

ROAD USE AGREEMENT.

This Road Use Agreement (the “**Agreement**”) is entered into this 14th day of January, 2025 (“**Effective Date**”) between Prattsburgh Wind, LLC, a Delaware limited liability company, with an address of 11455 El Camino Real, Suite 160, San Diego, CA 92130, hereinafter “**Company**”, and the Town of Wheeler, a municipal corporation having offices at 6429 Gardner Road, Bath, New York 14810, hereinafter “**Municipality**”. The Company and Municipality are each a “**Party**” and referenced together as the “**Parties**”.

RECITALS

WHEREAS, Company is developing a wind-powered electric generating facility located in the Towns of Prattsburgh, Avoca, Cohocton, Howard, and Wheeler, Steuben County, New York (the “**Prattsburgh Wind Farm Project**”); and

WHEREAS, Company intends to engage in the initial construction of the Prattsburgh Wind Project, including but not limited to Tree Clearing and Site Preparation activities (the “**Construction Phase**”), periodic repair and maintenance of the Prattsburgh Wind Project (each instance referred to herein as a “**Maintenance Period**”) and decommissioning activities (the “**Decommissioning Phase**”) (collectively, the “**Project Construction Activities**”); and

WHEREAS, in connection with the Project Construction Activities, Company may necessarily need to (i) traverse the Municipality’s highways, roads, bridges, culverts and related fee owned land, rights-of-way or easements owned or maintained by the Municipality (collectively “**Roads**”) with Company operated heavy vehicles, equipment, and machinery in excess of the legal dimensions or weights specified in Section 385 of the New York State Vehicle and Traffic Law (consisting of certain trucks, construction machinery and equipment and other related items operated by the Company during the Project Construction Activities) (collectively referred to herein as “**Company's Heavy Vehicles**”), (ii) transport personnel, parts, equipment, facilities and materials on the Roads, (iii) widen certain Roads, install temporary turning radii, and other temporary construction easement rights-of-way and make certain modifications and improvements (both temporary and permanent) to such Roads (including without limitation to certain culverts, bridges, road shoulders and other related fixtures) to permit equipment and material to pass, (iv) place certain underground and overhead electrical collection and transmission and communication cables, conduit and other wires and cables (collectively, “**Cables**”) for the Prattsburgh Wind Farm Project in close proximity to or under or across certain Roads, (v) place footings, foundations, towers, poles, crossarms, guy lines and anchors, circuit breakers, junction boxes and other machinery and equipment related to the Cables (all of the foregoing, collectively, “**Utility Poles**”) in close proximity to certain Roads, and (vi) carry out other related activities (the uses described in clauses (i) through (vi) are the “**Permitted Uses**”); and

WHEREAS, Company acknowledges that the nature of Project Construction Activities may cause damage to said Roads, beyond ordinary wear and tear; and

WHEREAS the Municipality seeks guarantees and assurances from Company that

Company will pay and/or otherwise indemnify the Municipality for any Damage (as defined herein) to the 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, Company and the Municipality, each intending to be legally bound, agree as follows:

1. Rights and Responsibilities of the Parties.

a. Company agrees that it shall be responsible for ensuring that all debris, garbage, and waste upon Roads related to 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.

b. Except under emergency circumstances, 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 ten minutes at a time. Company agrees that any proposed temporary Road closings will be properly coordinated in advance with the Municipality. Longer term closures, greater than thirty minutes at a time, if required, shall be coordinated with the Municipality 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 Clerk and Highway Superintendent, as well as the following emergency service providers and school officials, and any other list of local emergency service providers and school officials the Municipality provides to the Company in writing later: Steuben County Emergency Services, Fire departments, school district superintendents and directors of transportation.

c. The term “**Company**” shall include its employees, agents, vendors, contractors, subcontractors, and/or haulers. 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.

d. The Municipality designates the Town Road Committee, which shall consist of the Highway Superintendent, Town Supervisor and one member of the Town Highway Committee, but shall include no more than two voting members of the Town Board (“**Road Committee**”) as the entity that shall, unless otherwise limited or conditioned herein, have authority to act on behalf of the Municipality. The Town Supervisor may appoint an alternate to the Road Committee. The Highway Superintendent may designate the Town Highway Work Foreman to serve in his/her stead on the Committee. This paragraph (together with the use of a road committee throughout the Agreement) is in no way intended to limit or curtail any legal authority vested in the Town Highway Superintendent.

e. The Company agrees that it shall undertake the Prattsburgh Wind Farm Project, 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, Article 94-c of the Executive Law and the terms, conditions, limitations and modifications of any permit it is awarded pursuant thereto.

f. The term “**Period of Use**” shall mean the Construction Phase, any Maintenance Period or the Decommissioning Phase.

g. The term “**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 Exhibit A-1 and depicted on A-2 hereto, which shall include any alternate routes which may be used from time to time by the Company. All Company vehicles, equipment, and machinery shall use only the Roads identified in Exhibit A-1 and A-2 when traveling to and from the Project.

h. For the purposes of clarity, the parties agree that the “**Decommissioning Phase**” shall commence with the beginning of decommissioning activities and end upon the completion of the decommissioning of the Prattsburgh Wind Farm Project pursuant to the conditions set forth in the Permit issued by the New York State Office of Renewable Energy Siting (“**Permit**”).

2. Company Use.

Provided Company is not in default beyond any applicable cure period but subject to Section 21(b), Municipality hereby grants Company the right to use, improve, upgrade, construct, and repair and encroach into the Roads for the Permitted Uses during any Period of 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 Roads during construction (which includes tree clearing), maintenance and decommissioning. The routes depicted on Exhibits 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. This provision precludes construction employees of all company traffic (including but not limited to Heavy Construction Vehicles), during the Construction Phase, from using Municipal roads, not identified on Exhibits A-1 and A-2 to access the Project in their personal vehicles. Haul Roads and all intersections will be marked with visible construction signage indicating which roads are approved Roads for construction traffic.

b. Installation of Underground Cables. Use and encroach into the 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 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) For Cables that cross under the Roads, Company will bore under the Roads, in the method particularly described in subsection (3) below. If approved by the Road Committee, 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 Road Committee.
- (3) Company will bore under paved and unpaved roads, and all boring pits and ditch excavation will be backfilled, compacted and raked to return it to conditions equal to those prior to commencement of work. The highest point of any such boring by Company must be at a minimum depth of 48” 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 Road except in the locations set forth in the Exhibits to this Agreement.
- (4) Each boring under a Road will be identified by general location and also by centerline coordinate, and upon the completion of construction, Company will provide as-built location mapping.

c. Installation of Overhead Cables. Use Roads and public rights-of-way for the purposes of the installation, ownership and operation of overhead Cables over, across and in close proximity to certain Roads and public rights-of-way as shown on Exhibit B-2. 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 Roads or public rights-of-way, unless first approved in writing by the Municipality. Nevertheless, overhead lines shall not be used unless unground lines are not feasible.

d. Utility Poles. Use Roads and public rights-of-way for the purposes of the installation, ownership and operation of Utility Poles as shown on Exhibits B-1 and 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 provided, however, that guy wires may be located in a public right-of-way subject to the prior written approval of the Road Committee.

e. Temporary Construction Easements and Turning Radii. Use, traverse, improve, upgrade, widen, construct the Roads and rights-of-way shown on Exhibit C for purposes of making certain modifications and improvements (both temporary and permanent) to such Roads (including without limitation to certain culverts, bridges, road shoulders and other related fixtures) to permit equipment and material associated with the Prattsburgh Wind Farm Project to pass. All such modifications and improvements must be constructed in accordance with local laws and

regulations and with road specifications appended hereto and approved by the Highway Superintendent.

f. Driveways. Use and encroach into Roads and other rights-of-way shown on Exhibit D for purposes of installing driveways or entrances into or from certain Roads subject to the following:

- (1) Each driveway entrance from a Road will have a coordinate that will be transmitted in an electronic GIS format (ESRI shape file or equivalent) to the Highway Superintendent.
- (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 Project's Stormwater Pollution Prevention Plan (SWPPP) and must maintain proper drainage of the 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 Highway Superintendent.

g. Subsequent Relocation of Improvements. If, from time to time, Municipality should determine, in its sole discretion, that it will widen a Road or otherwise modify the public right-of-way in a manner that impacts Company's Permitted Uses hereunder, upon notice from Municipality, Company shall, at Company's sole cost, as soon as reasonably possible, relocate any of the improvements to allow the Municipality's modifications; provided, however that any underground Cables installed in accordance with Section 2(b) shall not need to be relocated.

h. Seasonal Use: Company may use seasonal roads listed on Exhibit A-1 and depicted on Exhibit A-2 during any Period of Use subject to the provisions of this Agreement, provided that the Company will pay for a third party or its own crews to perform any plowing or snow removal, together with any sanding or the like necessary to ensure appropriate traction and safety if required for access to the Project. To the extent that the Company or its agents damage such roads its uses, including during plowing or snow removal, it will repair them, to the same condition as before plowing activities.

3. Approval of Locations of Permitted Uses; Issuance of Permits.

a. Following the Effective Date but prior to the delivery of the Exhibits contemplated in Section 3(c) below or commencement of Company's Permitted Uses during each new Period of Use, Company and Road Committee shall meet and confer regarding the routes to be used for Company's 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 Municipality's review of Company's draft Exhibits submitted pursuant to Section 3(c) and Company's other documents, reports and plans submitted hereunder. Pursuant to Section 3(g),

Company shall pay for all of Municipality's documented out of pocket costs and expenses reasonably related to the implementation of this Agreement (including the reasonable fees of the Municipality's attorney and Municipal Engineer) (hereinafter referred to as "**Professional Fees**").

c. After meeting with Road Committee, but no later than sixty (60) days prior to the commencement of Permitted Uses hereunder and for each new Period of Use, the Company will provide to the Highway Superintendent for his review draft Exhibits A-1, A-2, B-1, B-2, C and D showing the proposed use of Roads and the locations of the planned infrastructure within the Roads and other Municipality rights-of-way, as well as any additional information related thereto that is reasonably requested by Municipality. Within forty (40) days of the Road Committee's receipt of said draft Exhibits, the Road Committee shall either (a) approve said draft Exhibits, which approval shall not be unreasonably withheld, conditioned or delayed, or (b) provide Company with reasonable revisions to said draft 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 Road Committee'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 Company shall not deviate from the routes and improvements established thereby unless approved by the Municipality or Road Committee as set forth herein or as otherwise provided in Section 3(d)(2). For each Maintenance Period and the Decommissioning Phase, to the extent new Exhibits are needed, each new set of Exhibits approved pursuant to this Section shall wholly replace Exhibits from the prior Period of Use.

d. Following the acceptance of the final Exhibits for any Period of Use, 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) Should any Roads not listed or shown on Exhibits A-1 and A-2 be expected by Company to be used by Company vehicles, at least thirty (30) days prior to the commencement of such use, the Company shall notify the Road Committee in writing, conduct any 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 Road Committee, which approval shall not be unreasonably withheld, conditioned or delayed. In the event 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 to Municipality herein, the Highway Superintendent may request and Company shall immediately upon receipt of such request cease and desist such deviation.
- (2) In the event that the Company needs 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 Highway Superintendent and Town Clerk and may only use said Roads temporary basis until such emergency has ended. In the event that Company determines that said Roads will be used on a permanent basis, Company shall comply with the terms of Section (d)(1) above. The Company agrees that if such roads used on an emergency basis

reveal damage afterwards, that the Town claims was caused by the Company, the burden shall be on the Company to either (a) cause the roads to be repaired in accordance with the standards set herein or (b) prove that the Company did not damage the roads.

- (3) If Company needs to materially vary the type, method or locations of any improvements shown on Exhibits B-1, B-2, C or D, Company shall provide a revised Exhibit to the Road Committee for review and approval, which shall not be unreasonably withheld, conditioned or delayed. Except in the event of an emergency, Road Committee shall complete the review within forty (40) days of receipt of revised Exhibits.

e. Upon approval of the Exhibits as described above and submission of the permit application referenced in Section 2(f)(2) above, Municipality shall issue, if necessary, any encroachment, crossing, driveway or other similar permits for 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.

f. If necessary to ensure safe and adequate placement of access road for the Project, the Municipality agrees to submit a speed reduction limit request with the New York State Department of Transportation pursuant to Vehicle and Traffic Law Section 1622 and or otherwise post appropriate traffic signs.

g. At all times during the Term of this Agreement, Company shall keep 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 Project Construction Activities and identification of subcontractors using Heavy Vehicles to be used by Company. Company shall provide such information regarding the timing, location and nature of its Permitted Uses promptly upon Municipality's request. Company agrees to cooperate in good faith with Municipality with respect to such time periods, which cooperation shall include but not be limited to coordinating the timing of 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 Municipality's road use local laws or road use agreements.

h. The Company agrees to reimburse Municipality for its reasonable Professional Fees. The Municipality may draw upon the Professional Fees Escrow Account described in this Section to pay such Professional Fees; provided, however, upon 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 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 7 below.

i. Establishment of Escrow Accounts.

- (1) Prior to Company's submittal of the draft Exhibits set forth in Section 3(c),

the Company shall deposit the sum of twenty-five thousand dollars (\$25,000.00) 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 Town Clerk shall advise Company, and 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 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 of each Period of Use.

- (2) 30 days prior to the commencement of Project Construction Activities, the Company shall deposit the sum of \$75,000.00 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 Town Clerk shall advise Company, and 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 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 of each Period of Use.

j. Nothing in this Agreement shall be construed as granting permission or rights to Company to infringe, use or encroach upon the land of private landowners. Any right or permission granted to Company by the terms of this Agreement to infringe, use or encroach upon land within the Municipality shall be limited to land owned by Municipality and shall be subject to 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 Town rights of way.

4. Reinforcement Activities.

The Parties acknowledge that certain Roads to be used by Company in connection with the Project Construction Activities may need to be upgraded or otherwise repaired to correct deficiencies or inadequacies, including such deficiencies and/or inadequacies identified by the Pre-Construction Report. Prior to use of the Road during each Period of Use, if the Company identifies deficiencies or inadequacies in the Roads relative to the Project Construction Activities, Company shall notify the Road Committee of its planned construction to reinforce and improve the Roads as necessary to correct such deficiencies or inadequacies ("**Reinforcement Activities**"). The Road Committee's approval of the proposed Reinforcement Activities shall not be unreasonably withheld, conditioned or delayed. The Road Committee shall complete its review of the Reinforcement Activities within forty (40) days of its receipt of the proposed Reinforcement

Activities. Upon the Road Committee's approval of said plans, the Company shall perform the Reinforcement Activities. Company's performance of the Reinforcement Activities on the Roads shall be conducted so as to minimize the effects on local transportation and shall be coordinated with the Road Committee with respect to its planned construction (if any) affecting the Roads.

5. Road Surveys and Routes.

a. Pre-Construction Requirements

- (i) Pre-Construction Report. After meeting with the Road Committee, and at least 60 days prior to the commencement of Road use activities by Company's Heavy Vehicles during any new Period of Use, at Company's cost, Company shall prepare a **Pre-Construction Report**, which shall include a suitable video survey of the Roads and bridges identified in Exhibits A-1 and A-2 to this Agreement and a written report summarizing the results of the company's physical testing of such Roads (which it agrees to conduct), including but not limited to, falling weight deflectometer (FWD) (10 per mile), and soil borings (2 per mile/max depth of 36" of less) ("**Physical Roadway Testing**"). The Physical Roadway Testing will document existing conditions using Pavement Condition Index (PCI) ratings. The strength of the road is calculated from the FWD and other data. The Pre-Construction Report shall further include review, in accordance with Exhibit G attached hereto, and written assessments of the condition of roadways, culverts, bridges, and/or drainage facilities. The Pre-Construction Report shall identify appropriate reinforcements and improvements that should be conducted in order for the roadways, culverts, bridges, and/or drainage facilities to properly support the Company's Road use, including the use of steel plates over culverts and pipes. The Company shall provide a copy of the Pre-Construction Report to the Road Committee at no cost to the Municipality. The Road Committee shall complete its review of the Pre-Construction Report within forty (40) days of its receipt of the Pre-Construction Report.
- (ii) Reinforcement. If the Pre-Construction Report reveals deficiencies or inadequacies in the Roads and/or culverts, bridges, and/or drainage facilities relative to planned construction activities, the Company shall undertake construction to reinforce and improve the Roads and and/or culverts, bridges, and/or drainage facilities as necessary to correct such deficiencies or inadequacies ("**Reinforcement Activities**"). Following the performance of Reinforcement Activities per Section 4 of this Agreement, the Pre-Construction Inspection Report will be updated, including a written narrative of work performed, and pre-construction photographs or video of the reinforcements shall be taken prior to the commencement of construction of the Project (collectively, the updated Pre-Construction Inspection Report, as applicable, and the photographs and videos are herein referred to as the "**Post-Reinforcement Report**"). Photographs will

be taken at areas of concern, such as bridges, to document the condition of such areas which may be impacted by traffic relating to the construction of the Project.

b. Post-Construction Requirements

- i. The Company shall in good faith notify the Road Committee when a Period of Use has concluded and within sixty (60) days thereafter, the Company shall, at Company's cost, prepare a "**Post Construction Report**" (which report includes the Damage Report referenced below), including a post-construction video Road survey; a post-construction Physical Roadway Testing of the Roads identified in Exhibits A-1 and A-2 to this Agreement; a report detailing any Damage, as defined in Section 6 of this Agreement, between the condition of the roads before and after the Project Construction Activities or other Permitted Uses of the Company ("**Damage Report**"); and a proposal from the Company detailing the manner in which the Company proposes to restore the roads to a condition that is as good as the condition the roads were in prior to such Company Activities.
- ii. Immediately following the completion of a Post Construction Report and Damage Report, Company will provide the Road Committee with the Post Construction Report and Damage Report, including a copy of the video and results of the post-construction Physical Roadway Testing.

c. The parties shall comply with and repeat the procedures and requirements set forth in Sections 3, 4 and 5 for each Period of Use. Notwithstanding the foregoing, after the Construction Phase and when Company is not operating within a Period of Use, in the event the Prattsburgh Wind Farm Project requires immediate, emergency repair, which repair is unscheduled, and strict compliance with the time frames of Section 3, 4 and 5 is not possible, then Company shall provide written notice thereof to the Municipality as soon as possible, and if prior written notice is not possible given circumstances, then Company need only provide prior telephonic notice to the Municipality that it will be utilizing the Roads. Under these circumstances only, Company may commence such use without the necessity of the pre-use reports and testing, but shall provide the Post-Construction Report and Damage Report as required and otherwise comply with the provisions of this Agreement.

6. **Road Damage.**

a. Notwithstanding anything to the contrary in this Agreement, including the definition of the terms "Damage" or "Damages" as described in this Section 6(a), Company shall be obligated to return the Roads identified in identified Exhibits A-1 and A-2, and any other Roads which were damaged by the Project Construction Activities or other Permitted Uses of Company, to an equal or better condition than prior to commencement of the Project Construction Activities. The terms "**Damage**" or "**Damages**" as used in this Agreement shall include, but not necessarily be limited to, accelerated deterioration, cracking, imprinting, pitting, tracking,

buckling or asphalt and dirt road base damage, damage to culverts, bridges and/or drainage facilities, including but not limited to ditches. It shall also include damage to guardrails. The terms “Damage” or “Damages” shall not include injuries to the Roads that (1) were (a) present prior to the Company’s use thereof by Company’s Heavy Vehicles and (b) not worsened by the Company’s use thereof as evidenced by the results of pre-use inspection(s) and report(s); (2) occurred after repairs to the Road were made, at a time Company’s Heavy Vehicles were not in use by the Company on the Road and that were not a result of Company’s defective repair work; (3) are the result of ordinary wear and tear. With regards to Damage to Roads used by Company’s Heavy Vehicles, notwithstanding anything in this Agreement to the contrary, Company shall only be liable for reasonable costs, fees, expenses and any other reasonable bills incurred to or by the Municipality to repair Damage to Roads, and the Municipality agrees that the remedies related to Damages to Roads and repair thereof set forth herein shall be the sole remedies for such Damages.

b. If any Damage occurs to Roads by the use of Roads by Company’s Heavy Vehicles or by Company’s other Permitted Uses and such Damage is, in the reasonable opinion of the Municipal Engineer and/or Road Committee or Highway Superintendent, an immediate danger to the public using said Road (**“Immediately Dangerous Damage”**), the Municipal Engineer and/or Highway Superintendent shall provide telephonic notice, following by written notice within one (1) business day, to the Company that there is an Immediately Dangerous Damage to a Road or Roads. In the event that the Company does not immediately undertake the necessary emergency repairs, the Municipality may retain necessary contractors and subcontractors, undertake immediate emergency repairs to said Road and draw upon the Emergency Repairs Escrow Account to cover the costs associated with such emergency repairs. 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 Municipal Engineer (and/or Road Committee) creates a safety risk if not repaired within the next five (5) days. In the event Company becomes aware of any potential Immediately Dangerous Damage, it shall immediately notify the Road Committee of the particulars of such Damage, which the Municipality shall thereafter inspect and, if warranted, repair in the manner described above.

c. Notwithstanding the provisions of Section 6(b), within 45 days following the submittal of the Post Construction Report, post-construction Physical Roadway Testing and Damage Report (if any), the Municipality must notify Company in writing if the Municipality believes Damages to the Roads (other than those which are identified in Company’s Damage Report) arise from Project Construction Activities or other Permitted Uses of Company.

d. Except in the case of Immediately Dangerous Damage covered by Section 6(b), within fifteen (15) days after a receipt of any written notice of allegation of Damage from the Municipality, Company shall notify the Road Committee in writing of its agreement or disagreement with the allegations.

e. Concurrent with Company’s response in Section 6(d), Company shall also notify Municipality 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 Road Committee.

f. Except in the case of Immediately Dangerous Damage covered by Section 6(b), with respect to any repairs that are not in dispute and that Company elects not to perform hereunder, Company shall reimburse 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 Municipality maintained time and material cost records, which shall be made available to Company for review upon request. Municipality billing rates shall be those established by the Municipality and shall be uniformly applied to all customers.

g. If Company reasonably disputes the invoice, scope of repair, need for repair or its liability for the repair, 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 15-day period. In the event of a dispute, then both Parties shall abide by the dispute resolution procedures set forth in Section 7 below.

h. The manner of repair of any Road Damage described in this Agreement shall be at the reasonable discretion of the Road Committee 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. All laborers, workmen and mechanics, under the control of Company or Company's subcontractors, within the meaning of NYS Labor Law Article 8, performing the road repairs contemplated by this Agreement prior to the date the Prattsburgh Wind Farm Project achieves commercial operation, whether through long-term or short-term employment, must be paid at least the applicable Prevailing Wage requirements of the jurisdiction where the Town is located. This requirement applies to all laborers, workmen and mechanics performing said road repairs, whether they are direct employees of the Company or of Company's subcontractors, or any other entity under the control of Company or Company's subcontractors. This requirement shall not apply if Company or Company's subcontractors has entered into a single collective bargaining agreement (including a pre-hire agreement) covering both contractors in the construction industry working on the Prattsburgh Wind Farm Project and a bona fide building and construction trade labor organization representing the craft workers who will perform the road repairs contemplated herein. The Company shall be required to pay for and install road base materials or surfaces to a condition equal to what 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 amend Exhibit E to take into account reasonable advances in repair techniques in consultation with the Municipal Engineer and/or Road Committee.

i. Company warrants that all repairs to Damage that it completes under this Agreement (but not those repairs completed solely by Municipality) shall withstand and sustain normal wear and tear for a period of 1 year from the issuance of a Completion Letter. This one year warranty period shall not be deemed to be renewed, or deemed to recommence, upon the

second repair of a particular Damage previously repaired by the Company.

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

k. 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 Roads that are no longer necessary for the Prattsburgh Wind Farm Project (the “Excess Materials”). Company agrees to remove such materials and stockpile them for use by the Municipality if requested by the Highway Superintendent. The Highway Superintendent shall designate the place on Town property on which the Excess Materials will be stored.

If Company Heavy Vehicles use Roads not otherwise allowed pursuant to this Agreement, it is agreed upon that, in addition to any other remedies the Municipality may have, including for damages to the roads used, a penalty of \$1,000 per occurrence for each will be paid to the Municipality. This provision only applies to Company Heavy Vehicles.

7. Dispute Resolution

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, Steuben County. For the purposes of clarity, in the event a cure period applies pursuant to Section 19, no dispute resolution obligation shall apply until after the expiration, or alleged expiration, of such cure period.

8. Bonding

a. Company shall obtain and deliver to the Municipality a bond in the amount of Five Million Dollars (\$5,000,000.00) during the Construction Phase, which shall remain in place for one (1) year following the day that the Highway Superintendent issues the last Completion Letter for such Period of Use or if no such letter is issued because no Damage was identified or repaired, then the last day of the Period of Use. The Bond amount for any other Period of Use, including the Decommissioning Phase,

shall be established by the Parties prior to the commencement of the Company using the Roads for that Period of Use and the amount shall be commiserate with bond amounts for similar projects in the State of New York occurring at that particular time. In the event that the Parties cannot agree on an amount prior to the time the Company needs to use the Roads for a Period of Use, the following shall apply:

- (i) Company will provide a bond in the amount of One Million Dollars (\$1,000,000.00) during a Maintenance Period and, thereafter, will pay for an independent engineer selected by the Municipality and licensed in the State of New York to determine the amount of the Bond for that specific Maintenance Period. If the independent engineer determines that the amount of the Bond should be greater than One Million Dollars (\$1,000,000.00), then the Company shall obtain an additional Bond (or increase the original Bond) to the new amount and if the independent engineer determines that the amount of the Bond should be less than One Million Dollars (\$1,000,000.00), then Bond amount shall be reduced to the new amount.
- (ii) Company will provide a bond in the amount of Five Million Dollars (\$5,000,000.00) during the Decommissioning Period and, thereafter, will pay for an independent engineer selected by the Municipality and licensed in the State of New York to determine the amount of the Bond for the Decommissioning Period. If the independent engineer determines that the amount of the Bond should be greater than Five Million Dollars (5,000,000.00), then the Company shall obtain an additional Bond (or increase the original Bond) to the new amount and if the independent engineer determines that the amount of the Bond should be less than Five Million Dollars (\$5,000,000.00), then Bond amount shall be reduced to the new amount.

b. Each Bond shall be executed by an insurance company with an AM Best Rating of A-/9 or better and authorized to do business in the State of New York.

c. Each Bond shall be released by the Municipality at the expiration of the applicable warranty period as set forth in Section 6(i).

d. Company shall be listed as principal with the instrument benefiting the Municipality, as obligee and shall be conditioned that the Company will comply with the terms and conditions of this Agreement. The original bond shall be delivered to the appropriate Municipal employee or supervisor.

e. In the event that the Company does not undertake repairs, fails to properly complete repairs or reimburse the Municipality in the time allotted under Section 6 above and the Emergency Repairs Escrow Account has been depleted, the Municipality shall be authorized to demand payment from and against any bond to recover any amounts due from the Company for repairs to the Roads and/or bridges. Upon receipt of the monies, the Municipality will proceed with completing the required repairs. Nothing in this subsection will prevent the Municipality from proceeding by way of a civil action to obtain compliance and abate the default.

f. In the event the Bond contains a stated termination date, then Company shall renew or obtain a new Bond in the agreed upon amount no later than 30 days prior to the stated termination date. Should Company convey any or all of its interest in this Agreement, then the new owner will obtain a Bond to comply with this Agreement.

g. The Bond is to guarantee reimbursement to the Municipality for all reasonable costs of labor, material and equipment expenses the Municipality may incur in repairing any Road consistent with the provisions of this Agreement.

h. The cancellation of any Bond will not release the Company from its obligation to meet all of the requirements of this Agreement.

i. Nothing in this Section 8 shall be construed to result in a waiver of any rights of the Company, bonding company or insurance institution issuing a bond to dispute or challenge any claims for payment by the Municipality for alleged Damage to its Roads.

j. The Municipality shall take all action and execute such documents as are reasonably requested by Company to evidence the release of the Bonds as contemplated in this Section 8.

9. Indemnification and Insurance.

Company shall obtain and maintain or cause to be obtained and maintained insurance of the following types and forms from the commencement of construction until completion of the project, and to the extent the Company transfers any of the obligations to perform under this agreement to its vendors, contractors, subcontractors, and/or haulers it shall ensure that they obtain and maintain the types and forms of insurance from the commencement of construction that are reasonable. Company shall furnish Municipality with certificates of insurance and endorsements of all required insurance, as may be reasonably requested.

a. Company shall maintain, or cause to be obtained and maintained, at no cost and expense to the Municipality, a minimum level of commercial general liability insurance of two million dollars (\$2,000,000) for each occurrence, and five million dollars (\$5,000,000) in the aggregate. Insurance coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage “occurrence” form or claims made form. Company agrees that it will include the Municipality as an additional insured. Coverage for the additional insured shall apply as primary and non-contributing before any other insurance, including any deductible, maintained by, or provided to, the additional insured. All insurers shall have at least an A – (VII) or better rating by A.M Best and be qualified to do business in the jurisdiction where

the Project is located. The CGL coverage for the Company and all additional insured from commencement of construction through completion of the project, and for at least two (2) years after the termination of this Agreement.

b. Company shall obtain and maintain or cause to be obtained and maintained by its sub-contractors Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, at the premises where the work is performed. Employers' Liability insurance shall not be less than five hundred thousand dollars (\$500,000) for injury or death each accident

c. Coverage identified in clauses a & b above shall provide 30 days' notice to the Municipality prior to cancellation of any coverage.

d. Indemnification by the Municipality. The Municipality hereby releases and agrees to indemnify and hold harmless Company, its members and Affiliates and its and their officers, directors, contractors, subcontractors, employees, successors and assigns (hereinafter collectively "**Company Releasees**") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Company Releasees arising out of or resulting from the Municipality's negligent or willful misconduct in the course of Municipality's completion of any Road repairs under this Agreement. More particularly, but without in any way limiting the foregoing, the Municipality hereby releases the Company Releasees and agree to indemnify and hold harmless the Company Releasees 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 Road by the Municipality, its respective employees, agents, representatives or contractors or its respective employees, agents or representatives.

e. Indemnification, Waiver and Forbearance. To the fullest extent permitted by law, Company shall defend, indemnify and hold harmless the Municipality, its agents, officers, board members and employees from and against all claims, damages, losses and expenses (including reasonable attorneys' fees), arising out of or resulting from Company's breach of this Agreement, Damage to the Roads, or Company's negligent or willful misconduct in the course of Company's completion of Road repairs under this Agreement. With respect to injuries to persons for whom Company has secured the payment of compensation as provided under the New York Workers' Compensation Law and which Company has agreed in this section to provide indemnification to the Municipality, this provision shall be construed as one by which the Company has expressly agreed to contribution or indemnification of the Municipality within the meaning of New York Workers' Compensation Law § 11. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in this section. In any and all claims against Municipality or any of its agents or employees by any employee of Company, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under

this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Company under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. So long as the Company materially complies with the terms and provisions of this Agreement, the Municipality further agrees that it shall not seek, obtain or enforce punitive damages, including, but not limited to treble damages set forth in New York Highway Law Section 320 for Damages to the Roads, and that Damages successfully remediated pursuant to this Agreement shall not be considered damages subject to the provisions of New York Highway Law Section 320. Notwithstanding anything to the contrary herein, but subject to the waiver of rights under Highway Law § 320, the Municipality has not waived any and all other rights and remedies that may be available and applicable under the New York State, local and federal law, including but not limited to, the New York Highway Law, Town Law and General Municipal Law.

f. **No Consequential Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT IT IS THE INTENT THAT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ITS RELATED PERSONS, FOR CLAIMS FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY NATURE CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED UPON NEGLIGENCE, STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

10. 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.

11. Modifications.

This Agreement cannot be changed orally, but only by agreement in writing signed by the Parties against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

12. 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.

13. 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 Steuben County, New York.

14. 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. 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 Company has conveyed or leased the Prattsburgh Wind Farm 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 Prattsburgh Wind Farm Project; provided further that, assignee agrees in writing to be bound by the terms of this Agreement. 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. 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 Prattsburgh Wind Farm Project as security for 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 Company, deliver to Company and the Permitted Collateral Assignee without delay a consent agreement in a form reasonably requested by Company and the Permitted Collateral Assignee and which shall contain customary provisions.

15. 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.

16. 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.

17. 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.

18. 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, or (2) on the first day following delivery via a nationally registered United States overnight courier service, and provided that a copy is sent via electronic mail to the other Party and its counsel. Prior to the commencement of Road use activities by Company's Heavy Vehicles, Company shall provide a telephone number in writing to the Municipality and Highway Superintendent where a Company representative will be available 24 hours a day and, thereafter, Highway Superintendent shall provide a telephone number to the Company. The Parties agree that whenever there is an emergency situation, the Party shall provide telephonic notice, followed by written 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:	Prattsburgh Wind, LLC 11455 El Camino Real Suite 160 San Diego, CA 92130
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With a copy to:	Young/Sommer LLC Executive Woods Five Palisades Drive Albany NY 12205
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For Municipality:	Town of Wheeler 6429 Gardner Road Bath, New York 14810 Attn: Town Supervisor
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For Highway Superintendent:	Town of Wheeler Highway Superintendent 6429 Gardner Road Bath, New York 14810
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With a copy to:	Mullen Associates PLLC 12 West Pulteney Square PO Box 551
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The Parties may change their notice addresses upon written notice to the other Party using a method set forth in this Section 18.

19. Cure.

a. In the event the Municipality believes a default in the obligations of the Company under this Agreement has occurred, Municipality shall give Company written notice of such alleged default and the Company shall have thirty (30) days (or ten (10) days for alleged defaults which are already subject to an express time period, such as, for example, Company's obligation to replenish escrow funds in Section 3(h)), or longer if the Agreement expressly allows for a longer cure period, 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 19 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 Municipality written notice of such alleged default and Municipality shall have thirty (30) days (or ten (10) days for alleged defaults which are already subject to an express time period, such as, for example, Municipality's obligation to return the balance of escrow funds in Section 3(h)) or longer if the Agreement expressly allows for a longer cure period 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, 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.

20. Further Assurances

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

21. Term.

a. The term of this Agreement shall become effective as of the date first written above and shall remain in effect, unless terminated earlier in accordance with this Agreement, until the date that is thirty (30) days after the date on which the Prattsburgh Wind Farm Project facilities are decommissioned in accordance with this Agreement ("**Term**").

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

22. Restoration and Decommissioning

Unless otherwise agreed by Municipality, Company shall restore to the original condition all temporary construction easements and turning radii within 180 days after Company's delivery of the Post Construction Report during the Decommissioning Phase. Prior to the end of the Term of this Agreement, Company shall remove the above-ground Cables and Utility Poles. Company shall be permitted to leave in place all underground Cables and other infrastructure buried to a depth of 36 inches in non-agricultural land or a depth of 48 inches or greater in agricultural land, otherwise Company shall remove such facilities prior to the end of the Term of this Agreement. With respect to underground Cables and other underground infrastructure left in place after the Term such infrastructure may be removed by the Municipality at its sole discretion. Company shall be permitted to leave in place all Road improvements, driveways and curb cuts.

23. Agreement Runs With Project.

This Agreement runs with the Prattsburgh Wind Project. Any company that owns or operates the project shall be subject to this Agreement. Notice of such Agreement will be recorded by the Company in the Steuben County Clerk's Office.

24. Dust control.

Throughout the course of the project, when dirt roads are used within 500' of either side of an occupied residence driveway, dust control will be used in a manner, method, and emulsion type that is reasonable and is acceptable to the Highway Superintendent, as agreed upon in consultation with each Municipality to ensure uniformity in application. It is estimated that such dust control will be in the form of an emulsion. A lesser dust control method will be used on the remainder of the dirt roads, which method will be acceptable to the Highway Superintendent and is estimated to be a brine or something substantially similar. If appropriate dust control methods are not implemented by the Company, the Town shall be entitled to injunctive relief. The Company will not be held liable to the Town for any damage to roadside vegetation caused by dust control methods approved by the Highway Superintendent.

25. 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, natural disasters; pandemic; 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 24; 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, Company and the Municipality have caused their respective, duly authorized officers to execute this Agreement under seal as of the day and year first above written.

Prattsburgh Wind, LLC

By: 
Name: Kevin Sheen
Title: VP of Business Development
Date: 1/14/25

Town of Wheeler

By: 
Name: Jeannette Underhill
Title: Supervisor
Date: 1-13-2025

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

- Exhibit A-1: List of Roads
- Exhibit A-2: Map of 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 D-1: Minimum Standards for Driveways
- Exhibit E: Repair Techniques
- Exhibit F: Road Inspection and Release Completion Letter
- Exhibit G: Bridge, Culvert, and Drainage Facility Review

Exhibit A-1
List of Roads
[To be Provided Prior to Construction]

Exhibit A-2

Map

[To be Provided Prior to Construction]

Exhibit B-1

Locations of Underground Cables

[To be Provided Prior to Construction]

Exhibit B -2

Locations of Overhead Cables and Utility Poles

[To be Provided Prior to Construction]

Exhibit C

Locations of Temporary Construction Easements and Turning Radii

[To be Provided Prior to Construction]

Exhibit D

Location of Driveways and Curb Cuts

[To be Provided Prior to Construction]

Exhibit D-1

**Minimum Standards for Driveways
[To Be Provided Prior to Construction]**

Exhibit E
Repair Techniques

Paved Surface:

Base Repair (hot mix areas)	Surface Repair (Gouges, track marks)	Base Repair (cold mix areas)
Mill eight inches in depth to the limits of the repair as field located	Chip seal in accordance with NYDOT Section 410 full lane width in the area of the surface damage	Mill to the limits of the repair as field located
Install three inches of NYDOT Section 402 19 mm hot mix binder	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 and 1/2 inches of NYDOT Section 402 9.5 mm hot mix Top Course		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 Company's Heavy Vehicles, Municipality shall notify Company as to which paved Roads are hot mix areas and which are cold mix areas. If 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
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Aggregate and Dirt Surfaces:

- Regrade and reshape rutted aggregate and dirt surfaces.
- Repair ditch lines as necessary.
- Apply dust control (water or commercial dust control) as determined to be necessary. Material.
- Furnish and install max four (4) inches of crusher run aggregate in the areas of repair.

In all cases: if any of the existing roads have improved depths that are thicker than those referenced above for the surrounding areas of road, then the depth of the new improvement (pavement, chip seal, aggregate, etc.) shall be at least as deep as the improved depth on the surrounding road.

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 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. The Municipality will provide copy of any videos to the Company that the Municipality prepares.

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.

Notifications:

1. Company will notify and provide monthly updates to the Municipality of the project schedule and the approximate time periods Company's Heavy Vehicles will be using the Municipality's Roads
2. Company will request a pre-use inspection of the Roads listed in the Road Use Agreement by the Municipality Representatives and Company representatives for identification of any existing Road damage, at a mutually agreeable time, prior to the time period of use by Company's Heavy Vehicles.
3. Company will request a one-time post-use joint inspection of the roads listed in the Road Use Agreement by the Municipal Representatives and Company representatives for identification of any new Road damage associated with the time period of use by Company's Heavy Vehicles.

Completion:

Upon completion of the construction of the Prattsburgh Wind Project, Company will contact the Municipality to schedule the final inspection of the Roads listed in the Road Use Agreement for release of the Roads from the Road Use Agreement and/or identification of repairs.

Exhibit F

Road Inspection and Release

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

The Town of Wheeler 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 Wheeler

Exhibit G

Bridge, Culvert, and Drainage Facility Review

- Culverts - A visual inspection and photo of each end of the culverts (and end sections) will be sufficient. If the culvert has been damaged due to heavy loads, there will likely be evidence of settling on the road surface above the culvert. Such notations should be identified in the inspection of the road.
- Bridges – A visual inspection of each bridge, as well as review of past inspection reports, will be sufficient to determine the condition of structures. If the visual inspection reveals concerns, a more detailed inspection would be required. The type of detailed inspection will vary greatly depending on the type of bridge and the deficiency suspected.
- Drainage Facilities – Visual inspection of swales/ditches will be sufficient. Closed drainage systems (drainage inlets and pipes) would fall into the same category as culverts.
- All of the above shall be photographed and video documented.