requested reimbursement of On-Site Monitor Fees and the Town shall present such invoices to the Company. The Company shall pay such invoices within thirty (30) days of receipt of such invoices from the Town; *provided*, *however*, the Company shall not be responsible for reimbursement of any invoice from the On-Site Monitor that does not contain: (a) total invoice amount, (b) period of time covered by the invoice, (c) individual entries for tasks performed detailing the date, timekeeper, time charged, rate charged, and narrative of the services rendered, (d) summary of timekeepers, rates charged by timekeeper, total hours charged by timekeeper, and total amount charged by timekeeper for the invoiced period, and (e) itemized costs and disbursements associated with the services performed during the invoiced period. At the Commencement of Construction, the Company shall establish an escrow account of $50,000 from which the Project Towns can pay the Town Monitor Fees (the “**Town Monitor Escrow**”). Within the limits of Section 18.1 (c), the Company shall replenish the Town Monitor Escrow upon request of the Project Towns.

### b. Fees of Legal Counsel. The Company shall reimburse the Town for all reasonable costs, fees and expenses paid to its legal counsel incurred in connection with the Town’s oversight of the post-Town approval phases of the Project occurring both prior to and after the Commercial Operation Date (the “**Town Legal Fees**”). At the Commencement of Construction, the Company shall establish an escrow account of $25,000 from which the Project Towns can pay the Town Legal Fees (the “**Town Legal Escrow**”).

### c. Maximum Reimbursement. The maximum amount of On-Site Monitor Fees and Noise Test Escrow Account deposits, for which the Company shall be required to reimburse the Project Towns shall be $500,000. If for extenuating circumstances the professional services exceed this amount, then the Company will reimburse the Project Towns for any reasonable costs.

## Section 18.2 No Fiduciary Relationship

The On-Site Monitor is retained pursuant to separate agreement with the Town and does not have any obligation to or fiduciary or employment relationship with the Company.

# Article XIXNotices

## Section 19.1 Notices

All notices, demands, requests, consents, or other communications provided for or permitted to be given pursuant to this Agreement shall be in writing and shall be mailed, communicated by electronic mail, or delivered to the Parties at the respective address set forth below:

|  |  |
| --- | --- |
| If to the CompanyBull Run Energy LLC c/o Invenergy LLCOne South Wacker Drive, Suite 1800Chicago, Illinois 60606Attn: General Counsel | If to the Town:Town of Ellenburg16 St. Edmunds Way Ellenburg Center, New York 12934 Attn: Town Supervisor |
| With a Copy To:Hodgson Russ 677 BroadwayAlbany, New York 12207Attn: John W. Dax | With a Copy To:Pease and Gustafson, LLP40 Main StreetMassena, New York 13662Attn: Eric Gustafson |

All such notices, demands, requests, consents, or other communications shall be deemed to have been duly given when transmitted by electronic copy or personally delivered or, in the case of a mailed notice, upon receipt, in each case addressed as aforesaid. Each of the Parties may from time to time change its address for notices by providing notice of such change to the other Parties given in accordance with this Section.

# Article XXMiscellaneous

## Section 20.1 No Waiver

The failure of any Party to insist on the strict performance of any term or provision hereof will not be deemed a waiver of the right to insist on strict performance of any other term or provision, nor will it be deemed a waiver of any subsequent breach. Unless specifically stated, the selection of any specific remedy hereunder or under the Local Law by a Party shall not be deemed an election of remedies limiting such Party’s right to seek any other remedy otherwise allowed by this Agreement or the Local Law.

## SeCtion 20.2 Applicable Law and Venue

This Agreement will be governed by the laws of the State of New York. Venue for any dispute arising under this Agreement and not settled by mediation shall be solely in the New York State Supreme Court for Clinton County.

## Section 20.3 No Recourse

All obligations of the Parties contained in this Agreement shall be deemed to be the corporate obligations of the respective Parties and not obligations of any member, officer, official, agent, servant, employee, or affiliate of the Parties. No recourse upon any obligation contained in this Agreement, or otherwise based on or in respect of this Agreement, shall be had against any past, present, or future member, officer, official, agent, servant, employee, or affiliate of the Parties.

## Section 20.4 Entire Agreement

Unless supplemented or otherwise amended in writing by the Town and the Company in accordance with the laws of the State, this Agreement constitutes the Parties’ entire agreement with respect to the subject set forth herein, and no other agreements, written or unwritten, implied or express, will be deemed effective.

## Section 20.5 Amendment

No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in a writing that specifically references this Agreement and that is duly executed by the Parties.

## Section 20.6 Binding Effect

This Agreement shall inure to the benefit of and shall be binding upon each of the Parties and, as permitted by this Agreement, their respective successors and permitted assigns.

## Section 20.7 Headings

The headings of sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or to affect the construction hereof.

## Section 20.8 Assignment by Town

Except in the context of financing or securitizing revenues from the Project under this Agreement, the Town may not transfer or assign any of its rights or obligations under this Agreement without the prior written consent of the Company and any such transfer or assignment shall be null and void and of no force and effect. The Company shall cooperate with the Town from time to time, including, without limitation, by entering into a consent and assignment or other agreements with the Town and the financing parties involved with any such financing or securitization in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by the involved financing parties.

## Section 20.9 Assignment by Company

The Company may, without the consent of the Town: (a) assign this Agreement to any (x) purchaser or successor in and to the Project, or (y) affiliate or subsidiary of the Company that is controlled by, controlling or under common control with the Company (such purchaser and affiliate are collectively defined as a “**Successor**”), provided such Successor assumes and agrees to be bound by this Agreement by executing and submitting to the Town a notice of assignment and assumption of this Agreement, a form of which is attached hereto as Exhibit “L”, and (b) pledge, encumber, hypothecate, mortgage, grant a security interest in and collaterally assign this Agreement to any to any persons or entities providing financing for the Project (“**Lender**”) as security for the repayment of any indebtedness and/or the performance of any obligation whether or not such obligation is related to any indebtedness (a “**Lender's Lien**”). A Lender shall have the absolute right to: (a) assign its Lender’s Lien; (b) take possession of and operate the Property or any portion thereof in accordance with this Agreement and perform any obligations to be performed by Company or a Successor hereunder; or (c) exercise any rights of Company hereunder. The Town shall cooperate with the Company, its affiliates, any Successor from time to time, including, without limitation, by entering into a consent and assignment or other agreements with such Successor and the Company in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by such Successor, including execution of a consent to the assignment of this Agreement in the form attached hereto as Exhibit “M”. In the event this Agreement is assigned to a Successor, the Company shall have no further obligations hereunder, except for any obligations outstanding on the date of the transfer. Nothing herein shall limit in any way the right of the owners of the Company to sell or otherwise transfer (including by merger or consolidation with any other entity) all or a portion of their ownership interests in the Company. Notwithstanding any provision in this Section, the Company acknowledges that any permit for the Project is governed by the Local Law and nothing herein changes the Local Law as to requirements for transferring any permit.

## Section 20.10 Counterparts

This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

## Section 20.11 Filing With Town Clerk

The Town shall file and maintain a copy of this Agreement in the office of the Town Clerk.

## Section 20.12 Force Majeure

Notwithstanding any other provision of this Agreement, if a Party’s performance of this Agreement or of any obligation hereunder is interfered with, delayed, restricted or prevented, in whole or in part, by reason of an event of Force Majeure (as defined below), then that Party, upon giving notice to other Party, shall be excused from such performance (but not from its financial obligations due prior to such Force Majeure event) to the extent and for the duration of such interference, delay, restriction or prevention, and the term and any other time periods set forth herein shall continue and be extended for a like period of time. “**Force Majeure**” means any act or condition beyond the reasonable control of any Party, whether or not similar to the matters or conditions herein specifically enumerated, and includes: acts of God or the elements (including fire, earthquake, explosion, flood, high winds, ice, epidemic or any other casualty or accident related to weather conditions); strikes, lock outs or other labor disputes; delays in transportation; inability to secure labor or materials in the open market; transmission system power failure or power surge; war, terrorism, sabotage, civil strife or other violence; the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after an application for the same has been submitted; the effect of any law, proclamation, action, demand or requirement of any government agency or utility; or litigation contesting all or any portion of the right, title and interest of the Town in the Roads and/or the Road Structures, and/or of the Company in the Project or Town Permits for the Project under this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date and year above written.

**BULL RUN ENERGY LLC**

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**TOWN OF ELLENBURG**

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) ss:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, in the year 20\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) ss:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, in the year 20\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

**List of Exhibits**

Exhibit “A” RESERVED

Exhibit “B” Pre-Construction Inspection Report

Exhibit “C” Town Approving Resolution

Exhibit “D” RESERVED

Exhibit “E” Schedule of Project Facilities Requiring Municipal Franchises, Road Permits and Curb Cuts

Exhibit “F” Receipt of Repair Estimate Payment and Release from Road Repair Obligations

Exhibit “G” Roads for Heavy Construction Vehicles

Exhibit “H” Noise Testing Plan

Exhibit “I” Detailed Noise Testing Protocol

Exhibit “J” Scope of Services of On-Site Monitor

Exhibit “K” Decommissioning Plan

Exhibit “L” Form of Notice of Assignment and Assumption of Host Community Agreement

Exhibit “M” Form of Consent to Assignment

Exhibit “N” Complaint Resolution Procedure

**Exhibit “A”**

**Reserved**

**Exhibit “B”**

**Pre-Construction Inspection Report**

**Exhibit “C”**

**Town Approving Resolution**

**Exhibit “D”**

**RESERVED**

**Exhibit “E”**

**Schedule of Project Facilities Requiring Municipal Franchises,**

**Road Permits and Curb Cuts**

**Exhibit “F”**

**RECEIPT OF REPAIR ESTIMATE PAYMENT AND RELEASE FROM ROAD REPAIR OBLIGATIONS**

**(Town of Ellenburg)**

**TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN KNOW THAT** the **TOWN OF ELLENBURG,** a municipal corporation duly organized and existing under the laws of the State of New York, as **RELEASOR**, in consideration of the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_paid to the Town of Ellenburg, and other good and valuable consideration, received from\_\_\_\_\_\_\_\_\_\_\_\_, a limited liability company organized under the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and authorized to do business in the State of New York, as **RELEASEE**, receipt of which is hereby acknowledged, forever releases and discharges RELEASEE, its successors and assigns, of any and all obligations and claims for damages or otherwise for repair of Roads or Road Structures in the Town of Ellenburg relating to, or arising out of, in any way, the construction of the Bull Run Wind Project and to hold RELEASEE harmless without responsibility for any damages incurred by the Town of Ellenburg as a result.

RELEASOR hereby covenants to RELEASEE, and its principals, officers, directors, affiliates, subsidiaries, employees, contractors, agents, members, and/or managers, that RELEASOR will not sue or otherwise assert a claim of any nature or description whatsoever against RELEASEE with regard to, or associated with, any claims for or arising out of repair of Roads or Road Structures in the Town of Ellenburg.

This Release may not be changed orally.

**IN WITNESS WHEREOF**, the RELEASOR has executed this Release on the \_\_\_ day of \_\_\_\_\_\_, \_\_\_\_\_\_.

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

 ss:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, in the year \_\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

**Exhibit “G”**

**Roads for Heavy Construction Vehicles**

**Exhibit “H”**

 **Noise Testing Plan**

**Exhibit “I”**

**Detailed Noise Testing Protocol**

The following is the process for the Detailed Noise Testing Protocol. The term “**Site(s)**”, as used in this protocol, is the property or properties that has or have been subject to the Initial Noise Test. Except as otherwise defined herein, all of the terms used in this protocol have the meanings provided for in the Agreement.

1. Site Investigation: Upon receipt of the physical address of the Site, the Town Noise Consultant will investigate the Site using existing maps and determine the ideal location for not less than two (2) Noise Meters and data logging systems; Location 1 (“**L1**”) will be setup adjacent to the residence and between the residential building and the property line adjacent to the nearest Turbine but not closer than 3 meters (approximately 10 ft.) to the building facade. L1 will be used to quantify the total environmental noise impact from all sources, including the Suspect Turbine and the existing ambient or background noise source such as a road corridor. Location 2 (“**L2**”) will be setup up in a suitable location which is not acoustically influenced by the Suspect Turbine to characterize the existing ambient conditions.
2. Data Collection - Attended Measurements and Observation: Attended short-term noise measurements and observations will be conducted at L1 during two observation periods – Scenario A) Suspect Turbine(s) “off” and Scenario B) Suspect Turbine(s) “on’’ conditions. A series of at least six (6) 10-minute Leq measurements will be collected and stored using a Noise Meter for each scenario (example, 60 minutes “on”, 60 minutes “off”). Attended measurements will be attempted for a period of up to 8-hours on-site and for not less than two (2) days and extending up to three (3) days to capture the select “worst-case” weather and wind conditions, i.e. the necessary meteorological conditions to generate the Suspect Turbine-generated noise conditions experienced by the complainant. The Suspect Turbine “off” scenario will be coordinated with the Project operator to ensure all the necessary Suspect Turbines are shutdown to accommodate Scenario A. Weather and wind conditions will be provided by the local met towers owned by the Project operator during the data collection period. The Town Noise Consultant will also confirm that the location of L2 is suitable for the assessment of ambient conditions and a series of attended short-term measurements will be collected.
3. The Town Noise Consultant will request that the complainant complete a monitoring and observation log to document inclement weather conditions, significant traffic conditions or background noise, and specific noise complaints during the monitoring period.
4. Data Analysis: The Town Noise Consultant will analyze all data collected during the measurement and monitoring period. The L1 and L2 Leq and noise statistics of interest such as the L90, L50, and L10 data will be graphed against wind and weather conditions to examine trends. After appropriate corrections for background and extraneous noise are made, the data will be compared against the applicable noise limits established by the Local Law and Town Permits.

\*\*\* Sample Law: Section, 16 A, of the Town of Ellenburg Local Law No.4 of 2005 states:

“The statistical sound pressure level generated by the WECS shall not exceed L10 – 50 dBA measured at the nearest inhabited off-Site dwelling existing at the time of application.” This limit will be used for purpose of analysis.

1. Reporting: Upon completion of the noise analysis, the Town Noise Consultant will prepare a short technical memorandum documenting the methodology, data analysis, and results of the study.

**Exhibit “J”**

**Scope of Services of On-Site Monitor**

**Exhibit “K”**

**Decommissioning Plan**

**Exhibit “L”**

**Form Notice of Assignment and Assumption of Host Community Agreement**

NOTICE OF ASSIGNMENT

To: Town of Ellenburg

Attn: Town Supervisor

16 St. Edmunds Way

Ellenburg Center, New York 12934

And

From: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Date: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Re: Assignment and Assumption of Host Community Agreement for Bull Run Energy Wind Farm.

[\_\_\_\_\_\_\_\_\_\_\_\_], a limited liability company duly organized and existing under the laws of the State of [\_\_\_\_\_\_\_], and having an office at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] hereby provides notice to the Town of Ellenburg that as of [\_\_\_\_\_\_\_\_\_\_\_] it purchased or otherwise acquired all or substantially all of the assets of Bull Run Energy LLC, a limited liability company duly organized and existing under the laws of the State of Delaware and having an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_. [\_\_\_\_\_\_\_\_\_\_\_] hereby assumes all obligations under the Host Community Agreement by and between Bull Run Energy LLC and the Town of Ellenburg dated as of [\_\_\_\_\_\_] and agrees to be bound by its provisions and waives all claims regarding its validity.

[\_\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_] limited liability company

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit “M”**

**Form of Consent to Assignment**

**Exhibit “N”**

**Complaint Resolution Procedure**

16429494v1 046581.00034