

AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS

This Agreement for Road Use, Repair, and Improvements (the “**Agreement**”) is entered into this ___ day of _____, 2024 (“**Effective Date**”) between Hoffman Falls Wind LLC, with its principal place of business located at 90 State Street, Albany NY 12207 hereinafter “**Company**”, and the Town of _____, a municipal corporation having offices _____, hereinafter “**Municipality**”. The Company and the Municipality are each a “**Party**” and referenced together as the “**Parties**”.

RECITALS

WHEREAS, the Company has been developing a wind generating facility located in the Towns of Eaton, Fenner, Nelson and Smithfield, in Madison County, New York (the “**Wind Project**”); and

WHEREAS, the Company intends to engage in the construction of the Wind Project (the “**Wind Project Construction Activities**”); and

WHEREAS, the Municipality is responsible for the maintenance of certain roads and highways within the Town of _____, Madison County, New York; and

WHEREAS, in connection with the development, construction, operation, maintenance and decommissioning of the Wind Project, it may be necessary for the Company and its contractors and subcontractors or designees (collectively “**Company Parties**”) to (i) traverse certain Municipal highways, roads, bridges, culverts and related fee owned land, rights-of-way or easements owned or maintained by the Municipality as listed on Exhibit A-1 and depicted on A-2 hereto (collectively “**Haul Roads**”) with the Company operated heavy machinery weighing in excess of the legal dimensions or weights specified in Section 385 of the New York State Vehicle and Traffic Law (consisting of approximately oversize/overweight (OS/OW) trucks to deliver the turbine components and the transformer, dump trucks for access road construction, concrete trucks for construction of turbine and substation foundations, and other components during the Wind Project Construction Activities) (collectively referred to herein as “**Company's Heavy Vehicles**”), (ii) transport personnel, parts, equipment, facilities and materials on the Designated Roads (iii) install temporary turning radii and other temporary construction easement rights-of-way and make certain modifications and improvements (both temporary and permanent) to Designated Roads (including without limitation to certain culverts, bridges, road shoulders and other related fixtures) to permit equipment and material to pass, (iv) place certain electrical collection and transmission and communication cables, conduit and other wires and cables (collectively, “**Cables**”) for the Wind Project in close proximity to or under or across certain Municipal roads for the purposes of carrying electrical current and data and information from the Wind Project to the point of interconnection substation and Operation and Maintenance facility, (v) place footings, foundations, towers, poles, crossarms, guy lines and anchors, circuit breakers, junction boxes and other machinery and equipment related to the Cables and existing

utility poles which may need to be relocated temporarily or permanently to accommodate Wind Project components (all of the foregoing, collectively, “**Utility Poles**”) in close proximity to certain Municipal roads, and (vi) carry out other related activities (the uses described in clauses (i) through (v) are the “**Permitted Uses**”); and

WHEREAS, the Company acknowledges that the nature of Wind Project Construction Activities may cause damage to said Designated Roads; and

WHEREAS, the Municipality and the Company wish to enter into an agreement for the use, repair, and improvement of the Designated Roads by the Company, all in accordance with the terms and conditions set forth herein; and

WHEREAS, the Municipality seeks guarantees and assurances from the Company that the Company will pay and/or otherwise indemnify the Municipality for any Damage (as defined herein) to the Designated Roads arising from its activities.

NOW, THEREFORE, in consideration of these promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound, agree as follows:

1. Rights and Responsibilities of the Parties.

- a. The term “**Designated Roads**” shall include all Municipal highways, roads, bridges, culverts and related fee owned land, rights-of-way or easements owned or maintained by the Municipality as listed on the Exhibits (A-D) attached hereto to this Agreement, which shall include any alternate routes which may be used from time to time by the Company.
- b. The Company agrees that it shall be responsible for ensuring that all debris, garbage, and waste upon Designated Roads related to Wind Project Construction Activities are disposed of in the appropriate manner and be responsible for obtaining any applicable approvals, permits and/or orders that are not granted under this Agreement. Materials and equipment of the Company or the Company Parties, if any, shall be removed from the Designated Roads as soon as they are no longer necessary.
- c. Except under emergency circumstances, the Company shall use commercially reasonable efforts to not block or obstruct or interfere with the flow of traffic in both lanes of traffic for any more than fifteen minutes at a time. The Company agrees that any proposed temporary road closings will be properly coordinated in advance with the Municipality. Longer term closures, if required, shall be coordinated in writing at least three (3) days prior to the closing. For every activity of the Company that will impact the flow of traffic, the Company shall be responsible for complying with any and all applicable New York State and federal laws concerning traffic control requirements and

notifying the Town Designee, as well as the appropriate emergency service providers and school district superintendents and directors of transportation.

- d. The term “**Company**” shall include its employees, agents, vendors, contractors, subcontractors, and/or haulers. The Company shall require that each and every employee, agent, vendor, contractor, subcontractor, and hauler will comply with the terms and conditions of this Agreement, and the Company shall be responsible for any failure of each and every employee, agent, vendor, contractor, subcontractor, and hauler that fails to comply with the terms of this Agreement.
- e. The Municipality designates the Highway Superintendent (referred to as “**Designee**”) to act on behalf of the Municipality and to issue approvals under this Agreement. The Highway Superintendent may designate the Highway Work Foreman to serve in his/her stead when needed.
- f. The Company agrees that it shall undertake the Wind Project Construction Activities and each of its Permitted Uses at all times in accordance with applicable state, federal and non-superseded local laws, rules and regulations, including without limitation, Section 94-c of the NYS Executive Law and the terms, conditions, limitations and modifications of any certificate or permit it is awarded pursuant thereto.
- g. The term “**Period of Use**” shall mean the construction and decommissioning phases of the Wind Project. Except in exceptional circumstances, concrete or other aggregate material trucks are limited to use from 7:00 a.m. to 8:00 p.m. Monday through Saturday and 8 a.m. to 8:00 p.m. on Sunday and national holidays, with the exception of construction and delivery activities which may need to occur during extended hours beyond this schedule on an as-needed basis. (“**Period of Use**”).
- h. If, due to exceptional circumstances, safety or continuous operation requirements the Company and the Company Parties determine it is necessary for the Wind Project to use the Designated Roads outside the Period of Use, then the Company or, if applicable, the Company Parties shall notify the Designee, describing in detail such use and the reasons therefore. Such notice shall be given at least 24 hours in advance, unless such construction activities are required to address emergency situations threatening personal injury, property, or severe adverse environmental impact that arise less than 24 hours in advance. In such cases, as much advance notice as is practicable shall be provided.
- i. If the Company and the Company Parties determine it is necessary for construction and delivery activities to occur outside the Period of Use for reasons other than exceptional circumstances, safety or continuous operation requirements, then the Company or, if applicable, the Company Parties shall seek the approval of the Designee, describing in detail such use and the reasons therefore. The Designee will

take into account, among other things, weather conditions and the conditions of the roads in making their determination to grant permission for use of the Designated Roads outside of the Period of Use, which permission shall not be unreasonably withheld, conditioned, or delayed. In the event that the Designee fails to respond within seven (7) business days, the Designee shall be deemed to have agreed to such use.

j. Once construction begins on the Wind Project, the Designee shall be entitled, at any time, to notify the Company and the Company Parties that use of the Designated Roads may result in excessive damage to the Designated Roads due to weather conditions. The Company shall work with the Designee to develop a plan to mitigate or prevent the effect of such weather conditions. If the Parties are able to develop a plan to mitigate or prevent such damage, then the Company and the Company Parties may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, the Company and the Company Parties may propose an alternate route to the Project site for approval by the Designee of the Municipality (such approval not to be unreasonably withheld, conditioned, or delayed).

k. Beginning with commencement of construction of the Wind Project, the Company and the Designee shall meet every two weeks to discuss the expected use of the Designated Roads in the next succeeding two weeks, including, without limitation, the construction schedule and the haul routes to be used. The Designee shall have authority to act on behalf of the Municipality, including the right to allow use of the Designated Roads outside the Period of Use and approve use of substitute roads. Within ten (10) days after the execution of this Agreement by the Parties, the Municipality shall provide the name and contact information for its Designee. It is the Company's sole responsibility and obligation to inform the Company Parties of all obligations, restrictions and liabilities contained within this Agreement and specifically that, without limiting any other rights to use Municipal roads and highways, the Company Parties are permitted the limited right to use the Municipal roads and highways as set forth herein or applicable law.

l. Prior to commencing work under this Agreement, the Company shall prepare a plan for dust control for any dirt or gravel haul road(s) to be used during periods of construction, which plan shall be shared with the Designee. The Company intends to primarily use water for dust control. However, where water is not a sufficient source to keep dust under control for safety and visibility reasons, the Company agrees to use environmentally approved dust palliatives. The Company shall maintain reasonable dust control measures throughout construction, including applying water or other dust control palliative on the Designated Roads used during construction. In the event the Company does not maintain a reasonable level of dust control, the Town Highway Department, after notifying the Company of their failure to maintain proper level of dust control, will apply liquid dust control during Wind Project construction and the Company agrees to reimburse the Municipality for such costs.

2. Company Use.

Subject to the requirements of this Agreement, the Municipality hereby specifically grants Company during Periods of Use the right to:

- a. Heavy Hauls. Use, traverse, improve, upgrade, construct and repair the Roads listed on Exhibit A-1 and depicted on Exhibit A-2 using Company's Heavy Construction Vehicles and other vehicles to transport personnel, parts, equipment, facilities and materials on, over and across the Designated Roads. The routes depicted on Exhibit A-1 and A-2 will include allowable routes for Company's Heavy Construction Vehicles when returning through the Municipality after heavy components have been delivered.
- b. Installation of Underground Cables. Use and encroach into Municipal roads and public rights-of-way as shown on **Exhibit B-1** for the purposes of the installation, ownership and operation of underground Cables under, or in close proximity to the Municipal roads and public rights-of-way, subject to the following:
 - (1) Except for Cables that cross under the Roads, all Cables shall be placed outside of public rights-of-way, except upon prior written approval of the Municipality.
 - (2) The Parties acknowledge that the Company may desire to route certain wires, cables, conduits and/or lines (and their associated equipment) related to the transmission of electricity at a voltage of up to 34.5 kV from the Wind Project below ground at a location adjacent to, under or across certain Municipal roads, as identified on Exhibit B-1 (the "34.5 kV Installation"). The 34.5 kV Installation will include a fiber-optic communication cable that will be installed in conjunction with the electrical cables. In connection with the 34.5 kV Installation, the Parties further agree that the Company shall be responsible for obtaining all private land rights as are necessary to permit the Company to complete the 34.5 kV Installation, if any, and make the modifications and improvements to the Municipal roads contemplated by this Agreement, including obtaining all necessary land rights from private landowners adjacent to the Municipal roads, as may be needed. In connection with the 34.5 kV Installation, the Municipality hereby grants the Company all such authorizations and approvals from the Municipality as is necessary to complete the 34.5 kV Installation and extends through the operation of the Wind Project, to include within road Right-Of-Way (ROW), subject only to the Company's obtaining all private land rights as are required in connection therewith.

- (3) For Cables that cross under Municipal roads, the Company may cut an “open trench” across gravel and unimproved roads, and the trench will be backfilled, compacted and raked to return it to conditions equal or better to those prior to the commencement of work. No such open trench shall be cut in any Road, unless first approved in writing by the Designee. In no event, shall underground cables be located within twenty-five (25) feet of any culverts at crossings. When crossing Municipal roads, cuts must be tapered back from center of cut ten (10) feet each way from half the distance of depth of cut.
 - (4) The Company will bore under paved roads, and all boring pits and ditch excavation will be backfilled, compacted and raked to return it to conditions equal or better to those prior to commencement of work. The highest point of any such boring by the Company must be at a minimum depth of 36” below the lowest point of the following: (i) road; or (ii) drainage ditch at the selected crossing location. No such boring shall be drilled under any Municipal roads except in the locations set forth in the Exhibits to this Agreement.
 - (5) Each boring or cut across a Municipal road will be identified by general location and also by centerline coordinate, and upon the completion of construction, the Company will provide an as-built location.
- c. Installation of Overhead Cables. Use of Municipal roads and public rights-of-way for the purposes of the installation, ownership and operation of overhead Cables and/or relocation of existing overhead collection or transmission lines to accommodate Wind Project component installation and/or delivery, over, across and in close proximity to certain Municipal roads and public rights-of-way as shown on **Exhibit B-2**. The Company overhead Cables will be designed and constructed in accordance with National Electric Safety Code (“**NESC**”) governing the clearance requirements above the roadway. Under no circumstances shall any poles used for the installation of overhead Cables encroach into Municipal roads or public rights-of-way, unless first approved in writing by the Designee.
- d. Utility Poles. Use of Municipal roads and public rights-of-way for the purposes of the installation, ownership and operation of Utility Poles, including the temporary or permanent relocation of existing utility poles to accommodate Wind Project component installation and/or delivery, as shown on **B-2**, subject to the following:
- (1) Overhead utility poles will be situated on the “back side of the side ditch” away from Roads, outside of the public right-of-way, unless first approved in writing by the Designee.

- e. Temporary Construction Easements and Turning Radii. Use, traverse, improve, upgrade, widen, construct the Designated Roads and rights-of-way shown on **Exhibit C** for purposes of making certain modifications and improvements (both temporary and permanent) to such Designated Roads (including without limitation to certain culverts, bridges, road shoulders and other related fixtures) to permit equipment and material associated with the Wind Project to pass. All such modifications and improvements must be constructed in accordance with local laws and regulations.
- f. Driveways. Use and encroach into Designated Roads and other rights-of-way shown on **Exhibit D** for purposes of installing driveways or entrances into or from certain Municipal roads subject to the following:
- (1) Each driveway entrance from a Municipal road will have a coordinate that will be transmitted in an electronic geographic information system (GIS) format (Environmental Systems Research Institute, Inc. [ESRI] shapefile or equivalent) to the Designee.
 - (2) Each driveway shall be constructed in accordance with the minimum specification outlined in Exhibit D-1, appended hereto. Driveways installed by the Company must be consistent with the Facility's Stormwater Pollution Prevention Plan (SWPPP) and must maintain proper drainage of the Municipal roads, the right-of-way, and other adjoining property located outside the rights-of-way, including the installation of a culvert pipe upon request of the Designee.
- g. Subsequent Relocation of Improvements. If, from time to time, the Municipality should determine, in its sole discretion, that it will widen a Municipal road or otherwise modify the public right-of-way in a manner that impacts the Company's Permitted Uses hereunder, upon notice from the Municipality, the Company shall work with the Municipality to relocate any of the improvements to allow the modifications and enter into an agreement to share costs associated with such relocations with the Municipality; provided, however that any underground Cables installed in accordance with Section 2(f) shall not be need to be relocated.

3. Approval of Locations of Permitted Uses; Escrow.

- a. Following the Effective Date but prior to the delivery of the Exhibits contemplated in Section 3(c) below or commencement of the Company's Permitted Uses, Company and the Designee shall meet and confer regarding the routes to be used for Company's Heavy Vehicles engaged in the Company's activities, the precautions to be taken to protect health and safety, and the proposed locations of the other improvements contemplated under this Agreement.

- b. The Municipality may retain an engineer (the “**Municipal Engineer**”) to assist in the review of the Company’s draft Exhibits submitted pursuant to Section 3(c) and the Company’s other documents, reports and plans submitted hereunder. Pursuant to Section 3(g), the Company shall pay for all of the Municipality’s documented out of pocket costs and expenses reasonably related to the implementation of this Agreement not otherwise covered by intervenor funding or other funds designated for expenses related to the activities of the major renewable energy development program under Article 10 of the Public Service Law, Section 94-c of the Executive Law or equivalent state permitting process (including the reasonable fees of the Municipality’s attorney and Municipal Engineer) (hereinafter referred to as “**Professional Fees**”).
- c. After meeting with the Designee, but no later than sixty (60) days prior to the commencement of Permitted Uses hereunder the Company will provide to the Designee for their review proposed final **Exhibits A-1, A-2, B-1, B-2, and C** (based on final Wind Project Layout) showing the proposed use of Designated Roads and the locations of the planned infrastructure within the Municipal roads and other Municipal rights-of-way, as well as any additional information related thereto that is reasonably requested by the Municipality. Within twenty (20) days of the Designee’s receipt of said proposed final Exhibits, the Municipality shall either (a) approve said Exhibits, which approval shall not be unreasonably withheld, conditioned or delayed, or (b) provide the Company with reasonable revisions to said Exhibits, which revisions shall not be unreasonably withheld, conditioned or delayed. In the event that the Parties are not able to resolve a dispute regarding the Municipality’s requested revisions to the Exhibits, the Parties agree to promptly meet to resolve any such disputes. Once approved, the Exhibits shall be attached to this Agreement as the final Exhibits and the Company shall not deviate from the routes and improvements established thereby unless approved by the Designee as set forth herein.
- d. For each driveway/curb cut set forth in **Exhibit D**, after meeting with the Designee, but no later than sixty (60) days prior to the commencement of driveway construction hereunder, the Company will provide to the Designee for his/her review a proposed final **Exhibit D (“Driveway Plan”)**, based on final facility layout, showing each proposed driveway/curb cut, as well as any additional information related thereto that is reasonably requested by the Municipality. The Driveway Plan may be submitted all together or phased separately as needed for each driveway. Within twenty (20) days of the Designee’s receipt of each proposed Driveway Plan, the Municipality shall either (a) approve said Driveway Plan, which approval shall not be unreasonably withheld, conditioned or delayed, or (b) provide the Company with reasonable revisions to said Driveway Plan, which revisions shall not be unreasonably withheld, conditioned or delayed. In the event that the Parties are not able to resolve a dispute regarding the Municipality’s requested revisions to the Driveway Plan(s), the Parties agree to promptly meet to resolve any such disputes. Once approved, the Driveway Plan(s)

shall be attached to this Agreement as the final **Exhibit D** and Company shall not deviate from those plans unless approved by the Designee as set forth herein.

e. Following the acceptance of the final Exhibits, the Parties recognize that variations to the location of the improvements, or that other routes, may become necessary to use due to various reasons.

(1) Unless otherwise agreed to between the Company and the Designee should any Municipal roads not listed or shown on **Exhibits A-1 and A-2** be expected by Company to be used by the Company's Heavy Vehicles, at least thirty (30) days prior to the commencement of such use, the Company shall notify the Designee in writing, conduct the necessary surveys and pre-use inspections under this Agreement and add the Roads to **Exhibit A-1 and A-2**, subject to the prior written approval of the Municipality, which approval shall not be unreasonably withheld, conditioned or delayed. In the event the Company deviates from the Road route designated in, or added by the Company to, **Exhibits A-1 and A-2**, in addition to any other remedies available herein, the Designee may request and the Company shall immediately upon receipt of such request cease and desist such deviation.

(2) In the event that the Company's Heavy Vehicles need to use Roads not listed or shown on **Exhibits A-1 and A-2** in an emergency, the Company shall provide telephonic notice to the Designee and may only use said Roads on a temporary basis until such emergency has ended. In the event that the Company determines that said Roads will be used on a permanent basis, the Company shall comply with the terms of Section 3 (e)(1) above.

(3) If the Company needs to materially vary the type, method or locations of any improvements shown on **Exhibits B-1, B-2, C or D**, the Company shall provide a revised Exhibit to the Designee for review and approval, which shall not be unreasonably withheld, conditioned, or delayed. Except in the event of an emergency, the Designee shall complete the review within thirty (30) days.

f. Upon approval of the Exhibits as described above, the Municipality shall issue, if necessary, any encroachment, crossing, driveway or other similar permits for the Company's encroachment into the public right-of-way. Except for the foregoing, no other permits or approvals, including without limitation for the use of Heavy Vehicles on Roads, will be required from the Municipality for the Permitted Uses hereunder.

g. At all times during the Term of this Agreement, the Company shall keep the Municipality apprised of the timing, location, and nature of its Permitted Uses,

including, without limitation, notice of its anticipated and actual start and stop dates for Periods of Use for the Wind Project Construction Activities and identification of subcontractors using Heavy Vehicles to be used by the Company. The Company shall provide such information regarding the timing, location and nature of its Permitted Uses promptly upon request. The Company agrees to cooperate in good faith with the Municipality with respect to such time periods, which cooperation shall include but not be limited to coordinating the timing of the Company's use, repair or improvement of the Roads with similar activities of the Municipality and other heavy haulers or developers within the Municipality who are subject to road use local laws or road use agreements.

h. The Company agrees to reimburse the Municipality for its reasonable Professional Fees. The Municipality may draw upon the Professional Fees Escrow Account described in Section 3(i)(1) to pay such Professional Fees; provided, however, upon the Company's request, Municipality shall detail the costs, fees, expenses and any other bills incurred to or by the Municipality for the Professional Fees. If the Company reasonably and in good faith disputes a payment made from the Escrow Account, then the Parties shall abide by the procedure set forth herein for dispute resolution in Section 8 below.

i. Establishment of Escrow Accounts. Prior to the Company's submittal of the draft Exhibits set forth in Section 3(c), the Company shall:

(1) Deposit the sum of twenty thousand dollars (\$20,000.00) in an escrow account to be established by the Municipality to secure the payment of Professional Fees ("**Professional Fees Escrow Account**"). If at any time the balance in such account is reduced to one-third or less of its initial amount, the Municipal Clerk shall advise the Company, and the Company shall deposit additional funds in such account to bring its balance up to the amount of the initial deposit within fifteen (15) days of the Company's receipt of written request therefor. The balance of the Professional Fees Escrow Account shall be returned to the Company within thirty (30) days of the end of the Term.

(2) Deposit the sum of \$50,000.00 in a separate escrow account to be established by the Municipality to secure the payment of costs for emergency repairs of Immediately Dangerous Damage, as set forth in Section 6(b) below ("**Emergency Repairs Escrow Account**"). If at any time the balance in such account is reduced to one-third or less of its initial amount, the Municipal Clerk shall advise the Company, and the Company shall deposit additional funds in such account to bring its balance up to the amount of the initial deposit within fifteen (15) days of the Company's

receipt of written request therefor. The balance of the Emergency Repairs Escrow Account shall be returned to the Company within thirty (30) days of the end of the Term.

- j. Nothing in this Agreement shall be construed as granting permission or rights to the Company to infringe, use or encroach upon the land of private landowners. Any right or permission granted to the Company by the terms of this Agreement to infringe, use or encroach upon land within the Municipality shall be limited to land owned by the Municipality and shall be subject to the Company obtaining from private landowners within the Municipality all legal and/or equitable permissions and rights necessary to infringe, use or encroach upon privately owned land. For any reinforcement activities, damage repairs or other Permitted Uses that require excavation of land, the Company shall contact Dig Safely New York and shall avoid damage to any water, sewer, gas or other utility pipes, tanks or lines located in the Municipal rights of way.

4. Reinforcement Activities.

The Parties acknowledge and agree that certain modifications and improvements to the Designated Roads and related appurtenant structures may be necessary to accommodate the use of the Designated Roads by the Company and the Company Parties contemplated hereby, including the widening of certain roads and modifications and improvements necessary to accommodate the heavy equipment and materials to be transported on the Designated Roads (“**Reinforcement Activities**”). The Reinforcement Activities that shall be made by the Company, at its sole cost and expense. The Company reserves the right to amend this Agreement to add roads and appurtenant structures if deemed necessary upon five (5) days’ notice to the Designee. The Municipality, and the Company agree that such improvements and modifications shall be made in accordance with the specifications set forth on **Exhibit E**. Notwithstanding anything herein to the contrary, upon the reasonable written request of the Company, the Designee is authorized from time to time to grant consent to deviations in writing from the specifications set forth on **Exhibit E**. The Designee shall complete their review of the Reinforcement Activities within thirty (30) days of its receipt of the proposed Reinforcement Activities. Upon the Designee’s approval of said plans, the Company shall perform the Reinforcement Activities. The Company’s performance of the Reinforcement Activities on the Designated Roads shall be conducted to minimize the effects on local transportation and shall be coordinated with the Designee with respect to its planned construction (if any) affecting the Designated Roads.

5. Road Surveys and Routes.

Prior to the commencement of Road use activities by the Company’s Heavy Vehicles, the Company shall retain an independent New York licensed professional civil engineer approved by the Municipality (“**Company Engineer**”) to

- a. Survey the Designated Roads to document the conditions of such roads prior to their use (the "**Initial Survey**"). The Initial Survey shall include for each road or road section (i) the Municipality's specifications applicable to the construction and use of the existing road; (ii) the period of time since the road was construction or last maintained; (iii) an assessment of the condition of the road based on visual inspection; (iv) the condition of appurtenant supporting structures and existing culverts; and (v) impacts to shoulders or roads due to construction of temporary or permanent accessways or haul roads. The Initial Survey shall also include a survey of the roads and highways within the boundaries of the Municipality anticipated to be used by the Company and the Company Parties including any alternate routes which may be used from time to time. The third-party surveyor will videotape the Designated Roads which video shall be accompanied by a written summary of findings regarding the condition of the Designated Roads (the "**Road Report**"). Copies of the video and the Road Report shall be provided to the Designee and the Company. The costs of the Initial Survey and Road Report will be borne by the Company. The Company agrees that the Initial Survey shall include an assessment of the haul routes identified in **Exhibits A-1** and **A-2** for rutting conditions and potential for rutting. All the foregoing work shall be done at the Company's sole cost and expense.
- b. The Company shall in good faith notify the Designee when the Period of Use has concluded and within sixty (60) days thereafter, the Company shall, at the Company's cost, retain a Third-Party Engineer, agreed to by the Parties to prepare a post-construction video Road survey to determine the then current condition of the Designated Roads. ("**Post Construction Report**"), as well as a report detailing any Damage arising from the Wind Project Construction Activities or other Permitted Uses of the Company ("**Damage Report**"). The post-construction road inspection shall assess rutting for the locations identified. In **Exhibits A-1** and **A-2**. All of the foregoing work shall be done at the Company's sole cost and expense.

6. **Road Damage.**

- a. In the event that any of the (i) Designated Roads, including shoulders of the roads, or related appurtenances, including bridges, culverts and other road improvements, or (ii) modifications and improvements made pursuant to Section 4 are damaged as a result of the use by the Company or the Company Parties, the Company agrees to either (i) reimburse the Municipality for reasonable costs, fees, expenses and any other reasonable bills incurred by the Municipality to repair such damage and to restore such road(s) or related appurtenance to the condition they were in prior to the Company's use (as near as is reasonably practicable having due regard for normal

wear and tear) under this Agreement, including road section thickness and width or (ii) repair (or cause to be repaired), at the Company's sole cost and expense, such damage and to restore such road(s) or related appurtenance to the condition they were in prior to the use (as near as is reasonably practicable having due regard for normal wear and tear) under this Agreement, including road section thickness and width. The Company shall restore Designated Roads in accordance with the specifications set forth on **Exhibits E**. The Parties shall rely upon the Initial Survey and the Road Report conducted pursuant to Section 5 for purposes of determining whether the repair has been performed in accordance with the standards set forth in this Section. Any repair and restoration shall be promptly performed at such times as mutually agreed by the Company and the Designee, having due regard for time of year, weather, safety, the presence of emergency conditions and the costs of such repairs compared with other times of year. Following completion of such repair, the Designee and the Company shall jointly inspect the repair to determine that it has been satisfactorily completed.

b. The Designee may request in writing that the Company repair, at its sole cost and expense, damage shown to be caused by the Company and the Company Parties to the Designated Roads and related appurtenances and return such roads and appurtenances to the condition such roads and appurtenances were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, the Designee and the Company shall meet to review the damage in relation to the Initial Survey, Road Report or most recent subsequent survey, as applicable. The Company shall repair (or cause to be repaired) such damage and restore the road(s) to the standard set forth in this Section, unless the Company or the Company Parties demonstrate to the reasonable satisfaction of the Designee that the damage was not caused by the Company or the Company Parties. Any repair and restoration shall be promptly performed at such times as the Company and the Designee determine, having due regard for the time of year, weather safety, the presence of emergency conditions and the costs of such repairs compared with other times of year. In the event that the Company fails to repair such roads and appurtenances within the agreed period, then, unless the Parties mutually agree otherwise, the Municipality may make such repairs and shall invoice the Company for the costs incurred by the Municipality in connection with the repair. The Company shall pay such invoiced amounts within forty-five (45) days following receipt of such invoice. The burden shall be on the Company to establish that an invoice is unjustified or unreasonable subject to the dispute resolution provisions set forth in Section 8.

c. If any Damage occurs to Designated Roads by the use of Designated Roads by the Company's Heavy Vehicles or by the Company's other Permitted Uses and such Damage is, in the reasonable opinion of the Designee, an immediate danger to the public using said Designated Road ("**Immediately Dangerous Damage**"), the Designee shall provide telephonic and written notice to the Company that there is an Immediately Dangerous Damage to a Designated Road or Designated Roads. In the

event that the Company does not undertake the necessary emergency repairs in a reasonable timeframe, the Municipality shall advise the Company that it will undertake the repairs itself, provide any details available to the Municipality at that time, and may retain necessary contractors and subcontractors to undertake immediate emergency repairs to said Designated Road. The Municipality shall then provide the Company with documentation detailing the completed repairs and any additional repairs that may be required. Immediately Dangerous Damage includes any condition that in the opinion of the Designee creates a safety risk if not repaired within the next five (5) days. In the event the Company becomes aware of any potential Immediately Dangerous Damage, it shall immediately notify the Designee of the particulars of such Damage, which the Municipality shall thereafter inspect and, if warranted, repair in the manner described above.

d. Notwithstanding the provisions of Section 6(b), within 45 days following the submittal of the Post Construction and Damage Report (if any), the Municipality must notify the Company in writing if the Municipality believes Damages to the Designated Roads (other than those which are identified in Company's Damage Report) arise from Wind Project Construction Activities or other Permitted Uses of the Company.

e. Except in the case of Immediately Dangerous Damage covered by Section 6(c), within twenty (20) days after a receipt of any written notice of allegation of Damage from the Municipality, the Company shall notify the Designee in writing of its agreement or disagreement with the allegations.

f. Concurrent with the Company's response in Section 6(e), the Company shall also notify Designee whether it elects to undertake all or some of the repairs, including retention of necessary contractors and subcontractors and will coordinate such activities with the Designee.

g. Except in the case of Immediately Dangerous Damage covered by Section 6(c), with respect to any repairs that are not in dispute and that the Company elects not to perform hereunder, the Company shall reimburse the Municipality for the undisputed repair costs incurred by the Municipality within thirty (30) days after receipt of the invoice. The Municipality's charges shall be based on the Municipality maintained time and material cost records, which shall be made available to the Company for review upon request. Billing rates shall be those established by the Municipality and shall be uniformly applied to all customers.

h. If the Company reasonably disputes the invoice, scope of repair, need for repair or its liability for the repair, the Company shall pay any and all amounts not in dispute and Company shall provide a written statement as to its basis for contesting the

disputed amount(s) within the same 20-day period. In the event of a dispute, then both Parties shall abide by the dispute resolution procedures set forth in Section 8 below.

- i. The manner of repair of any Road Damage described in this Agreement shall be at the reasonable discretion of the Designee consistent with the Road or bridge standards that are otherwise applicable throughout the Municipality for the type of road or bridge involved being a guide. The Company shall be required to pay for and install road base materials or surfaces to a condition equal to or better than existed prior to the alleged Damage caused by the Company. By way of example, should Damage occur to an unpaved Road, the Company will not be required to pave such Road. The Parties agree that the roadway repairs will consist of those repair techniques identified in **Exhibit E**, provided however, the Parties agree that the repair techniques may change in the future and further agree to cooperate in good faith to take into account reasonable advances in repair techniques in consultation with the Designee.
- j. The Company's engineering responsibility, including the selection of material and equipment suitable for the repair of, and modifications and improvements to, the Designated Roads shall be carried out in accordance with generally accepted engineering practices, and the Company's construction responsibility shall be carried out in accordance with sound construction practices, subject to the provisions of Section 6(i). The Company shall require from its construction contractors and subcontractors the same standards of engineering and construction practice. The Company warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.
- k. The Company warrants during the Applicable Warranty Period (as defined below) that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. The Company shall remedy any defects in the repairs, modifications and improvements performed hereunder, workmanship, materials and equipment, including repairs, modifications and improvements, workmanship, materials and equipment provided by subcontractors, in accordance with Section 6(i) which appear during the Applicable Warranty Period. A "defect" means any and all design, engineering, construction, manufacturing, installation, materials, equipment, repairs, modifications or improvements which (i) does not conform to the terms of this Agreement, (ii) fails to comply with the standards set forth in Section 6(i), (iii) is not of specified quality, (iv) is of improper or inferior workmanship, or (v) is not suitable for use under the applicable climatic and range of operating conditions. As used herein, "Applicable Warranty Period" means, with respect to any repair, modification, or improvement by the Company hereunder, the time period that begins on the date repairs, modifications, or improvements to Designated Roads are identified by the Company to the Municipality where the road is located as complete and ending on the date that is twelve (12) months after such completion date.

l. During the Applicable Warranty Period, the Municipality shall notify the Company in writing within fifteen (15) days of discovery of any defects in the repairs, modifications, or improvements, provided that any delay by the Municipality beyond such fifteen (15) days in notifying the Company shall relieve the Company from liability only to the extent of any additional expense which may arise as the direct result of such delay. At no additional cost to the Municipality, the Company shall proceed promptly to take such action relating to its performance hereunder as is necessary to cause the repairs, modifications, and improvements to comply with the warranties specified in this Agreement. The Company shall be available either at the Wind Project or by telephone for the performance of warranty repairs on a seven (7) day a week basis. The Company shall not be obligated to remedy any materials, equipment, repairs, modifications, or improvements which become defective as a result of improper operation or maintenance by the Municipality, or which results from normal wear and tear or use by parties other than the Company or the Company Parties. In the event that the Company fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, and if the Company fails to agree to undertake such repairs within thirty (30) days of its receipt of notice from the Municipality where the road is located, then the Municipality may make such repairs and shall invoice the Company for the costs incurred in connection with the repair. The Company shall pay such invoiced amounts within sixty (60) days following receipt of the invoice. The burden shall be on the Company to establish that an invoice is unjustified or unreasonable subject to the dispute resolution provisions set forth in Section 8.

m. Promptly, upon completion of any repairs required in this Section, the Designee will issue a letter in the form of **Exhibit F** (the “Road Inspection and Release”) accepting the repairs and, subject to the Company’s warranty in Section 6(k), release the Company from Damages that may occur from normal wear and tear. To the extent Damage is not identified, subject to the Company’s warranty in Section 6(k), such letter from the Designee will release the Company from the responsibility of repairing Damages of each of the Designated Roads identified in **Exhibits A-1 and A-2**. Notwithstanding anything to the contrary herein or in any Road Inspection and Release, no release from liability shall apply to the extent of Designated Roads used by the Company’s Heavy Vehicles during time periods which have not been agreed to under this Agreement.

n. The Company agrees that in connection with any upgrades or repairs to be made hereunder, the Company may determine, in its sole discretion, that there may be certain materials removed from the Designated Roads that are no longer necessary for the Wind Project (the “**Excess Materials**”). The Company agrees to remove such materials and stockpile them for use by the Municipality if requested by the Designee. The Designee shall designate the place on Municipal property on which the Excess Materials will be stored. In the event that the Municipality does not want the excess

material, the Company will dispose of the excess materials in accordance with all applicable laws.

- o. The Company warrants that all repairs, modifications, improvements, and materials furnished in connection with the performance by the Company and the Company Parties under this Agreement shall be free and clear of all liens.

7. Operating, Maintaining, and Decommissioning Project.

In the event operating, maintaining, or decommissioning of the Wind Project requires the use by the Company of oversized or overweight vehicles, prior to entry upon roads and highways with such vehicles, the Company shall inspect the affected roads and highways pursuant to this Agreement and produce to the Designee a Post-Construction Report (the “Post-Construction Report”). In the event of subsequent damage caused by operating, maintaining, or decommissioning of the Wind Project (measured against the Post-Construction Report), the Parties agree that this Agreement would be re-instated for a term necessary to repair such damage, in which event the Company’s rights and obligations hereunder, including the warranty provisions of Section 6, shall be restored for the period necessary to repair such damage, if any. In no event shall the post-construction road use obligations limit the use of ordinary commercial trucks (i.e. pick-up trucks) in use for the Wind Project.

8. Dispute Resolution

a. Disputes Regarding Repair Work. In the event that the Company or the Company Parties and the Municipality do not agree regarding the quality or completeness of any repair work conducted pursuant to this Agreement, the Company and the Municipality shall commence mediation for adjudication of the dispute by notifying the mutually agreed upon independent engineer identified pursuant to this Agreement as the “mediator”. If the mediator is satisfied with the quality and completeness of the repair work, no further work shall be required. If the mediator is satisfied with the scope of the repair work, the Municipality shall be responsible to pay the full amount of the mediator’s invoice within sixty (60) days. If the mediator is not satisfied with the quality and completeness of the repair, the Company shall perform the repair activities identified by the mediator but shall not be required to perform repair beyond what the Municipality had requested of the Company. In the event that the work is deemed inadequate, the Company shall pay the full cost of the mediator’s invoice.

b. The parties shall mutually agree upon an independent engineer mediator for such disputes regarding road work prior to the commencement of any mediation.

c. If a Party has a dispute with the other Party regarding or in connection with this Agreement, then such Party will notify the other Party in writing of such dispute. Before resorting to litigation, the Parties shall use reasonable efforts to settle such dispute

through representatives of the Parties for a period of at least thirty (30) days, during which time the parties shall have at least one (1) in-person meeting. Any litigation related to this Agreement shall be initiated before a court of competent jurisdiction located in the State of New York. For the purposes of clarity, in the event a cure period applies pursuant to Section 22, no dispute resolution obligation shall apply until after the expiration, or alleged expiration, of such cure period.

9. Indemnification.

a. To the fullest extent permitted by law, each Party (as “Indemnitor”) shall indemnify and hold harmless the other Party, and the affiliates, members, investors, and partners of such other Party, and its and their respective directors, shareholders, members, officers, and employees (collectively, “Indemnitee”), from and against all losses, to the extent that such losses may be caused by or arise out of performance of work upon Municipal roads by Indemnitor or result from any breach of any representation or warranty made in this Agreement by Indemnitor. More particularly, but without in any way limiting the foregoing, the Indemnitor hereby releases the Indemnitees and agrees to indemnify and hold harmless the Indemnitor from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Designated Road by the Indemnitor and their respective employees, agents, representatives or contractors.

b. Limitation of Liability. Except as expressly set forth herein, the acts of each Party are provided hereunder without warranty of any kind, express or implied, and each Party hereby disclaims any such warranty including, without limitation any warranty of merchantability or fitness for a particular purpose. The Parties waive all claims against each other (and against each other's parent companies and affiliates and their respective members, shareholders, officers, directors, agents, and employees) for any consequential, incidental, indirect, special, exemplary, or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory.

10. Insurance.

The Company shall at all times throughout the term of this Agreement maintain or cause to be maintained in full force and effect worker's compensation insurance in an amount required by applicable law and general liability insurance, naming the Municipality as additional insureds, in an amount of Five Million Dollars (\$5,000,000) in the aggregate. The Company

may utilize any combination of primary and/or excess insurance to satisfy this requirement. The Company may elect to self-insure any or all of the insurance requirements contained in this Agreement. 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 Municipality. If the Municipality performs a repair, the Company shall have no obligation relative to indemnity or insurance for work completed and the Municipality shall be responsible for its own insurance protection.

11. Captions and Headings.

Captions and headings throughout this agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this agreement nor in any way affect this Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement has been prepared by one of the Parties, all of the Parties confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting party shall not apply. All Exhibits referenced in this Agreement are incorporated in and form a part of this Agreement.

12. Amendments and Integration.

This Agreement (including Exhibits) shall constitute the complete and entire agreement between the Parties with respect to the subject matter hereof. No prior statement or agreement, oral or written, shall vary or modify the written terms hereof. This Agreement may be amended only by a written agreement signed by all of the Parties.

13. Severability; No Waiver.

If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null and void, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect. The waiver by any Party hereto of a breach or violation of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation.

14. Governing Law; Forum.

This Agreement shall be governed and construed in accordance with the laws of the State of New York. The exclusive forum for any actions or proceedings not settled or required to be settled through dispute resolution or other means pursuant to this Agreement shall be the

state and federal courts located in Madison County, New York.

15. Binding Effect/Assignment.

- a. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.
- b. Except as provided in subsection (c), below, no Party to this Agreement shall assign, transfer, delegate or encumber this Agreement or any or all of its rights, interests or obligations under this Agreement without the prior written consent of the other Parties. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned, or delayed; and (ii) without limiting the foregoing, in the case of the Municipality, the Municipality's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of the Company pursuant to this Agreement. The Company may, without the consent of the Municipality, assign this Agreement or any or all of its rights, interests or obligations under this Agreement to (i) an affiliate of Company, (ii) an entity to which the Company has conveyed or leased the Wind Project, or (iii) any corporation, partnership, limited liability company or other business entity that acquires all or substantially all of the assets used in connection with the Wind Project; provided further that, assignee agrees in writing to be bound by the terms of this Agreement. The Company or the assignee shall provide notice of the assignment of this Agreement prior to assignee using the Roads pursuant to the terms of this Agreement.
- c. The Company may, without the consent of the Municipality, pledge, mortgage, grant a security interest in, or otherwise collaterally assign this Agreement or any or all of its rights, interests and obligations under this Agreement to any lender or equity provider providing financing for the Wind Project as security for the Company's obligations under the financing agreements (including a trustee or agent for the benefit of its lenders) (a "Permitted Collateral Assignee"). In connection with any such collateral assignment to a Permitted Collateral Assignee, the Municipality shall, upon the request of the Company, deliver to the Company and the Permitted Collateral Assignee without delay a consent agreement in a form reasonably requested by the Company and the Permitted Collateral Assignee and which shall contain customary provisions.

16. Entire Agreement.

The entire agreement of the Parties is contained in this Agreement. No promises, inducements or considerations have been offered or accepted except as herein set forth. This Agreement supersedes any prior oral or written agreement, understandings, discussion,

negotiations, and offers of judgment or statements concerning the subject matter thereof. The parties hereto agree to execute and deliver such other documents and to perform such other acts as may, from time to time, be reasonably required to give full force and effect to the intent and purpose of this Agreement.

17. Counterparts.

This Agreement may be entered in counterparts, each of which will be considered an original, and all of said counterparts shall together constitute one and the same instrument which may be sufficiently evidenced by one counterpart.

18. Intentionally Left Blank

19. Authority of Parties.

The individuals who have executed this Agreement on behalf of the respective Parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

20. Nature of Relationship.

The status of the Company under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, each Party and its officers, agents, employees, representatives, and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives, or servants of the other Party. Each Party accepts full responsibility for providing to its employees all statutory coverage for worker's compensation, unemployment, disability, or other coverage required by law. Notwithstanding the foregoing, it is not the Parties' intention to establish a relationship whereby the Municipality is, and notwithstanding anything to the contrary in this Agreement the Municipality shall not be, a contractor of the Company with respect to Repairs. Rather, the Municipality shall perform Repairs as part of its ongoing maintenance of Municipal roads, and the Company's only obligation with respect to Repairs performed by the Municipality shall be to reimburse the Municipality in accordance with this Agreement.

21. Notice.

- a. Except where telephonic notice is required in Section 3(d)(2) and Section 6(b) and when providing telephonic notice to the other Party in the event of an emergency, any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (1) upon hand delivery, (2)

facsimile, or (3) on the first day following delivery via a nationally registered United States overnight courier service. Notice delivered in person shall be acknowledged in writing at the time of receipt. Notice delivered by facsimile shall be acknowledged by return facsimile within twenty-four (24) hours, excluding Saturdays, Sundays, and public holidays. Prior to the commencement of Road use activities by the Company's Heavy Vehicles, the Company shall provide a telephone number in writing to the Designee where a Company representative will be available 24 hours a day and, thereafter, Designee shall provide a telephone number to the Company. The Parties agree that whenever there is an emergency situation, the Party shall provide telephonic notice to the other Party in a reasonable amount of time following the emergency.

b. For purposes of this Agreement only, any notices to the Parties, other than telephonic notices, shall be directed to the Parties as set forth below:

For Company:

With a copy to: Young/Sommer LLC
Attorneys for Hoffman Falls Wind LLC
Executive Woods
5 Palisades Drive, Suite 300
Albany, NY 12205

For Municipality:

For Highway Superintendent:

With a copy to:

The Parties may change their notice addresses upon written notice to the other Party using a method set forth in this Section 21.

22. Default and Remedies.

a. In the event the Municipality believes a default in the obligations of the Company under this Agreement has occurred, the Municipality shall give the Company written notice of such alleged default and the Company shall have thirty (30) days (unless the alleged default is already subject to an express time period in this Agreement, in which case that time period shall control), from the receipt of such notice to cure such alleged default, except that should the nature of the alleged default be such that it cannot be reasonably cured within such thirty (30) days, Company shall commence and diligently continue cure activities within such thirty (30) days and shall have a reasonable amount of time after the expiration of the thirty (30) (or ten (10) day period to cure such alleged

default, provided however, such additional cure period shall not exceed one hundred and twenty (120) days. No cure period shall apply to a default that requires immediate attention pursuant to Section 6 of this Agreement. Notwithstanding anything in this Section 22 to the contrary, the Company shall have a reasonable amount of time to cure an alleged default with regard to its obligations regarding disposal of debris and the blockage of traffic.

b. In the event the Company believes a default in the obligations of the Municipality under this Agreement has occurred, Company shall give the Municipality written notice of such alleged default and the Municipality shall have thirty (30) days (unless the alleged default is already subject to an express time period in this Agreement, in which case that time period shall control) from the receipt of such notice to cure such alleged default, except that should the nature of the alleged default be such that it cannot be reasonably cured within such thirty (30) days, the Municipality shall commence and diligently continue cure activities within such thirty (30) days and shall have a reasonable amount of time after the expiration of the thirty (30) day period to cure such alleged default, provided however, such additional cure period shall not exceed one hundred and twenty (120) days.

23. Further Assurances

Subject to the terms of this Agreement, each Party agrees to reasonably cooperate with the other Party's reasonable use of Roads.

24. Safety.

The Company shall perform the work hereunder in a safe manner and shall obey all safety requirements of the Company, and all applicable federal, state, County, and Town laws, rules, and regulations, that may be established from time to time. While work is being done on a Designated Road, the Company shall cause the Company Parties to (i) place signs stating that people and vehicles are entering a construction area and (ii) identify certain hazards that may be present on the Designated Road. The Company also agrees to cause the Company Parties to provide traffic control on the Designated Roads when such roads are blocked during their use by the Company or the Company Parties under this Agreement. All traffic control devices and signage associated with Road construction shall comply with the Manual on Uniform Traffic Control Devices.

25. Term.

a. The term of this Agreement shall become effective as of the date first written above and shall remain in effect until the date that is sixty (60) days after the date on which the Wind Project facilities are decommissioned, and the decommissioning has been approved by the Office of Renewable Energy Siting or State permitting equivalent

(“Term”).

b. The Municipality agrees that the Company’s right to place Cables and Utility Poles and other infrastructure as permitted herein in Municipal roads and in the Municipality’s right of way shall be irrevocable during the Term.

26. Provision of Security for Performance.

a. Form of Security. For the period commencing on the date that construction of the Wind Project begins and ending on the date that commercial operation of the Wind Project is achieved, the Company agrees to furnish a payment and performance bond or other reasonably equivalent form of security or guarantee (including, without limitation, an escrow agreement, letter of credit, or guarantee provided by Hoffman Falls Wind LLC) which the Company may elect to provide (i) in the amount of One Hundred Thousand Dollars (\$100,000.00) for the joint and several benefit of the Municipality, with such surety and on such terms as are reasonably satisfactory to the beneficiaries, guaranteeing (i) the full and faithful performance of the repairs, modifications and improvements by the Company and the Company Parties hereunder and (ii) the payment of all liens of all persons performing labor or providing services, materials, equipment, supplies, machinery, and other items in connection with the performance of such repairs, modifications and improvements by the Company and the Company Parties hereunder. The amount of the payment and performance bonds is not intended to limit in any way the obligation of the Company to perform its obligations, all in accordance with this Agreement.

b. Release of Security. Upon the achievement of commercial operation of the Wind Project and the completion of the repair work to the reasonable satisfaction of the Designee, the Designee shall issue to the Company a certification in writing that the performance is accepted in the form provided in Exhibit F. If further repair work is required to return roads to a condition that is not worse than the conditions identified in the initial survey, the bond shall be reduced to an amount to cover the reasonable “repair” expenses for the remaining pre-construction repair work. Upon completion of the post-construction repair work, the Municipality shall issue the certificate contained in Exhibit F and release the funds remaining in the bond or other form of security back to the Company.

27. Force Majeure

a. Force Majeure Event Defined. As used in this Agreement, “**Force Majeure Event**” means causes or events that are beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Force Majeure Event, including, without limitation,

pandemics, natural disasters; fire; lightning strikes; earthquake; acts of God; unusually or unseasonably severe actions of the elements such as snow, floods, hurricanes, or tornadoes; causes or events affecting the performance of third-party suppliers of goods or services to the extent caused by an event that otherwise is a Force Majeure Event under this Section 27 ; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act (including expropriation and requisition) of any governmental agency, to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money).

b. Applicability of Force Majeure Event. No Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

- (1) the non-performing Party will give the other Parties written notice within forty-eight (48) hours of the commencement of the Force Majeure Event, with details to be supplied within fourteen (14) calendar days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;
- (2) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;
- (3) the Party whose performance is delayed or prevented will proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance and will provide a written report to the other Parties during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance will no longer be affected by the Force Majeure Event; and
- (4) when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party will give the other Parties written notice to that effect.

[signature page to follow]

IN WITNESS WHEREOF, Parties have caused their respective, duly authorized officers to execute this Agreement under seal as of the day and year first above written.

Hoffman Falls Wind LLC

Town of _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

List of Exhibits – To be provided by Company at a later date as set forth in the Agreement

Exhibit A-1: List of Haul Roads

Exhibit A-2: Map of Haul Roads

Exhibit B-1: Locations of Underground Cables

Exhibit B-2: Locations of Overhead Cables and Utility Poles

Exhibit C: Locations of Temporary Construction Easements and Turning Radii

Exhibit D: Location of Driveways and Curb Cuts

Exhibit E: Repair Techniques

Exhibit F: Road Inspection and Release Completion Letter

Exhibit A-1

List of Designated Roads

[Final to be Provided Prior to Construction]

Exhibit A-2

Map of Designated Roads

[Final to be Provided Prior to Construction]

Exhibit B-1

Locations of Underground Cables

[Final to be Provided Prior to Construction]

Exhibit B -2

Locations of Overhead Cables and Utility Poles Crossing Town Roads

[Final to be Provided Prior to Construction]

Exhibit C

Locations of Temporary Construction Easements and Turning Radii

[Final to be Provided Prior to Construction]

Exhibit D

Location of Driveways and Curb Cuts

[Final to be Provided Prior to Driveway Installation]

Exhibit E

Repair Techniques

Paved Surface:

Base Repair (hot mix areas)	Surface Repair (Gauges, track marks)	Base Repair (cold mix areas)
Mill four inches in depth to the limits of the repair as field located	Chip seal in accordance with NYDOT Section 405 full lane width in the area of the surface damage	Mill four inches in depth to the limits of the repair as field located
Install two inches of NYDOT Section 402 19 mm hot mix	NYDOT hot mix (shim) may be applied in areas of minor depressions at the Town's direction	Install four inches of NYDOT Section 405 cold mix bituminous pavement, Type 2 and chip seal the surface using limestone chip seal
Install two inches of NYDOT Section 4029.5 mm hot mix		Seal surface in accordance with NYDOT Section 405
Seal edges with NYDOT joint sealant		

Hot/Cold mix areas: Prior to use of the Roads by the Company's Heavy Vehicles, Municipality shall notify the Company as to which paved Roads are hot mix areas and which are cold mix areas. If the Company has an objection as to whether a Road is a hot mix area or a cold mix area, it can provide evidence of the contrary with a core sample of the Road. The results of the core sample shall be conclusive evidence regarding hot mix or cold mix area.

Exception: if base failure area requires excavation and stone, a reasonable field determination will be made for depth and size of the repair. Also, field adjustments for paved surfaces and base may be made upon mutual agreement.

Chip Seal Surface:

Loss of surface material:	Base Repair:(excess rutting or base failure)

Install NYDOT Section 410 Bituminous Surface Treatment in areas where existing surface material loss occurs.	Profile the roadway by a full depth reclamation in four to eight inch lifts using a calcium chloride binder
Spot chip seal repairs will be applied on an as needed basis using limestone chip seal	Install a NYDOT double chip seal over the reprofiled area using limestone chip seal

Aggregate and Dirt Surfaces:

Regrade and reshape rutted aggregate and dirt surfaces	Apply dust control as determined to be necessary. Water or commercial dust control material
Repair ditch lines as necessary	Furnish and install 4 inches of crusher run aggregate in the areas of repair.

Scope of repairs will be field inspected and compared to the existing conditions as recorded by Road video collected prior to the start of the use of each Road by the Company's Heavy Vehicles. A copy will be provided to the Municipality for use of comparison to the Municipality video should the Municipality choose to prepare its own video record.

Should temperatures or seasonal restrictions apply, the Municipality may elect to waive temperature and seasonal restrictions or delay the repairs until Section 402 and 410 specifications can be met.

Exhibit F

Road Inspection and Release

Whereas the Town of _____ has inspected and approved the necessary repairs on _____ Road (the “**Road**”) on _____ 20____.

The Town of _____ hereby releases Company, according to the terms of the Road Use Agreement dated _____ 20____, from any future repairs on the Road from the following date: _____ 20____.

Town of _____
