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Via Electronic Mail

July 31, 2020

Mr. Steve Kahl
Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
ndpsc@nd.gov

**In re: Northern Divide Wind, LLC
Northern Divide Wind Energy Center
Case No. PU-19-376
Our Matter No. 035218-000045**

Dear Mr. Kahl:

Enclosed for filing in PU-19-376 is an electronic copy of Northern Divide Wind, LLC's Road Use Agreement with Leaf Mountain Township.

Please feel free to contact me with any questions.

Sincerely,

CROWLEY FLECK PLLP


Casey A. Furey
Enc.

cc: Tracy Davis (via e-mail)
Jerry Lein (via e-mail)

ROAD USE AND MAINTENANCE AGREEMENT

THIS ROAD USE AND MAINTENANCE AGREEMENT (“**Agreement**”) is entered into as of this 21 day of July, 2020 (“**Effective Date**”) by and between Leaf Mountain Township, whose address for purposes of notice is 9029 Co. Road 7, Columbus, ND 58727 (“**Township**”), and Northern Divide Wind, LLC, a Delaware limited liability company, whose address for purposes of notice 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 Burke County, North Dakota, with approximately seventy-four (74) wind turbine generators and an expected total nameplate capacity of approximately 200 megawatts (“**MW**”); 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 Township (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 I 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 Township 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 the attached Exhibit “C”, and for other good and valuable consideration, 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 at 561-267-5044. In the event that such company representative shall change, Wind Operator shall immediately notify Township.

- b. At least sixty (60) days prior to beginning construction of the Project, Provide Township with a preliminary site plan identifying site access points and road crossings, to be attached as Exhibit A, along with a preliminary transportation route for the Project equipment attached as Exhibit B, subject to amendment;
 - c. Provide plans to Township 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 restore the affected property to its original condition. Notwithstanding to the extent agreed to by the affected landowner(s) and Township, the corner turning radii and associated improvements shall be left in place and not removed by Wind Operator;
 - 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 Township right-of-way. All Cables shall be buried at a minimum depth of forty-eight (48) inches below the road surface. The determination of whether to bore or trench such Cables across section lines and roads will be made by the Qualified Engineer in consultation with the Township during the Evaluation of Roads in Section 3(a) below.
 - e. Notify Township Commissioners 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 Township when it is necessary for a Road to be closed due to a 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 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 Township;
 - i. Purchase and deliver applicable road materials for repairs to Roads that are damaged by 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 enjoyed immediately prior to such damage occurring, to the extent reasonably possible;
 - j. Wind Operator may bore a Cable crossing under improved asphalt and rock roads, to a minimum depth of forty-eight (48) inches below the road surface, subject to a road crossing permit and after approval of the Qualified Engineer in consultation with the Township shall determine during the Evaluation of Roads in Section 3(a) below;
2. Township, in accordance with the terms of this Agreement, agrees that it shall:

- a. Designate a Township representative with authority to represent Township. As of the date of the Agreement, Township representative is Jon Thingvold at (701) 339-1680.
 - b. Timely perform routine and regular maintenance of the Roads including: grading, snow removal, stripping, routine signage, and regularly scheduled maintenance and repair. During construction, Township Roads that are minimum maintenance or no maintenance will be Wind Operator's sole responsibility for any and all repairs, upgrades, or maintenance, including snow removal for their access purposes and damage caused by Wind Operator to Township Roads that are minimum maintenance or no maintenance;
 - 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 Township rights-of way; which are submitted by Wind Operator in accordance with **Exhibit A and B**;
 - e. Authorize the designated Township representative to agree on behalf of Township to revisions to **Exhibit A and B** and the final location of Road crossings, access points, and utility encroachments as revisions are submitted to Township by or on behalf of Wind Operator.
3. Planning Inventory
 - a. Evaluation of Roads
 1. Initial Evaluations. As soon as practicable after the execution of this Agreement, but in any event prior to the commencement of Project construction and before delivery of materials and equipment to the Project, Wind Operator shall, at its own expense, hire a mutually agreed upon third party qualified independent engineer ("**Qualified Engineer**") to inspect and structurally assess all Roads and to provide a report (the "**Initial Evaluation**"). The Initial Evaluation shall include or address the following:
 - i. The Qualified Engineer shall determine if the Roads have the structural capacity to carry the loads generated by Wind Operator.
 - ii. If qualified engineer determines that the Roads are insufficient to carry the loads generated by Wind Operator, the Qualified Engineer shall provide a recommendation to the Wind Operator and Township as to how the Roads will be made sufficient. All cost associated with making the Roads sufficient for the Wind Operator shall be the responsibility of the Wind Operator.
 2. Updates to Exhibit B. If Wind Operator submits an updated version of **Exhibit B** to Township, Township and Wind Operator shall perform an Initial Evaluation with respect to each additional Road that Wind Operator has included in **Exhibit B** as a Road. The costs of each Initial Evaluation will be borne by Wind Operator.

Additional evaluations shall be conducted only in the event the parties mutually agree.

b. Road Inventory

1. Pre-Construction Inventory. No later than July 30, 2020, 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, Township will provide Wind Operator, if available, with copies of any plans, cross-sections and specifications relevant to the existing Roads structure. Copies of all preconstruction documentation shall be provided to each of the parties. Wind Operator will reimburse Township for all costs associated with the Pre-Construction Inventory.
2. Post-Construction Inventory
 - i. Upon completion of construction of the Project, the Qualified Engineer will perform a post-construction inventory, the methods of which shall be the same as those of the Pre-Construction Inventory described above to maintain a consistent comparison of pre and post construction conditions. 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, Township and Wind Operator will mutually agree to the extent of the repairs or improvements needed to return the roads to a pre-construction (or better) 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 and all repairs necessary to return the roads to a pre-construction (or better) condition, at its sole cost and expense as documented in the comparison of the Pre-Construction Inventory and Post-Construction Inventory, but excluding repair caused by Township's negligence or intentional misconduct. In the event the Parties are unable to agree upon the required repairs needed to return the roads to pre-construction condition, the Parties agree that the Qualified Engineer will determine the repairs required. Within ten (10) calendar days following the completion of the Post-Construction Inventory, Wind Operator shall provide notice to Township identifying those repairs which Wind Operator shall undertake in accordance with the above-described Inventories and the expected date by which such repairs shall be completed.

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

4. 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 inconsequential damages), claims expenses and other liabilities, including, without limitation, attorney’s 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 Township 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.

5. End of Project Life. Should Wind Operator decide to substantially disassemble and/or abandon the Project and the result of such activity would require use of the Roads, Wind Operator agrees to return the Roads to the same or better condition than they were on the day the end of the Project began, with all costs associated to be borne solely by Wind Operator.

6. Miscellaneous

a. Due Authorization. Wind Operator hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Wind Operator. Township

hereby represents, and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Township.

b. Severability. If any provisions 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.

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

d. 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.

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

f. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of 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.

g. Successor and Assigns. This agreement shall insure to the benefit of and shall be binding upon the Parties hereto, their respective successors, assignees, and legal representatives.

h. 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.

i. Failure of Township 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.

7. Whenever in this Agreement the approval or consent of either Township 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, or otherwise unreasonably conditioned, withheld or delayed.


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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:

Northern Divide Wind, LLC,
a Delaware limited liability company

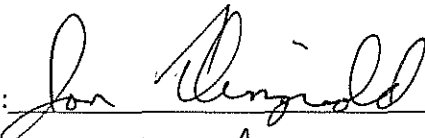
By: 

Name: Anthony Pedroni

Title: Vice President

Township:

Leaf Mountain Township

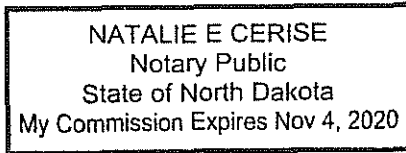
By: 

Name: Jon Thingvold

Title: Township Board President

On this 30th day of July, 2020, before me personally appeared **Jon Thingvold**, in his capacity of Representative for Leaf Mountain Township, known to me to be the person who is described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

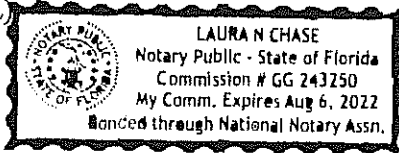
(SEAL)



Natalie E Cerise
Notary Public
State of North Dakota

On this 23rd day of July, 2020, before me personally appeared Anthony Pedroni, in his/her capacity for Northern Divide Wind, LLC, a Delaware limited liability company, known to me to be the person who is described in and who executed the foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)



Laura N Chase
Notary Public
State of Florida

EXHIBIT "C"

THIS AGREEMENT is attached to and by reference made a part of the Road Use and Maintenance Agreement ("Agreement"), effectively dated the 21 day of July, 2020, by and between **Leaf Mountain Township, a political subdivision of the State of North Dakota**, of 9029 County Road 7, Columbus, ND 58727, "OWNER", and **Northern Divide Wind, LLC, a Delaware Limited Liability Company**, of 700 Universe Boulevard, Juno Beach, Florida 33408, as "OPERATOR".

1. Notwithstanding the provisions of this Agreement to the contrary, OPERATOR hereby acknowledges and agrees that OPERATOR shall have the obligation to care for and maintain the minimum or no maintenance roadways ("Roads") described herein at OPERATOR'S sole expense. Further, OPERATOR hereby agrees that maintenance of the said roadway shall include grading, graveling, repairs, snow removal, dust control, mowing of ditches, and weed control, together with any other maintenance required for the purposes of keeping the relevant access roadways in a condition that is safe and accessible for its given purpose.
2. Notwithstanding the provisions of this Agreement to the contrary, OPERATOR and/or its successors and assigns shall restore the Roads within six (6) months of abandoning the access road described herein. OPERATOR shall further restore the Roads described herein as close as is practicable to their former condition within six (6) months of abandoning the Roads described herein; however, if OPERATOR should encounter severe weather which shall make the said restoration/reclamation impracticable within the said six-month period, the said period shall be extended for a reasonable period of time to accommodate such restoration/reclamation. The lands taken by OPERATOR may be excused from restoration/reclamation if, prior to abandonment, OWNER requests in writing that the Roads be retained by OPERATOR in its current or then existing condition.
3. Notwithstanding the provisions of this Agreement to the contrary, OPERATOR and/or its successors and assigns shall hold harmless and indemnify and defend OWNER and/or its heirs, successors and assigns from and against all claims, demands, actions, judgments, damages and executions that arise out of OPERATOR's activities on the Roads described herein. This indemnity shall terminate at such time as the OPERATOR shall complete restoration of the Roads as described above, except and unless any claim, demand, action, judgment, damage and/or execution shall have arisen or shall have been discovered after OPERATOR has completed restoration.
4. Notwithstanding the provisions of this Agreement to the contrary, except for the rights granted to OPERATOR herein, OWNER reserves all oil, gas and minerals on and under said lands and the right to use the surface of the land used by OPERATOR for a right of way in any manner not inconsistent with the rights granted to OPERATOR hereunder.