

THIS AGREEMENT (“Agreement”)

made in duplicate originals this \_\_\_\_ day of \_\_\_\_\_, 2017 (the “Effective Date”)

BETWEEN:

CARBON COUNTY

P.O. Box 487

1016 West Hugus

Rawlins, WY 82301

(307) 324-9555

(the “County”)

-AND-

Ekola Flats Wind Energy LLC

1 S. WACKER DRIVE

SUITE 1800

CHICAGO, IL 60606

(312) 224-1400

(the “Company”)

1. **DEFINITION OF TERMS USED IN THIS AGREEMENT**

**“Appurtenance”** means:

A sidewalk, ditch, or any type of wall, fence, guardrail, curb, pavement marking, traffic control device, illumination device, mailbox or barrier adjacent to or in, along or on a road, or any construction, obstruction, erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or on a road that is not on the traveled portion of the road.

**“Commodity”** means:

A physical substance, such as food, grains, and metals, which is interchangeable with another product of the same type, and which investors buy or sell, usually through future contracts. The price of the commodity is subject to supply and demand.

**“Company”** means Ekola Flats Wind Energy LLC or its affiliates, successors, assigns, vendors, contractors, or subcontractors.

**“Haul Route(s)”** means those Roads identified in the map submitted as the Roads to be used by the Company to move/haul goods, equipment and materials. The parties will agree to the Haul Route(s) prior to construction.

**“Legal load”** means:

- I. the maximum rated gross weight that may be borne by a tire, an axle or an axle group or any of them; or
- II. the maximum rated gross weight that may be borne by a public vehicle or combination of public vehicles on a highway, secondary road, rural road or street and as set out from time to time under the Traffic Safety Act and regulations or orders made there under.

**“Pre-Inspection”** means:

An inspection of Haul Routes to be completed prior to the haul or rig move commencing.

**“Post-inspection”** means:

An inspection of Haul Routes to be completed after the haul or rig move out has been completed.

**“Windpower Facilities”** means:

- I. Wind power generating machines, of any kind (including supporting towers, foundations and any other associated equipment or structures);
- II. Overhead and underground electrical distribution, collection, transmission and communications lines, electric transformers, electric substations, energy storage facilities, telecommunications equipment, and power generation facilities;
- III. Roads and crane pads;
- IV. Meteorological towers and wind measurement equipment; and
- V. Control buildings, maintenance yards, temporary construction laydown and staging yards and related facilities and equipment.

**“Work Days”** means:

Seven days a week from the hours of (7:00am – 9:00pm).

## **2. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to define the terms and conditions under which the

parties to this Agreement agree:

- a) That in the event there is damage from the use of Roads in the Haul Routes for the hauling or moving of goods, equipment or materials, those parties responsible for such damage are held accountable;
- b) As to how dust control will be maintained;
- c) To establish routing for the movement of vehicles and equipment, including all surface servicing equipment.

This Agreement is intended to engage both the County and the Company in an effort to avoid damage to Roads and Appurtenances and to minimize interruptions to the traveling public. The parties acknowledge that this Agreement is entered into in order to address these matters and to protect the Roads and Appurtenances, as depicted in Exhibit A, from damage.

### **3. TERM**

- a) This Agreement shall commence on the Effective Date and shall continue until construction is complete or this agreement is terminated by either party in accordance with this Section 3.
- b) The Company may terminate this Agreement at any time by giving sixty (60) days prior written notice of such termination to the County.
- c) If the Company has not commenced construction of Windpower Facilities within two (2) miles of any Road by the fifth (5<sup>th</sup>) anniversary of the Effective Date, the County may terminate this Agreement upon sixty (60) days prior written notice to the Company; provided, however, that such termination shall only be effective if, at the time the County's written termination notice is delivered, the Company has not commenced construction of Windpower Facilities within two (2) miles of any Road.
- d) Notwithstanding the termination of this Agreement, the provisions respecting liability and indemnification, to the extent liabilities may have accrued prior to the termination, and provisions respecting settlement of accounts, shall remain in full force in accordance with their terms.

### **4. ROAD USE; RESTRICTIONS**

The Company is hereby authorized to operate and move its commercial vehicles on all such Haul Routes and Roads, so long as such use is in accordance with this Agreement.

Attached hereto as Exhibit B is a list of the restrictions on the Company's use of the Haul Route Roads. The Company shall use commercially reasonable efforts to comply with the restrictions listed on Exhibit B. It is specifically understood and agreed that personal vehicles and other light-duty vehicles will not be bound by the restrictions of Exhibit A.

## **5. RESTRICTIONS AND DEVIATIONS FROM ROAD RESTRICTIONS**

- a) Use of the Haul Routes by the Company may commence once the Company has submitted a Haul Route map, and a timely written approval by the County has been received by the Company.
- b) If, following the Pre-Inspection, the County, acting reasonably, determines that it is necessary to impose restrictions on the Company in the interest of public safety, the County shall consult with the Company to determine the details of such restrictions. Thereafter, the County shall set out the specifics of the restrictions imposed on the Company and any deviations from road restrictions that the County is prepared to grant and the conditions under which such deviations will be granted, including any requirements for the Company to post security.
- c) It is understood that any deviations from road restrictions granted by the County shall comply with County regulations, unless otherwise agreed by the parties.

## **6. SECURITY**

- a) The County may require that the Company post security during construction for repairs that are required by paragraph 8(c) below, in an amount to be specified by the County.
- b) If the County requires that the Company post security, the Company shall not haul goods, equipment or materials on the Roads forming the Haul Route until:
  - i. It has delivered to the County the security required (in the form of surety bond in the amount of \$\_\_\_\_\_ (\_\_\_\_\_ dollars); and
  - ii. A Pre-Inspection pursuant to 7(a)(i) has been completed.
- c) Any security posted by the Company shall be released by the County within fifteen (15) days following the later to occur of i) construction, and ii) the reasonable acceptance by County of the Post Construction Inspection.

## **7. INSPECTIONS**

### **6.1 – Pre & Post Construction Inspections**

The Company and the County shall agree as to the condition of the Haul Route Roads both within fifteen (15) days prior to commencement of construction of the Windpower Facilities and within fifteen (15) days following completion of construction of the Windpower Facilities. Video recordings and photographs of the current conditions of the Haul Route Roads will be undertaken by the Company (or a third party hired by the Company), at the Company's expense and provided to the County for its review and retention (i)

prior to the start of any construction activities by the Company, and (ii) following the Company's completion of construction of the Windpower Facilities. The County shall have the right, if so desired, (i) to observe these recordings/photographs as they are being taken and (ii) to require the Company to undertake certain types of recordings and photographs or reasonable additional inspections if the County reasonably believes the recordings/photographs are inadequate representations of the impacted roads current conditions.

## **7.2 – Intermediate or Emergency Inspections**

- a) The County or the Company may, at any reasonable time and at reasonable intervals during the term of the Agreement, request that an inspection of the Roads be carried out. The County and the Company agree to coordinate weekly during construction or such other frequency as the parties may agree, which coordination may take place either at an in-person meeting or, at the request of the parties, via telephone conference call.
- b) Inspections requested under paragraph 7.2 (a) shall be carried out within five (5) business days of receipt of a request for such inspection, and in the presence of official designees of both the County and the Company; provided, however, that any inspections required for potential damage that may pose a safety risk to the motoring public shall be carried out within one (1) business day of the request for the same.
- c) The County and the Company shall both acknowledge the results of all inspections by having the inspection document(s) signed by their official designees unless such party or its designee disagrees with the results of such inspection, in which case such party or designee shall submit to the other party notice of such disagreement along with support and reasoning relating to such disagreement. The parties shall negotiate in good faith to come to agreement on the proper results of such inspection.
- d) The cost of such reasonable inspections shall be paid by the Company to the County as required by County policy.

## **8. OTHER TERMS AND CONDITIONS**

The following terms and conditions shall apply at all times during the term of this Agreement:

- a) Restriction on Use

The County reserves the right to reasonably determine the hours during which vehicles and equipment may be moved on the Roads covered by this

Agreement, provided that vehicles and equipment may be moved on the Roads during Work Days, provided further that the County may temporarily suspend approvals under this Agreement if, in the opinion of the County, acting reasonably, the prevailing weather conditions make such use hazardous to the motoring public, or emergencies warrant such suspension. If the County chooses to temporarily suspend approvals pursuant to this paragraph 8(a), the County shall use its best efforts to i) notify the Company verbally prior to taking such action, and to ii) consult with the Company in order to minimize any construction delays to the Windpower Facilities.

b) Maintenance

If required by the County, the Company shall provide, at its sole expense, all equipment, materials and labor required to maintain the road surface of the Haul Route Roads in substantially the same condition it was immediately prior to the use of such Roads, but taking into account the average wear and tear and deterioration from non-Company use during such period. Maintenance related only to average wear and tear and deterioration of such Roads shall be completed by the County at its sole cost and expense.

c) Damages

- i. The Company shall be liable at all times for the repair, to the reasonable satisfaction of the County, of any damage to the Roads caused by the Company's use. Any repairs undertaken shall restore the road surface to substantially the same condition it was in immediately prior to the use of the Road, but taking into account the average wear and tear and deterioration from non-Company use during such period. The Company shall, providing that the weather and weather-related conditions permit, complete any necessary repairs or repairs which pose a risk to the motoring public within ten (10) business days of being notified by the County of the need for such repairs. Any non-necessary repairs or repairs of conditions which do not pose a risk to the motoring public may be postponed by the Company until the end of the term of this Agreement.
- ii. In the event the Company is prevented by the weather or weather-related conditions from completing the repairs required by the County, pursuant to that specified in 8(c)(i) above, that are required within ten (10) business days, the County, acting reasonably, may specify a further period of time within which the Company must complete such repairs.

d) Costs

In the event that the Company fails to complete the repairs required by the County, pursuant to paragraph 8(c)(i) or (ii) above, the County may draw upon

security to effect the repairs in accordance with the provisions of the surety bond. In the event that the security is not sufficient to cover the cost of repairs, or if no security was posted, the Company shall be liable to the County for all reasonable costs (including reasonable attorney fees and costs) incurred by the County in repairing the affected Roads to substantially the same condition they were in immediately prior to the use by the Company and recovering the costs of such repairs. The Company shall have a right to receive details of all expenses incurred by the County.

e) Emergencies

- i. The County may, in emergency situations, and acting reasonably, and without giving any notice to the Company as required elsewhere in this Agreement, take immediate and all action necessary to complete repairs to the Haul Route Roads that the County deems necessary for public safety.
- ii. The Company may, in emergency situations, and acting reasonably, and without giving any notice to the County as required elsewhere in this Agreement, take immediate and all action necessary to move vehicles and equipment on the Haul Route Roads that the Company deems necessary for public safety or to preserve the environment.

f) Notification

The County and the Company shall provide notification to each other of any action taken under 8(c), (d), (e) and (f) above as soon as is reasonably practicable.

g) Indemnity

The Company shall indemnify the County against all actions, proceedings, claims, demands and costs suffered by the County to the extent arising out of damage caused by the Company, its employees, agents, contractors or subcontractors to the Haul Route Roads, but such indemnity shall not apply to the intentional acts or negligence of the County, its employees, agents, contractors or subcontractors. Each party's liability to the other party shall be limited to direct damages and shall exclude other liability, including, without limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise.

The County shall indemnify the Company against all actions, proceedings, claims, demands and costs suffered by the Company to the extent arising out of actions or inactions caused by the County, its employees, agents, contractors or subcontractors to the Roads, but such indemnity shall not apply to the intentional acts or negligence of the Company, its employees, agents, contractors or subcontractors. Each party's liability to the other party shall be limited to direct damages and shall exclude other liability, including, without

limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise.

h) Force Majeure

No party shall be deemed to be in default with respect to non-performance if due to strikes, lockouts, fire, storm, acts of God or terrorists, or any other cause (weather similar or dissimilar to those enumerated) beyond its control; but lack of finances shall in no event be deemed to be cause beyond a party's control.

i) Dust Control

The Company shall provide commercially reasonable dust control on the Haul Route Roads during the time that the Company is using the same. The Company shall coordinate with the County on the form and method of dust control to be utilized.

**9. NOTICES**

All notices required to be given under the terms of this Agreement shall be in writing and may be mailed or electronically transmitted, addressed to the parties as follows:

**County:**

Carbon County

Attention: \_\_\_\_\_

Address:

Phone:

Fax:

Email: \_\_\_\_\_

**Company:**

Invenergy

Attention: Ekola Flats Project Manager

Address:

1 South Wacker Drive

Suite 1800

Chicago, IL 60606

Phone:

(312) 224-1400

Email:

Either party may, from time to time, change its address for service by giving written notice to the other party. Any notice shall be deemed to have been given and received: if delivered personally, on the day delivered; if sent by registered mail, on



the 4<sup>th</sup> business day following the day it was posted; and if electronically transmitted, at the start of the next regular business day. In the case of postal disruptions, or an anticipated postal disruption, all notices to be given under this Agreement shall be electronically transmitted or delivered by hand (including a reputable overnight courier).

## **10. ASSIGNMENT**

Except as otherwise provided herein, this Agreement shall not be assigned by either party hereto without the prior written consent of the other party, which consent shall not unreasonably be withheld. Notwithstanding the foregoing, the Company shall be permitted without prior written consent of the County to (a) assign this Agreement to an Affiliate; (b) assign this Agreement to a public utility company; (c) assign this Agreement to a third party purchasing all or substantially all of the Company's Windpower Facilities in the County; and (d) collaterally assign this Agreement to a financing party of the Company or an Affiliate. "Affiliate" shall mean and refer to any person or entity controlling, controlled by, or under common control with Company.

## **11. WAIVERS**

- a) Failure by either party, at any time, to require strict performance by the other party of any provision of this Agreement will in no way affect the first party's rights hereunder to enforce such provision; nor will any waiver by either party of any breach be held to be a waiver of any succeeding breach or waiver of any other provision;
- b) No waiver of any breach of a covenant or provision of this Agreement shall take effect or be binding upon a party unless it is in writing.

## **12. SUCCESSORS AND ASSIGNS**

The Agreement shall inure to the benefit of, and be binding upon the County and the Company and their respective successors and permitted assigns.

## **13. TIME IS OF THE ESSENCE**

Time shall be of the essence of this Agreement.

## **14. SEVERABILITY**

If any provision of this Agreement shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

[signatures on following page]

**IN WITNESS WHEREOF** the parties hereto have executed and delivered this Agreement as of the date and year first above written

**NAME:** Carbon County

**BY:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**NAME:** Ekola Flats Wind Energy LLC

**BY:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**EXHIBIT A**

**Haul Route Map**

**[TO BE INSERTED]**

**EXHIBIT B**

**Road Restrictions**

**[TO BE INSERTED]**

