

ROAD USE AND MAINTENANCE AGREEMENT

THIS ROAD USE AND MAINTENANCE AGREEMENT ("**Agreement**") is entered into as of this ____ day of _____, 2019 ("**Effective Date**") by and between the County of Logan, North Dakota whose address for purposes of this Agreement is 301 Broadway, Napoleon, ND 58561 ("**County**") and Emmons-Logan Wind, LLC, a Delaware limited liability company, whose address for purposes of this Agreement is 700 Universe Boulevard, Juno Beach, Florida 33408 ("**Wind Operator**").

RECITALS

WHEREAS, Wind Operator is developing a commercial wind turbine electrical generation facility ("**Project**") on a site located in Logan and Emmons Counties, North Dakota, with approximately 123 wind turbine generators and an expected total nameplate capacity of approximately 300 megawatts ("**MW**"); and

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

WHEREAS, in connection with the construction, operation and maintenance of the Project, the Parties desire to address certain issues relating to the roads owned, operated and maintained by the County (collectively, the "**Roads**") over which it will be necessary for Wind Operator and Wind Operator's Representative(s) to, among other things: (i) transport heavy equipment and materials which may be in excess of local design limits of certain Roads, (ii) transport locally sourced materials, such as concrete and gravel, on the Roads; (iii) make specific modifications and improvements (both temporary and permanent) to the Roads (including various associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; and (iv) place overhead and underground electrical and communication cables (collectively "**Cables**") for the Project adjacent to, along, under or across such Roads; and

WHEREAS, Wind Operator and the County wish to set forth their understanding and agreement relating to the use of Roads during the construction and operation of the Project; and

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

TERMS AND CONDITIONS

1. Wind Operator will undertake the following activities in accordance with the terms of this Agreement:

a. Designate a company representative with authority to represent Wind Operator. As of the date of the Agreement, the company representative is Clay Cameron, 561-267-5044.

b. At least sixty (60) days prior to beginning construction of the Project, provide the County with a preliminary site plan identifying turbine locations, site access points, and road crossings, to be attached as **Exhibit A**, along with the preliminary transportation route for the Project equipment attached as **Exhibit B**, subject to amendment;

c. Provide plans to the County for the widening of any corner radius necessary to facilitate the turning movements of the transport trucks used by Wind Operator during construction of the Project; make any necessary improvements; and at the conclusion of construction, remove any such improvements as the County directs and restore the affected property to its original condition;

d. Erect permanent markers indicating the presence of the Cables and install tape in any trench in which Wind Operator has placed or will place Cables in a County right-of-way. All Cables shall be buried at a minimum depth of forty-eight (48) inches below the road surface;

e. Notify the County Highway Superintendent in advance of all oversize transportation and crane crossings over, across or along any Road;

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

g. Provide reasonable advance notice to the County when it is necessary for a Road to be closed due to a crane crossing or for any other reason relating to the construction of the Project. Notwithstanding the foregoing, Wind Operator will provide no less than twenty-four (24) hours notice when reasonably practicable and will provide all materials necessary to close the Road;

h. Provide signage of all road closures and work zones in compliance with the Manual on Uniform Traffic Control Devices and as may be required by the County;

i. Purchase and deliver applicable road materials for repairs to Roads that are damaged by Wind Operator and/or a Wind Operator Representative during the hauling of materials and/or construction of the Project and bear the reasonable costs to restore any Roads that are damaged by Wind Operator and/or an Wind Operator Representative during the hauling of materials and/or construction of the Project to the condition enjoyed immediately prior to such damage occurring, to the extent reasonably possible;

j. Cables may cross a road, in which case, these Cables will be bored under the road, buried at a minimum depth of forty-eight (48) inches below the road surface and the crossing shall be restored promptly to its pre-construction condition;

2. The County, in accordance with the terms of this Agreement, agrees that it shall:

a. Within fifteen (15) days following the Effective Date of this Agreement, designate a County representative with authority to represent the County;

b. Timely perform routine and regular maintenance of the Roads including: grading, snow removal, striping, routine signage, and regularly scheduled maintenance and repair;

c. Timely review and approve all Project-related access points and road crossings, which are submitted by Wind Operator in **Exhibit A and B**;

d. Timely review and approve plans for all Project-related utility encroachments on County rights-of-way; which are submitted by Wind Operator in accordance with **Exhibit A and B**;

e. Authorize the designated County representative to agree on behalf of County to revisions to **Exhibit A and B** and the final location of Road crossings, access points, and utility encroachments as revisions are submitted to the County by or on behalf of Wind Operator.

3. Planning Inventory

a. Road Inventory

1. Pre-Construction Inventory. No later than June 1, 2019, the Parties shall jointly perform a survey to record the condition of the pavement surface of the Roads which will be used in the transport of equipment to the Project. During this survey, the entire length of the roads shall be videotaped and if deemed necessary by the parties, photographs may also be taken. In addition, the County will provide Wind Operator, if available, with copies of any plans, cross-sections and specifications relevant to the existing Roads structure. Copies of all pre-construction documentation shall be provided to each of the Parties. Wind Operator will reimburse the County for all costs associated with the Pre-Construction Inventory.

2. Post-Construction Inventory

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

ii. Wind Operator shall be obligated to make any or all repairs necessary to return the roads to a pre-construction condition, at its sole cost and expense. Within ten (10) calendar days following the completion of the Post-Construction Inventory, Wind Operator shall provide notice to the County identifying those repairs which Wind Operator agrees to undertake and the expected date by which such repairs shall be completed.

b. Routing and Access Approval. As soon as practical after execution of this Agreement and as necessary throughout the construction of the Project, Wind Operator and

County shall meet to discuss routing for the transportation of equipment to the Project, Project-related access points, road crossings and Cable locations and the County shall review and approve the same in accordance with Sections 2.

4. Intentionally Deleted.

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

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

b. Limitations of Liability. In no event shall Wind Operator or any of its members, officers, directors or employees or the County or any of its Boards, officers or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to any other Party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, non-performance or delay in performance under this Agreement.

c. Required Insurance. Wind Operator shall upon commencement of construction of the Project and for the period of construction of the Project, maintain in full force and effect commercial general liability insurance, in the aggregate amount equal to Three Million Dollars (\$3,000,000). Wind Operator may utilize any combination of primary and/or excess insurance to satisfy this requirement and may satisfy this requirement under existing insurance policies for the Project.

7. Miscellaneous

a. Remedies and Enforcement. The Parties acknowledge that money damages would not be an adequate remedy for any breach or threatened breach of this Agreement. Each of the parties hereto covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any Party (the "**Defaulting Party**"), which default is not caused by the Party seeking to enforce said provisions (the "**Non-Defaulting Party**") and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right to seek specific performance and/or injunctive relief to remedy or prevent any breach or threatened breach of this Agreement. The remedies of specific performance and/or injunctive relief shall be exclusive of any other remedy available at law or in equity.

b. Due Authorization. Wind Operator hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Wind Operator. The County hereby represents, and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County.

c. Severability. If any provision of this Agreement proves to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected by such finding, and in lieu of each provision of this Agreement that is illegal, invalid, or unenforceable a provision shall be deemed added as may be possible to accurately reflect the intentions of the Parties and so as to make the unenforceable provision legal, valid, and enforceable.

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

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

f. This Agreement may not be assigned without the written consent of the Parties, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Wind Operator may assign this Agreement to its affiliates and may collaterally assign this Agreement to any lender in support of the Project.

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

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

i. Successor and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors, assignees, and legal representatives.

j. If any Term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining Terms of this Agreement, which shall continue in full force and effect.

k. Failure of County or Wind Operator to insist on strict performance of any of the conditions or provisions of this Agreement, or to exercise any of their rights hereunder, shall not waive such rights.

l. Whenever in this Agreement the approval or consent of either County or Wind Operator is required or contemplated, unless otherwise specifically stated, such approval or consent shall not be made the subject of a demand for additional compensation, nor otherwise unreasonably conditioned, withheld or delayed.

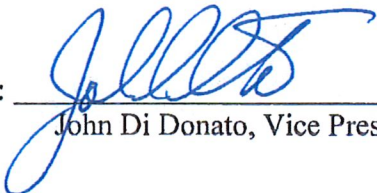
m. In any litigation arising from or related to this Agreement, the parties hereto each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement.

*[remainder of page intentionally left blank]
signatures begin on following page*

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

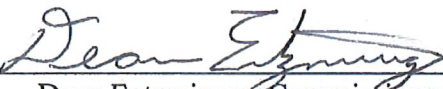
Wind Operator:

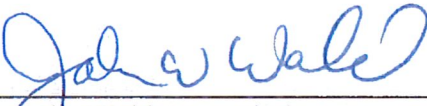
Emmons-Logan Wind, LLC
a Delaware limited liability company

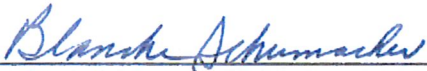
By: 
John Di Donato, Vice President

County:

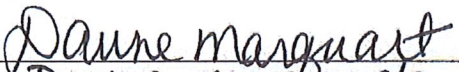
Logan County, North Dakota
Board of Commissioners

By: 
Dean Entzminger, Commissioner

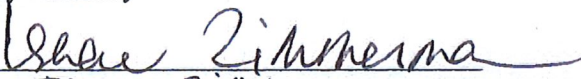
By: 
John Wald, Commissioner

By: 
Blanche Schumacher, Commissioner

ATTEST:
County Clerk

By: 
Name: Dawne Marquart

Approved as to Form:
County Attorney

By: 
Name: Isaac Zimmerman

ATTEST:

COUNTY AUDITOR

BY Brenda Fischer

NAME BRENDA FISCHER