

July 14, 2026

Minutes for the Regular Meeting of the Town Board of the Town of Smithfield held July 14, 2026,
at the Smithfield Community Center commencing at 7:00 p.m.

Present:

Supervisor	Thomas J Stokes	
Councilperson	Brenda Goff	
Councilperson	Nell Ziegler	
Councilperson	Ken Mennig	absent
Councilperson	Richard Looft	
Highway Superintendent	Charlie O'Hara	
Town Clerk	Betsy MacArthur	

Meeting called to order 7:02

Pledge of Allegiance was recited

Approval of Minuets

A motion was made by Councilperson Goff seconded by councilperson Looft that the minutes of June 9,2026 be approved with corrections Was adopted

Ayes 4 -Supervisor Stokes, council persons; Goff, Ziegler, Looft

Nays- 0

Supervisors report

On a motion of Supervisor Stokes the meeting was started with Supervisors report seconded by Council person Goff. Receipts and payments for June 2026 were read and filed.

General Funds Revenues	totalled \$10,150.68	Expenditures \$44,127.66
Streetlight Revenues	totalled \$18.48	Expenditures \$203.89
Highway Revenues	totalled \$201,023.70	Expenditures \$288,260.26

On a motion of Supervisor Stokes seconded by councilperson Ziegler Supervisors report was adopted

Ayes -4 - Supervisor Stokes, Councilperson Goff, Ziegler ,Looft

Nays -0

Town Clerks Monthly Report-

Receipts and Payments for June, 2026 were read and filed.

Total State, County and Local Revenues totalled disbursements \$805.00

Local Shares Remitted to General Fund totalled \$735.42

On a motion of councilperson Looft, seconded by Councilperson Ziegler Clerks report was adopted:

Ayes: 4– Supervisor Stokes, Councilpersons: Ziegler, Goff, Looft

Nays: 0

Codes Enforcement Report- Report was reviewed and filed.

Planning Board – no report

Zoning Board – no report

Highway Superintendent- Charlie O'Hara reported that work continues with repairs to equipment. The six wheeler was repaired and is working nicely.

Public courtesy of the floor;

William Graham ; 5733 Old County Rd.. He stated as follows “I was out politicking and wanted to clear some things up. First concern; I left my position as Supervisor in the Town of Vienna , April 2022, to purchase a house in Canastota to be near his family. The second concern, a Board member was contacted about a vote on a resolution. I did not like the response. Third, I would like to see the terms of the elected positions on the website. Fourth I own investment properties. “

A councilperson asked if he lived at stated address (5733 old county rd.) He responded “ yes, But, I will be gone for 2 months. I want to state for the record” “I am planning to try to purchase my mothers property from my three siblings. “That is my intentions, legally I do not have to occupy until January 1 of 2027”. “

Howard Tucker 4650 Elizabeth Street . He is still concerned about the two cottonwood trees across the road from his house . The Highway superintendent expressed concern, with the town doing the job. The trees are extremely large for the towns equipment. He will ask the county will take down. He also knows an arborist and will seek information there as well.

Old business

URI Grant Counsel person Ziegler shared that estimates are being compiled for an application being applied for in August .

Executive session

A motion of Supervisor Stokes to enter executive session to seek advice of counsel. Seconded by councilperson Goff motion adopted at 7;11pm

Ayes: 4– Supervisor Stokes, Councilpersons: Ziegler, Goff, Looft
Nays: 0

On a motion of Supervisor Stokes , seconded by councilperson Goff to end the executive session at 7:20 pm No action was taken’

Ayes: 4– Supervisor Stokes, Councilpersons: Ziegler, Goff,Looft
Nays: 0

Resolution #50-2026 Approving Host Community Agreement with Hoffman Falls Wind LLC

RESOLUTION No. #50-2026

OF THE TOWN BOARD OF THE TOWN OF SMITHFIELD

RESOLUTION APPROVING HOST COMMUNITY AGREEMENT WITH HOFFMAN FALLS WIND LLC

WHEREAS, Hoffman Falls Wind LLC (the "**Company**") filed an application under New York State Public Service Law Article VIII ("**Article VIII Application**") as part of the Renewable Action Through Project Interconnection and Deployment ("**RAPID Act**") to obtain a Siting Permit ("**Siting Permit**") from the Office of Renewable Energy Siting and Electric Transmission ("**ORES**") to construct an approximate 100 megawatt ("**MW**") wind-powered electric generating facility in the Towns of Eaton, Smithfield, Nelson and Smithfield (the "**Project**") comprised of up to twenty four (24) wind turbines ("**Turbine**"), as well as an associated underground medium voltage collection system, a permanent

meteorological (“**MET**”) tower, an aircraft detection lighting system (“**ADLS**”), temporary construction laydown areas, a temporary concrete batch plant, a medium voltage-to-transmission voltage collection substation, a point of interconnection (“**POI**”) switchyard, gravel access roads, and an operations and maintenance (“**O&M**”) facility (collectively the “**Facility**”); and

WHEREAS, the Company filed its Application for the Project with ORES on February 15, 2024; and

WHEREAS, on December 22, 2025, ORES issued its *Statement of Findings of the Executive Director and Siting Permit for a Major Renewable Energy Facility* (the “**Siting Permit**”), wherein, the Facility was approved for construction and operation in accordance with terms and conditions of the Siting Permit; and

WHEREAS, on January 30, 2026, the Company sought to modify the Siting Permit pursuant to 16 NYCRR §1100-11.1 and on March 12, 2026, ORES approved the Company's

request as a minor modification to the Siting Permit, which *inter alia*, reduced the number of turbines to eighteen (18) and increased the permitted nameplate capacity of the Facility to 109.8 MW; and

WHEREAS, pursuant to the 4.1(f) of the Siting Permit, the Company shall provide host community benefits which may include payments pursuant to a host community agreement to host communities such as the Town of Smithfield (“**Town**”); and

WHEREAS, the Town Board, through its attorneys, has engaged in negotiations with the Company on a Host Community Agreement (“**HCA**”) that is intended to memorialize the Town's review and approval process for compliance with the Uniform Fire Prevention and Building Code and Energy Conservation Code, decommissioning procedures and other related items, and memorializes the Company's payment of host community benefit payments on an annual basis for the next thirty (30) years;

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Smithfield hereby approves the HCA in the form attached hereto (see attached addendum) and made a part hereof and authorizes the Town Supervisor to execute the HCA, and further authorizes the Supervisor and legal counsel for the Town to take such other steps and actions as may be necessary to carry out the purpose and intent of this resolution and the HCA. This resolution shall take effect immediately.

Dated: July 14, 2026

On a motion of Supervisor Stokes Seconded by Richard Looft, the resolution #50-2026 was adopted by roll call ;

Supervisor	Thomas Stokes	Aye
Councilperson	Nell Ziegler	Aye
Councilperson	Brenda Goff	Aye
Councilperson	Richard Looft	Aye
Councilperson	Kenny Mennig	Absent

Resolution #51-2026 Authorizing The Modification of the 2026 Adopted Town Budget.

Resolution No. 51____-2026

Authorizing The Modification of The 2026 Adopted Town Budget

BE IT RESOLVED that the 2026 Adopted Town Budget be modified as follows:

Highway Fund

<u>Estimated Revenues</u>	<u>From</u>	<u>To</u>
DA5031 Transfer from Fund Balance	\$19,000	<u>\$84,117.00</u>
Control Total:		<u>\$65,117.00</u>

Expenses

DA5130.2 Machinery, Equipment	\$26,000	<u>\$91,117.00</u>
Control Totals:		<u>\$65,117.00</u>

On a motion of Supervisor Stokes, Seconded by Councilperson Goff, Resolution #51-2026 was adopted by roll call

Supervisor	Thomas Stokes	Aye
Councilperson	Nell Ziegler	Aye
Councilperson	Brenda Goff	Aye
Councilperson	Richard Looft	Aye
Councilperson	Kenny Mennig	Absent

Resolution #52-2026

Authorizing the purchase of a Used 4 WD Diesel Powered Agricultural type Tractor with Attatched Boom Arm Mower

RESOLUTION NO. _52-2026____OF THE TOWN BOARD
OF THE TOWN OF SMITHFIELD

A RESOLUTION AUTHORIZING THE PURCHASE OF USED 4WD DIESEL
POWERED AGRICULTURAL TYPE TRACTOR WITH ATTACHED BOOM ARM
MOWER

WHEREAS, the Town Highway Department is in need of a replacement tractor and boom arm mower for clearing ditches and road rights of way; and

WHEREAS, the Town has duly solicited sealed bids for the purchase of a used tractor and mower to fulfill this need; and

WHEREAS, one bid was received in response to the solicitation, from Timothy Searles in the amount of \$45,000; and

WHEREAS, the Town Highway Superintendent and the Town Supervisor have found said bid to be in accordance with the bid specifications and recommend that said bid be accepted.

NOW THEREFORE IT IS HEREBY RESOLVED that Town Board of the Town of Smithfield accepts the bid of Timothy Searles in the amount of \$45,000 for the purchase of a used John Deere 6230 tractor with a Diamond boom arm mower attachment and authorizes the Town Supervisor to take such actions and make such payments as may be necessary to complete said purchase; and

IT IS HEREBY FURTHER RESOLVED that a budget transfer from the Highway Department unappropriated fund balance in the amount of \$45,000 is hereby authorized and appropriated for the payment of the purchase price of this equipment.

July 14, 2026

On a motion of Supervisor Stokes, seconded by Nell Ziegler. Resolution #52-2026 was adopted by roll call

Supervisor	Thomas Stokes	Aye
Councilperson	Nell Ziegler	Aye
Councilperson	Brenda Goff	Aye
Councilperson	Richard Loof	Aye
Councilperson	Kenny Mennig	Absent

Payment of Claims

On a motion of Richard Looft seconded by Brenda Goff , resolved the bills be paid on abstract #7 in the following amounts

General Fund	Vouchers #86 to 97	in the amount of	\$	7,480.26
Highway Fund	Vouchers #65 to 77	in the amount of	\$	10,917.74
Pre-Pays			\$	1,261.37

Ayes 4- Supervisor Stokes Councilpersons Nell Ziegler, Brenda Goff, Richard Looft
Nay -0

New Business-

discussion was focused on the organizing of 'Old Home Days' planning for next year. The fire department has been contacted and organizing has started. Also, a Smithfield Open House is being organized for the end of August 2026. The town wants to showcase the improvements and upgrades in the highway department and celebrate what our community has to offer.

The meeting was adjourned at 7:51pm

Respectfully submitted, Betsy MacArthur

Addendum Resolution 50-2026

Host Community Agreement

For the Hoffman Falls Wind Project

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- List of Exhibits**
- Exhibit “A” Town Board Resolution**
- Exhibit “B” Scope of Services**
- Exhibit “C” Form of Notice of Assignment and Assumption of Host Community Agreement**

HOST COMMUNITY AGREEMENT

This HOST COMMUNITY AGREEMENT, is made as of the [] day of [], 2026 (this “Agreement”) by and between HOFFMAN FALLS WIND LLC, with its principal place of business located at 412 W 15th Street, 15th Floor, New York, NY 10011 (the “Company”), and the TOWN OF SMITHFIELD, a municipal corporation duly organized and existing under the laws of the State of New York and having its offices at 5255 Pleasant Valley Road, Peterboro, NY 13035, (the “Town”). The Company and the Town may sometimes be referred to herein, individually, as a “Party” and, collectively, as the “Parties”.

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

WHEREAS, the Company filed an application under New York State Public Service Law Article VIII (“Article VIII Application”) as part of the Renewable Action Through Project Interconnection and Deployment (“RAPID Act”) to obtain a Siting Permit (“Siting Permit”) from the Office of Renewable Energy Siting and Electric Transmission (“ORES”) to construct an approximate 100 megawatt (“MW”) wind-powered electric generating facility in the Towns of Eaton, Fenner, Nelson, and Smithfield (the “Project”) comprised of up to twenty four (24) wind turbines (“Turbine”), as well as an associated underground medium voltage collection system, a permanent meteorological (“MET”) tower, an aircraft detection lighting system (“ADLS”), temporary construction laydown areas, a temporary concrete batch plant, a medium voltage-to-transmission voltage collection substation, a point of interconnection (“POI”) switchyard, gravel access roads, and an operations and maintenance (“O&M”) facility (collectively the “Facility”); and

WHEREAS, the Company filed its Application for the Project with ORES on February 15, 2024; and

WHEREAS, on December 22, 2025, ORES issued its Statement of Findings of the Executive Director and Siting Permit for a Major Renewable Energy Facility (the “Siting Permit”), wherein, the Facility was approved for construction and operation in accordance with terms and conditions of the Siting Permit; and

WHEREAS, on January 30, 2026, the Company sought to modify the Siting Permit pursuant to 16 NYCRR §1100-11.1 and on March 12, 2026 ORES approved the Company’s request as a minor modification to the Siting Permit, which inter alia, reduced the number of turbines to 18 and increased the permitted nameplate capacity of the Facility to 109.8 MW; and

WHEREAS, pursuant to the 4.1(f) of the Siting Permit, the Company shall provide host community benefits which may include payments pursuant to a host community agreement to host communities such as the Town; and

WHEREAS, this Agreement is intended to memorialize the Town’s review and approval process for compliance with the Uniform Fire Prevention and Building Code and Energy Conservation Code (“Uniform Code”), decommissioning procedures and other related items; and

WHEREAS, the Company desires to make such additional payments to the Town under the terms and conditions of this Agreement; and

WHEREAS, the host community benefit payments the Company has agreed to pay to the Town (“Host Payments”) pursuant to this Agreement satisfy the condition of the Article VIII Siting Permit and Article VIII requiring the company to provide host community benefits to the host communities of the Project; and

WHEREAS, the Parties believe that their mutual interests will be served by the execution of this Agreement which specifies their respective rights, interests, and obligations relative to the construction, operation, and decommissioning of the Facilities; and

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

1. DEFINITIONS

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

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

“Certificate of Completion” shall have the meaning set forth in Section [9.04](#)

“Commercial Operation Date” shall have the meaning set forth in Section [4.02](#).

“Company” shall mean Hoffman Falls Wind LLC, a limited liability company duly organized and existing under the laws of the State of New York.

“Completion Notice” shall have the meaning set forth in Section [7.03](#).

“Construction Commencement Date” shall have the meaning set forth in Section [4.01](#).

“Construction Period Payment” shall have the meaning set forth in Section [4.01](#).

“Decommissioning” shall have the meaning set forth in Section [9.01](#)

“Decommissioning Notice” shall have the meaning set forth in Section [9.02](#).

“Decommissioning Security” shall have the meaning set forth in Section [9.06](#).

“Deficiency Notice” shall have the meaning set forth in Section [7.03](#)

“Effective Date” shall have the meaning set forth in Section [3.01](#).

“Evaluation Period” shall have the meaning set forth in Section [7.03](#).

“Expiration Date” shall have the meaning set forth in Section [3.02](#).

“Extended Cure Period” shall have the meaning set forth in Section [13.05](#).

“Host Fee” shall have the meaning set forth in Section [4.02](#).

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

“Lender” shall have the meaning set forth in Section [16.10](#).

“Lender’s Lien” shall have the meaning set forth in Section [16.10](#).

“Losses” shall have the meaning set forth in Section [11.02](#).

“MW” shall have the meaning set forth in Section [4.01](#).

“Mortgage” shall have the meaning set forth in Section [13.05](#).

“Mortgagee” shall have the meaning set forth in Section [13.05](#).

“Notice of Breach” shall have the meaning set forth in Section [13.01](#).

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

“NYISO” means the New York Independent System Operator.

“On-Site Monitor” shall have the meaning set forth in Section [60.1](#).

“**Payment Rate**” shall have the meaning set forth in Section [4.02](#).

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

“**Replenishment Amount**” shall have the meaning set forth in Section [8.03](#).

“**Restoration**” shall have the meaning set forth in Section [9.02](#).

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

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

“**Scope of Services**” shall have the meaning set forth in Section [6.03](#)

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

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

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

“**Temporary Certificate of Completion**” shall have the meaning set forth in Section [7.05](#).

“**Town**” shall mean the Town of Smithfield, New York.

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

“**Town CEO**” means the Code Enforcement Officer of the Town.

“**Town Supervisor**” means the Chief Executive Officer of the Town.

2. REPRESENTATIONS AND WARRANTIES

1. TOWN REPRESENTATIONS AND WARRANTIES.

The Town represents, warrants, and agrees as follows:

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

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

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

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

2. COMPANY REPRESENTATIONS AND WARRANTIES.

The Company represents, warrants, and agrees as follows:

1. **Existence and Good Standing.** The Company is, and will continue to be throughout the term hereof, validly existing as a limited liability company duly organized and existing under the laws of the State of New York and authorized to do business in the State of New York.

2. **Approval, Authorization and Enforcement.** The Company has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Company is duly authorized to execute and deliver this Agreement and perform all of its duties and obligations contained herein. Neither the Company nor any successor, transferee, or other party acting through rights acquired through or from the Company will bring a claim challenging, nor raise as a defense in litigation, the legal validity or enforceability of this Agreement.

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

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

3. TERM

1. EFFECTIVE DATE.

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

2. TERM.

The term of this Agreement shall commence with the Effective Date and expire upon the date of Decommissioning and Restoration has been completed for the Project located within the Town (the “Expiration Date”). Notwithstanding the foregoing, the Parties’ obligations to defend and indemnify each other as set forth in this Agreement shall survive this Agreement or any extension thereof for a period of six (6) years after the Expiration Date or extension thereof.

4. HOST COMMUNITY PAYMENTS

1. CONSTRUCTION PERIOD PAYMENTS.

In consideration of impacts associated with construction of the Project, the Company shall make a one-time payment to the Town (the “Construction Period Payment”) in the amount of Two Thousand dollars (\$2,000) times the total number of Turbines installed in the Town pursuant to the terms of the Siting Permit. The Company shall provide the Town written notice of its intent to commence construction of the Project (the “Notice of Commencement of Construction”) and such notice shall state the date upon which construction activities associated with the Project may commence (the “Construction Commencement Date”). The Construction Period Payment shall be due with the Notice of Commencement of Construction.

2. ANNUAL HOST FEE.

1. Payment Rate. The Company shall annually pay the Town a host community fee (the “Host Fee”) in an amount equal to Four Thousand Five Hundred dollars (\$4,500) per MW, including any fractional share thereof, of nameplate rated capacity for the Facilities installed by the Company in the Town as part of the Project (the “Payment Rate”) for a period of thirty (30) years commencing on the Commercial Operation Date.

2. Inflation Adjustment to Payment Rate. Starting with the second annual Host Fee payment the Host Fee shall be adjusted annually for inflation by a rate equal to two percent (2%).

3. Due Date. Host Fee payments shall be due within thirty (30) days after the Commercial Operation Date (as defined below) and shall thereafter be due on the anniversary of the first Host Fee payment. The date on which the Project becomes commercially operational, as evidenced by its notice to the New York Independent System Operator (“NYISO”), shall be referred to as the Commercial Operation Date (the “Commercial Operation Date”). Within fifteen (15) days after its notice to the NYISO, the Company shall provide notice to the Town of the Commercial Operation Date.

3. TERMINATION OF HOST FEE FOR DECOMMISSIONED FACILITIES.

The Company shall pay an annual Host Fee in accordance with Section 4.02. hereof with respect to Facilities installed by the Company in the Town as part of the Project until the earlier of the following: (i) thirty (30) years following the Commercial Operation Date; (ii) the Facilities are Decommissioned and Restoration has occurred in accordance with Article IX below.

4. LATE PAYMENT.

Any Host Fee not paid as of the date due shall be deemed late and the Town shall provide the Company with written notice of non-payment and an opportunity to cure the delinquency within thirty (30) days of receipt of such notice. If the Host Fee remains unpaid after this cure period, the Town may issue a Notice of Breach in accordance with Section 13.01. After issuance of the Notice of Breach, late fees shall be assessed at a rate of seven and a half percent (7.5%) per annum, until the Host Fee is paid. Late fees shall accrue in accordance with this section without further written notice from the Town.

5. COMPLIANCE WITH LAW

1. COMPLIANCE WITH LAWS.

The Company agrees that the Project shall be constructed and operated in compliance with the ORES Siting Permit and in compliance with all applicable State and federal laws, rules, and regulations to the extent not otherwise preempted by Article VIII of the Public Service Law or the ORES Siting Permit.

6. ON-SITE MONITOR, MONITORING, AND REPORTING REQUIREMENTS

1. APPLICABLE CODES.

Pursuant to Article VIII of the Public Service Law the Company is obligated to arrange with the Town for the review, approval, inspection and compliance certification of work required by the Siting Permit to comply with the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, which the Town agrees supersede any provisions of the Town's local electrical, plumbing and building codes (the State Fire and Building Codes are collectively referred to herein as the "Applicable Codes") to the extent applicable to a utility-scale wind energy generation system.

2. ON-SITE MONITOR.

At the sole expense of the Company, as is set forth in more detail in Section 8.01 of this Agreement, the Town shall engage a qualified independent engineer or engineering firm (the "On-Site Monitor") who shall be responsible for: (a) reviewing any portion(s) of the Company's building plans for those portions of the Facility subject to the Applicable Codes (b) if compliant with the Applicable Codes, recommending approval of building plans for the Facility, (c) assisting the Town's codes enforcement officer ("Town CEO") and/or any of the representatives of the Town CEO with inspecting the construction work for compliance with Applicable Codes, and (d) certifying such compliance which shall be evidenced by issuance by the Town, or by the On-Site Monitor on the Town's behalf, of Certificates of Compliance and/or Temporary Certificates of Compliance (collectively, the "Scope of Services").

3. SCOPE OF SERVICES.

The Scope of Services is set forth on Exhibit "B". The Scope of Services and the On-Site Monitor's review of the Project does not extend to installation or assembly of turbines, including towers, nacelles and blades; turbine mechanical or electrical systems, including generators, gearboxes and control panels; and power collection systems components

including buried and overhead collection and transmission lines or Vertical Construction Activities.

4. LIMITATION OF AUTHORITY.

The On-Site Monitor will not be responsible for construction means, methods or techniques, or choice of or source of supply for construction materials. Nor shall the On-Site Monitor have approval authority over the Company's choice of labor or responsibility for monitoring Project labor. Nor shall the On-Site Monitor be responsible for construction site safety.

5. SCHEDULE.

The On-Site Monitor shall work within Project scheduling parameters established by the Company, and shall provide adequate staffing to enable review and approval in accordance with the timelines in this Agreement.

6. TOWN ENGAGEMENT OF ON-SITE MONITOR.

The Town's selection of the On-Site Monitor shall be subject to the Company's consent, which shall not be unreasonably withheld. Further, the Town agrees that it shall cooperate with the Towns of Nelson, Eaton, and Fenner to select a mutually agreeable On-Site Monitor to serve on behalf of the Town and the Towns of Nelson, Eaton, and Fenner for the Project. Such selected firm must be a qualified independent engineering firm with wind project experience. The Company shall have five (5) business days after its receipt of the Town's notice of its intent to retain the On-Site Monitor to advise the Town in writing of any objection to the engagement of such firm. If the Company raises an objection, the Town and the Company agree to meet within three (3) business days of the Town's receipt of the Company's notice to discuss the Company's concerns with the selected firm and potential substitute firms. Failure to raise an objection constitutes consent by the Company. The Town may replace the On-Site Monitor at any time following the selection procedures of this Section 6.06.

7. REPORTS.

The On-Site Monitor shall provide copies of his or her reports to the Company at the same time such reports are provided to the Town Supervisor, Town Board, and Town Highway Superintendent.

8. EMERGENCY NOTIFICATIONS.

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

9. LIMITATION.

The On-Site Monitor is not an agent or employee of the Company or an engineer of record for the Project, nor does the work of the On-Site Monitor in any way limit the Company's obligation under New York law to use a licensed engineer where required.

**7. PERMITS, CONSTRUCTION OVERSIGHT, AND
CERTIFICATES OF COMPLETION**

1. SUBMISSION OF BUILDING PLANS.

Sixty (60) days prior to the Commencement of Construction the Company will meet with the On-Site Monitor to discuss the process, timing and schedule for the submission of the Company's building plans for the Facility that are required to be reviewed by the Town for compliance with the Applicable Codes. The Town agrees that the Company may phase construction of the Facility and that building plans for each phase will be submitted for review.

2. PROMPT REVIEW AND APPROVAL.

The On-Site Monitor will promptly review the Company's building plans for the Facilities within fifteen (15) business days of the Company's submission of same. The On-Site Monitor's review and approval of the Company's building plans shall supersede and serve as any permit or other approval that the Town would otherwise require.

3. COMPANY COMPLETION NOTICE AND EVALUATION PERIOD.

When the Company completes installation of any portion of the Facility subject to the Applicable Codes, it shall submit a certification from an engineer confirming compliance with the Applicable Codes (a "Engineer Certification") and request that a Town Certificate of Completion be issued (together with the Engineer Certification, the "Completion Notice"). The On-Site Monitor will by the end of the tenth (10th) business day following its receipt of a Completion Notice (the "Evaluation Period") issue either a Certificate of Completion or a Temporary Certificate of Completion as outlined in Sections 7.4 and 7.5 hereof or a notice of deficiency. If the On-Site Monitor does not issue a Certificate of Completion or a Temporary Certificate of Completion for any Facility component for which a Completion Notice was provided to the Town, the Town shall deliver to the Company a written list of all alleged deficiencies for any such component ("Deficiency Notice") by the expiration of the Evaluation Period. Upon receipt of any Deficiency Notice, the Company shall have the opportunity to object to any of the alleged deficiencies it disagrees with. To the extent the Company disagrees with any of the alleged deficiencies, the procedures set forth below in Section 7.6 shall apply. The Company shall otherwise address the identified deficiencies it agrees with and deliver a new Completion Notice to the Town.

4. CERTIFICATE OF COMPLETION.

In the event the On-Site Monitor finds that Facility component has been constructed in accordance with the Applicable Codes the On-Site Monitor will issue to the Company a Certificate of Completion confirming that the Facility component has been constructed in accordance with the Applicable Codes (a "Certificate of Completion").

5. TEMPORARY CERTIFICATE OF COMPLETION.

1. If during the Evaluation Period the On-Site Monitor determines that a Facility component has been constructed in accordance with the Applicable Codes, except for certain outstanding conditions or other items that cannot be completed due to weather, material delays, or similar reasons, the On-Site Monitor will issue to the Company a temporary certificate of completion confirming that the Facility component has been constructed in accordance with the Applicable Codes (a “Temporary Certificate of Completion”). A Temporary Certificate of Completion may be issued by the On-Site Monitor for a six-month period and renewed by the On-Site Monitor for up to six months at a time, as long as efforts are being made to complete compliance with all conditions.

2. When the Company has satisfied all outstanding conditions in accordance with the Applicable Codes relative to a Facility component for which the On-Site Monitor has issued a Temporary Certificate of Completion, the Company shall submit a Completion Notice to the Town. In the event the On-Site Monitor finds that the Company has satisfied such conditions, the On-Site Monitor will issue to the Company, within seven (7) days of its receipt of the Completion Notice, a Certificate of Completion confirming that the involved Facility components have been constructed in accordance with the Applicable Codes.

6. DENIAL OF PERMITS OR DISPUTES REGARDING CERTIFICATES OF COMPLETION.

If the Company and the On-Site Monitor do not agree that either a Certificate of Completion or Temporary Certificate of Completion should be issued for a Facility component, at the Company’s election the Company and the Town shall engage a third party independent engineer with wind project experience to review the Company’s Completion Notice pursuant to Section 7.03 and inspect the Facility component in question. The cost of the independent engineer shall be borne by the Company. The independent engineer shall have seven (7) days to complete its analysis. If the independent engineer is satisfied with the completeness of the Facility component installation, the On-Site Monitor shall immediately issue a Certificate of Completion. If the independent engineer is not satisfied with the completeness of the installation, the On-Site Monitor shall either issue a Temporary Certificate of Completion or the Company shall cure the indicated deficiencies as required by the independent engineer as quickly as reasonably practicable.

8. REIMBURSEMENT OF TOWN EXPENSES

1. REIMBURSEMENT OF TOWN EXPENSES.

The Company shall provide for the payment of all reasonable costs, fees and expenses paid by the Town to its Legal Counsel and the On-Site Monitor (the “Fees”) incurred in connection with the Town’s applicable oversight of the Project under this Agreement. The cap for Fees under this Section will be One-Hundred Fifty Thousand Dollars (\$150,000) (“Fee Cap”), with an option to negotiate an increase if the Town can demonstrate appropriate extra expenses beyond this Fee Cap.

2. PROJECT ESCROW ACCOUNT.

Initial Funding of Project Escrow Account. Ninety (90) days prior to the commencement of construction, the Company shall deposit the sum of One-Hundred

Thousand Dollars (\$100,000.00) in an interest-bearing escrow account to be established by the Town at a local banking institution (the “Fee Escrow Account”), with any interest accruing to the Company’s benefit. In the event that each of the Towns establishes a separate Fee Escrow Account, the Company may fund such accounts through separate deposits or checks; provided, however, that the total amount deposited across all Fee Escrow Accounts shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00).

3. REPLENISHMENT OF PROJECT ESCROW ACCOUNT.

Whenever the balance of the Project Escrow Account falls below \$10,000, the Company shall be notified, through notice to the Company and its attorney, as set forth in Section 8.02 hereof, of the amount remaining in the Project Escrow Account and, within fifteen (15) business days of such notification, the Company shall deposit an additional \$10,000, or such other amount as the Town and the Company shall mutually agree, into the Fee Escrow Account, subject to the Fee Cap established in Section 8.01. In the event the Company fails to replenish the Project Escrow Account within fifteen (15) business days of the Company being notified, the Town Board may direct the On-Site Monitor, and any engineers and attorneys to cease all work on the Project until such payment is received from the Company.

4. INVOICES AND WITHDRAWALS.

The Invoices for engineering and legal services will be submitted to the Town Board, who will review the invoices. Upon approval by the Town Board, the Town Supervisor will thereafter disburse funds from the Fee Escrow Account to pay the invoices. Copies of all invoices shall be provided prior to approval by the Town Board to the Company, except for any privileged portions of legal billings.

5. DISPUTES.

In the event the Company disputes or objects to any invoice or item set forth in the bi-annual accounting, the Company shall identify the disputed item and the basis for the dispute, in writing, within fifteen (15) business days of the receipt of such invoice. The Company and the Town agree to communicate expeditiously and in good faith with each other to resolve any such billing dispute as promptly as possible. In the event the Parties are unable to resolve their dispute, the Parties shall first proceed with mediation in accordance with Section 12.01 hereof.

6. REASONABLE SERVICE RATES.

The services provided by the Town’s On-Site Monitor and Legal Counsel are subject to payment under this Article and shall be limited to those services reasonably necessary to assist the Town in connection with the Project in accordance with applicable law and the completion of any agreements with the Town. The rates charged by the Town’s On-Site Monitor and Legal Counsel shall not exceed the reasonable rates within the community for similar services.

7. RETURN OF FEE ESCROW ACCOUNT BALANCE.

Upon completion of the Town’s responsibilities with respect to the Project, but in no event later than one (1) year following the Commercial Operation Date, any monies remaining in the Town Monitor Escrow or Town Legal Escrow Accounts, after paying all eligible outstanding costs, fees and expenses, shall be returned to the Company. In the event

that, subsequent to close out of the escrow accounts, further activities or events involving the Project require additional Town oversight, the Parties agree to submit those invoices to the Company for payment and, if necessary, to reestablish the escrow account. In the event the escrow account is reestablished, the Company agrees to re-fund the escrow account as appropriate to the circumstances

8. NO FIDUCIARY RELATIONSHIP.

The On-Site Monitor and Legal Counsel are retained pursuant to separate agreements with the Town and do not have any obligation to or fiduciary or employment relationship with the Company.

9. DECOMMISSIONING AND SITE RESTORATION PLAN

1. DECOMMISSIONING.

The Parties acknowledge that the Company shall be obligated to decommission and remove certain portions of the Facility at the end of its useful life and that one or more Turbines may, from time to time, need to be decommissioned and removed prior to the end of the useful life of the project (“Decommissioning”). Decommissioning of individual Turbines or certain portions of the Facility as a whole prior to the end of the useful life of the Project shall be at the Company’s sole discretion and the Company shall have no obligation to replace decommissioned Turbines.

2. DECOMMISSIONING PLAN.

All Decommissioning work shall be governed by the Final Decommissioning and Site Restoration Plan (the “Decommissioning Plan”). The Decommissioning Plan will be filed with ORES as part of the Company’s compliance filings under the Company’s Siting Permit.

3. VOLUNTARY DECOMMISSIONING.

If the Company determines to decommission a Turbine, it shall so notify the Town Supervisor in writing not less than fifteen (15) business days prior to the start of decommissioning work (a “Decommissioning Notice”). The Turbine shall stop generating electricity as of the date stated in the Decommissioning Notice.

4. RESTORATION.

Decommissioning shall also involve site restoration activities (“Restoration”). The standards of Restoration are set forth in the Decommissioning Plan. The Company’s responsibility for Restoration in the context of Decommissioning shall not extend beyond the requirements of the Decommissioning Plan.

5. FAILURE TO PERFORM DECOMMISSIONING.

In the event the Company fails to perform necessary Decommissioning activities and the Town has to carry out such Decommissioning activities in accordance with the terms of the Decommissioning Plan, the Company hereby acknowledges, agrees and authorizes in such incidences that the Town shall have the right to access the Facility Site for purposes of performing such Decommissioning activities. The Company shall grant the Town the right to use the Company’s easements and access rights to carry out any Decommissioning the Town has a right to conduct; provided, however, that the Town’s rights as granted herein shall be concurrent with and derived from the Company’s rights set forth in, and shall be subject to the terms of, the

agreements originally granting the Company such easement or access rights. The Company, to the extent permitted, will not allow its access rights or easements to any particular facility to expire until Decommissioning and Restoration of the site have been completed. The Company certifies that it has access through and by easements over access roads to the Facility locations, and in such cases described in and to carry out the purposes of this Section.

6. EXPENSE OF DECOMMISSIONING.

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

7. DECOMMISSIONING SECURITY.

1. Establishment of Decommissioning Security. Article VIII requires the Company to provide the Town with financial security for Decommissioning (“Decommissioning Security”). The Decommissioning Security shall be in an amount established by the Company’s Decommissioning Plan.

2. Form of Decommissioning Security. The Decommissioning Security shall be in the form of an irrevocable letter of credit or other financial assurance, with the type of security determined by the Company and subject to approval by ORES. In the event any issuing financial institution provides notice of cancellation or non-renewal, the Company shall obtain and provide a replacement security, meeting the requirements of this Agreement, no later than thirty (30) days prior to the expiration or cancellation date of the existing security to ensure no lapse in coverage.

3. Phasing of Decommissioning Security. On or before the Commencement of Construction, the Company shall provide to the Town the Decommissioning Security. The Company may provide the Decommissioning Security in separate amounts, corresponding to each construction phase of the Project as allowed by the Siting Permit. The amount of Decommissioning Security for each phase shall reflect the decommissioning costs associated with that specific phase. The phased Decommissioning Security amounts shall be cumulative and added to the security from the prior phase. By the completion of all construction phases the total Decommissioning Security shall, in aggregate, equal the total net decommissioning cost for the entire Project as approved by ORES.

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

5. Adjustment to Decommissioning Security. The Decommissioning Security amount shall be updated by the Company, after one year of project operations and every fifth year thereafter to reflect inflation and any other increases due to labor or other costs. Such updated amount shall be subject to review by the Town and ultimate approval by ORES. If the Decommissioning Security amount increases, then within thirty (30) days of receiving approval of the revised Decommissioning Security amount from ORES, the Company shall provide Decommissioning Security in such higher amount.

6. Bankruptcy. For the avoidance of doubt, the Decommissioning Security and any escrow account established by this Agreement are property of the Town, and are not property of the Company, or any bankruptcy estate, and such Decommissioning Security and any escrow account established by this Agreement shall not be subject to disclaimer or rejection in a bankruptcy proceeding.

10. FIRE PROTECTION CONTROL AND SAFETY

1. MEETINGS WITH PUBLIC SAFETY OFFICIALS.

The Company will meet, on at least an annual basis, or as mutually agreed otherwise by the Parties, with the fire chief of each fire department in which Facilities are located and appropriate EMS staff, to review the Company's Safety Response Plan and current access, fire suppression, water supply placement, training needs, and other related issues.

2. SAFETY RESPONSE PLAN.

Within ninety (90) days after the initial meeting with the fire chief, the Company will submit to the fire chief and to the Town a copy of the Safety Response Plan which will identify and address any reasonable and necessary concerns raised by the fire chief. If necessary, such plan shall be updated within thirty (30) days after each subsequent meeting. The Company must take reasonable steps to mitigate any reasonable and necessary safety concerns raised by a fire chief.

11. LIABILITY COVERAGE AND INDEMNIFICATION

1. INSURANCE.

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

2. INDEMNIFICATION OF TOWN.

1. **Indemnification.** Except to the extent caused by the, gross negligence or willful misconduct of the Town or its officers, agents, employees or subcontractors, the Company agrees that it will defend, indemnify, and hold harmless the Town and its officers and employees from and against any and all liability, actions, damages, claims, demands, judgments, losses, cost, reasonable expenses and fees, including reasonable attorneys' fees (collectively, "Losses"), and will defend the Town and its officers and employees in any court action, administrative proceeding or appeal in connection with such Losses, whether or not finally adjudicated and including any settlement thereof, provided such Losses arise out of or occur in connection with this Agreement or the construction and operation of the Project. In the event a claim, action, demand, suit or proceeding is instituted against the Town by any third party for a money judgment only, pursuant to which the Town is entitled to be indemnified hereunder, the Town shall immediately notify the Company in writing and contemporaneously provide the Company with a copy of the written documents presented by such third party.

2. **Hold Harmless and Defense Against Actions Concerning the Project or Town Approvals.** Without limiting the foregoing defense, indemnity, and hold harmless, in the event a claim, action, demand, suit or proceeding is instituted against the Town by any third party challenging the exercise of the Town's municipal powers or obligations in connection with the Project, this Agreement, or the Town's issuance of approvals for the Project, the Town shall immediately notify the Company in writing and contemporaneously provide the Company with a copy of such written documents presented by such third party.

3. **Right to Control Defense.** The Company shall have the right to control the defense of any indemnified actions or claims, including selection of legal counsel, and shall have the right to settle such actions or claims on such terms as it may deem reasonable, subject to approval by the Town, which shall not be unreasonably withheld. The Company's indemnification of the Town shall remain in full force and effect regardless of any settlement terms. The Town may, at its own expense, retain separate counsel, but such representation shall not interfere with or otherwise limit the Company's control over the defense of settlement of the action or claim. The Parties agree that the Town shall cooperate with the Company, as permitted by this subparagraph (c) as necessary to defend against third party actions.

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

3. INDEMNIFICATION OF THE COMPANY.

The Town shall indemnify, hold harmless and defend the Company and its owners, affiliates, officers, directors, employees, subcontractors, successors and assigns, and agents from and against any and all Losses, arising out of or incurred as a result and to the extent of: (a) the willful misconduct of the Town, (b) willful breach of any obligation, covenant or undertaking of the Town contained herein, or (c) any misrepresentation or breach of

warranty on the part of the Town pursuant to this Agreement, except to the extent caused by the gross negligence, illegal or willful misconduct of the Company or its officers, agents, employees or subcontractors, and except with respect to special or consequential damages.

12. DISPUTE RESOLUTION

1. DISPUTE RESOLUTION.

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

13. BREACH AND REMEDIES

1. NOTICE OF BREACH.

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

2. COMPANY RIGHT TO CURE.

The Company shall have the right to cure any breach and must cure such breach within sixty (60) days of its receipt of a Notice of Breach, unless such breach is not capable of cure within sixty (60) days, in which event the Company may request an extension of a total one hundred eighty (180) days, which extension shall not be unreasonably denied by the Town Board.

3. REMEDIES CUMULATIVE.

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

4. TOWN BREACH AND RIGHT TO CURE.

The Town shall cure all breaches within sixty (60) days of its receipt of the notice unless such breach is not capable of cure within sixty (60) days, in which event the Company

shall give the Town a total of one hundred eighty (180) days to cure provided the Town has commenced a cure and proceeded diligently to affect such cure. If the Town fails to cure such breach within the time allowed, the Company's payment obligations under Sections 4.01 and 4.02 hereof shall be suspended until such breach is cured.

5. MORTGAGEE RIGHT TO CURE.

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

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

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

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

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

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

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

14. SEVERABILITY

1. SEVERABILITY.

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

2. REFORMATION.

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

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

2. Negotiate such changes in, substitutions for, or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with Section 14.02(a) hereof to effect the original intent of the parties in the clause, provision, section or article declared invalid.

15. NOTICES

1. NOTICES.

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

Notices to the Town:

**Town of Smithfield
5255 Pleasant Valley Road
Cazenovia, NY 13035
Attn: Supervisor**

With a copy to:

**Costello, Cooney & Fearon PLLC
211 West Jefferson St., Ste. 1
Syracuse, NY 13202
Attn: Jeffrey D. Eaton**

Notices to the Company:

**Hoffman Falls Wind LLC
412 W 15th Street, 15th Floor
New York, NY 10011**

**With copies to:
Young/Sommer LLC
500 Federal Street
5th Floor
Troy, New York 12180
Attn: Robert A. Panasci**

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

16. MISCELLANEOUS

1. NO WAIVER.

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

2. APPLICABLE LAW AND VENUE.

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

3. FEES ASSOCIATED WITH ENFORCEMENT.

In the event that either party commences any action to collect any payment or monetary amount due under this Agreement, or to enforce any provision of this Agreement,

such party shall have the right to recover all reasonable expenses and fees, including reasonable attorneys' fees, incurred in bringing the action, if such party prevails in such action.

4. NO RECOURSE.

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

5. ENTIRE AGREEMENT.

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

6. AMENDMENT.

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

7. BINDING EFFECT.

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

8. HEADINGS.

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

9. ASSIGNMENT BY TOWN.

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

10. ASSIGNMENT BY COMPANY.

The Company may, without the consent of the Town: (a) assign this Agreement to any (x) purchaser or successor in and to the Project, or (y) affiliate or subsidiary of the Company that is controlled by, controlling or under common control with the Company

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

11. COUNTERPARTS.

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

12. FILING WITH TOWN CLERK.

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

[SIGNATURE PAGE FOLLOWS]

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

HOFFMAN FALLS WIND LLC

By: _____

Name: _____

Title: _____

TOWN OF SMITHFIELD

By: _____

Name: _____

Title: _____

List of Exhibits

Exhibit “A” Town Board Resolution

Exhibit “B” Scope of Services

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

Exhibit A

Town Approving Resolution

Exhibit B

Scope of Services of On-Site Monitor

The services provided by the On-Site Monitor in connection with the Project that are subject to reimbursement by the Company shall be limited to the following:

- 1. Review of the Company’s Building Plans for those portions of the Project subject to the New York State Uniform Fire Prevention and Building Code and the Energy Conservation Code of New York State (“Uniform Code”).**
- 2. Recommending approval of Building Plans for those portions of the Project subject to the Uniform Code.**
- 3. Assisting the Town CEO or any of the representatives of the Town CEO with inspecting the Company’s compliance with the Uniform Code.**
- 4. Certifying such compliance with the Uniform Code, which shall be evidenced by the issuance of Certificates of Completion or Deficiency Notice(s).**
- 5. Reviewing compliance filings submitted by the Company to ORES pursuant to 16 NYCRR § 1100-10.2 for compliance with applicable local codes as outlined in the Company’s Siting Permit.**

The following conditions are understood to govern the On-Site Monitor's involvement in the review of Building Plans and construction phases of the Project:

- 1. Neither the Town nor the On-Site Monitor will be responsible for construction means, methods or techniques, or choice of or source of supply for construction or landscaping materials.**
- 2. Neither the Town nor the On-Site Monitor will be responsible for construction site safety.**
- 3. The Town and the On-Site Monitor shall have no approval authority over the Project work and/or immediate comment participation unless the observation deals with public safety or building code or other compliance issues.**
- 4. The Town and the On-Site Monitor shall have no approval authority over the Company's choice of labor or responsibility for monitoring Project labor.**
- 5. The On-Site Monitor agrees to work within Project scheduling parameters established by the Company to the maximum extent possible, provided that reasonable advance schedule notification is received, and shall provide adequate staffing to enable review and approval of multiple site and contemporary Reviewed Improvements construction.**
- 6. The On-Site Monitor is not an agent for or employee of the Company or an engineer of record for the Project, nor does the work of the On-Site Monitor in any way limit the Company's obligation under New York law to use a licensed engineer where required.**

Exhibit C

Form Notice of Assignment and Assumption of Host Community Agreement

NOTICE OF ASSIGNMENT

**Town of Smithfield
5255 Pleasant Valley Road
Peterboro, NY 13035
Attn: Supervisor**

Re: Hoffman Falls Wind Project – Assignment and Assumption of Host Community Agreement.

[_____], a limited liability company duly organized and existing under the laws of the State of [_____], and having an office at [_____] hereby provides notice to the above-named municipalities and school districts that as of [_____] it purchased or otherwise acquired all or substantially all of the assets of Hoffman Falls Wind LLC. [_____] hereby assumes all obligations under the Host Community Agreement by and between Hoffman Falls Wind LLC and the Town of Smithfield dated as of [_____] and agrees to be bound by its provisions and waives all claims regarding its validity.

[_____], a [_____] limited liability company

By: _____

Name: _____

Title: _____