

DRAFT
ROAD USE AGREEMENT [EXCERPT FROM HOST COMMUNITY AGREEMENT]

This **ROAD USE AGREEMENT**, is made as of the ___ day of _____, 2016 (this “**Agreement**”) by and between Baron Winds LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, and having its corporate offices at 1251 Waterfront Place, 3rd Floor, Pittsburgh, PA 15222 (the “**Company**”), and the Town of _____, a municipal corporation duly organized and existing under the laws of the State of New York and having its offices at _____ (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 filed a Public Scoping Statement pursuant to Public Service Law Article 10 with the New York State Board on Electric Generation Siting and the Environment as part of the application process to obtain a Certificate of Environmental Compatibility and Public Need (“**Article 10 Certificate**”) from the New York State Board on Electric Generation Siting and the Environment (“**Article 10 Process**”) to construct a 300 megawatt (“**MW**”) wind-powered electric generating facility in the Towns of Cohocton, Dansville, Fremont and Wayland (the “**Project**”) comprised of up to seventy-six (76) wind turbine generators (each a “**Turbine**”), some of which will be located in the Town, one or more electrical interconnection switchyard and substations (“**Interconnection Facilities**”), and associated appurtenances, equipment, facilities, and improvements including without limitation, land and easement rights, access roads, power collection lines (overhead and/or underground), operations and maintenance building, and meteorological and communication towers and devices (“**Ancillary Facilities**”); and

WHEREAS, in connection with the Project, the Company will use certain of the Town’s roadways and related Town rights-of-way, which will be identified during the Article 10 Process and will be attached hereto as Exhibit “A” (“**Roads**”) to transport materials and equipment to and from the Project sites and for other purposes permitted hereafter; and

WHEREAS, the Town has agreed to allow the Company to inspect, repair and reinforce the Roads, and appurtenant structures such as culverts, manholes and other drainage features, guardrails, bridges, utilities, and signage (“**Road Structures**”), in advance of and during Project construction to adequately support the loads necessary for such transportation and operation activities; and

WHEREAS, prior to commencement of construction of the Project (“**Commencement of Construction**”), the Company has agreed to inspect the Roads and Road Structures and prepare a pre-construction inspection report (“**Pre-Construction Inspection Report**”) establishing the preexisting condition of the Road and Road Structures, which Pre-Construction Inspection Report is subject to approval by the Town and will be attached hereto as Exhibit “B”; and

WHEREAS, following completion of the Project, the Company has agreed to inspect and repair the Roads and Road Structures to their pre-existing structural condition as established in the Pre-Construction Inspection Report, or to pay a lump sum payment to the Town for repair activities performed by the Town, as provided herein; 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 Project, subject to the conditions, if any, attached to any approvals that may be issued by the Town; and

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I 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 Road Use Agreement and any and all exhibits or schedules attached hereto.

“Ancillary Facilities” shall have the meaning set forth in the first Whereas Clause.

“Article 10 Certificate” shall mean a certificate of environmental compatibility and public need authorizing the construction and operation of a major electric generating facility issued by the New York State Board on Electric Generation Siting and the Environment pursuant to Article 10 of the Public Service Law.

“Article 10 Process” shall have the meaning set forth in the recitals.

“Certificate of Completion” a certificate confirming that the Turbine foundation has been constructed in accordance with the New York State Fire Prevention and Building Code.

“Certificate of Restoration” shall have the meaning set forth in Section 2.6.

“Commencement of Construction” means when unlimited and continuous construction of the Project has begun and does not include testing or surveying (including geotechnical drilling and meteorological testing) to determine the adequacy of the site for construction, which shall be defined as the initiation of ground disturbance construction activities.

“Commercial Operation Date” shall mean the date specified by the Company in a written notice addressed and delivered to the Town fifteen days prior to the date that it is anticipated that the Project will first deliver electricity to the New York State Electric Grid.

“Company” shall mean Baron Winds LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, and its successors and assigns.

“**Civil Engineer**” shall have the meaning set forth in Section 2.3.

“**Construction Commencement Date**” shall mean the date specified in the Notice of Commencement of Construction as the date after which Project construction activities may commence.

“**Effective Date**” shall mean upon the date of execution by the Company and the Town Supervisor.

“**Force Majeure**” means any act or condition beyond the reasonable control of either Party, whether or not similar to the matters or conditions herein specifically enumerated, and includes: acts of God or the elements (including fire, earthquake, explosion, flood, high winds, ice, epidemic or any other casualty or accident related to weather conditions), strikes, lock-outs or other labor disputes, delays in transportation, inability to secure labor or materials in the open market, transmission system power failure or power surge, war, terrorism, sabotage, civil strife or other violence, the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after an application for the same has been submitted, the effect of any law, proclamation, action, demand or requirement of any government agency or utility, or litigation contesting all or any portion of the right, title and interest of the Town in the Roads and/or the Road Structures, and/or of the Company in the Project or the Certificate for the Project.

“**Haul Routes**” shall have the meaning set forth in Section 2.7.

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

“**Local Law**” means Town of _____ Law, as presently written or as it may be subsequently amended.

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

“**Notice of Commencement of Construction**” written notice of Company’s intent to commence construction of the Project

“**On-Site Monitor**” a qualified independent engineer or engineering firm who shall be responsible for assisting the Town Highway Superintendent with Roads and Road Structures and Repair Activities review pursuant to this Road Use Agreement.

“**Pre-Construction Inspection Report**” shall have the meaning set forth in the recitals.

“**Post-Construction Inspection Report**” shall have the meaning set forth in Section 2.6.

“**Project**” shall mean the Baron Winds Farm described in the recitals, including all Interconnection Facilities and Ancillary Facilities.

“**Reinforcement Activities**” shall have the meaning set forth in Section 2.1.

“**Repair Activities**” shall have the meaning set forth in Section 2.1.

“**Repair Estimate**” shall have the meaning set forth in Section 2.6.

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

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

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

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

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

“**Town CEO**” means the Town Codes Enforcement Officer.

“**Town Highway Superintendent**” means the Highway Superintendent of the Town.

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

“**Turbine**” shall have the meaning set forth in the recitals and is sometimes referred to herein as a WECS.

“**WECS**” means an individual wind energy conversion system or tower and is sometimes referred to herein as a Turbine.

ARTICLE II

ROAD USE, REINFORCEMENT AND REPAIR

SECTION 2.1 ACCESS AND IMPROVEMENT.

The Town hereby grants the Company and the Company’s contractors and subcontractors, and their respective employees, agents, permitted assigns, and contractors, a non-exclusive license to enter upon the Roads and Road Structures during the term of this Agreement for the purposes of (a) making investigations and inspections thereon, including, without limitation, investigations related to the load-bearing and structural characteristics of the Roads and the Road Structures, (b) reinforcing, modifying, improving, and/or expanding the Roads and the Road Structures as the Company deems necessary to support construction, operation, maintenance and decommissioning of the Project, including construction of improved turning radii for oversized vehicles within Road rights-of-way and access road improvements within Road rights-of-way (“**Reinforcement Activities**”), (c) transporting personnel, equipment, and materials to and over the Roads to support construction, operation, maintenance and decommissioning of the Project, and (d) repairing the Roads and the Road Structures to a condition at least as good as existed immediately prior to the commencement of construction of the Project, as established in the Pre-Construction Inspection Report, including any designs for planned Reinforcement Activities contained therein and actually constructed. (“**Repair Activities**”). No use or rights herein granted with respect to this Agreement shall create or vest in the Company any easement or any other ownership rights of any nature whatsoever in the Roads or Road Structures, nor does this Agreement grant rights to use any right-of-way or property owned by a private party.

SECTION 2.2 MUNICIPAL FRANCHISE IN ROADS, ROAD PERMITS AND CURB CUTS.

It is anticipated that power collection and transmission lines associated with the Project will need to be located above, below or within the Roads and that access roads constructed in connection with the Project will intersect the Roads. To the extent permitted by applicable law, the Town hereby grants to the Company (a) all municipal franchises and/or road permits necessary to locate and operate Project facilities above, below or within Roads, and (b) all curb cuts necessary to connect Project access roads to Roads. A schedule of all Project facilities anticipated to require such municipal franchises, road permits, and curb cuts will be finalized during or after the issuance of the Certificate and will be attached hereto at Exhibit "C". Exhibit "C" may be modified by the Company from time to time with the approval of the Town highway superintendent (the "**Town Highway Superintendent**"), which approval shall not be unreasonably withheld or delayed. Nothing in this section shall grant rights to use any right-of-way or property owned by a private party.

SECTION 2.3 PRE-CONSTRUCTION INSPECTION REPORT.

The Company shall, at its sole cost and expense, retain an independent New York licensed professional civil engineer (the "**Civil Engineer**"), to be approved by the Town Highway Superintendent, to inspect the Roads and Road Structures, including performance of visual inspections, core testing, or other standard road evaluation practices, prior to the Commencement of Construction of the Project to determine whether the Roads, taking into account road surface, base, sub-base, cross-section, and shoulder, and Road Structures are in a condition sufficient to support the construction activities (the "**Pre-Construction Inspection Report**"). Photographs and/or video for the Pre-Construction Inspection Report will be taken at a maximum interval of two hundred (200) feet, and at substantially lesser intervals in the vicinity of all access road intersections, to document the condition of all Roads and Road Structures that may be impacted by traffic relating to construction of the Project. The results of the Pre-Construction Inspection Report shall be set forth in a written report certified to the Town by the Civil Engineer, and such report shall be subject to the approval of the On-Site Monitor and Town Highway Superintendent. The On-Site Monitor and Town Highway Superintendent, whose response and approval shall not be unreasonably withheld, shall approve or disapprove the Pre-Construction Inspection Report within five (5) business days following receipt of same from the Company.

SECTION 2.4 DESIGN AND SAFETY.

Except to the extent that the Company may be responsible for safety of the Roads and Road Structures during the Company's performance of Reinforcement Activities or Repair Activities, nothing herein shall give rise to liability or create responsibility on the part of the Company for the adequacy of Road and Road Structure design and Road and Road Structure safety in relation to construction, reinforcement, improvement, reconstruction, repair, and later use of Roads and Road Structures. The Company will prepare designs of planned Road and Road Structure improvements, Reinforcement Activities, Repair Activities, or modifications. The Town agrees that the Town Highway Superintendent, in consultation with the On-Site Monitor, will be responsible for approving such designs, and the Town shall have safety responsibility for improved, modified, reinforced, or repaired Roads and Road Structures following approval. The Town Highway Superintendent, in consultation with the On-Site Monitor, shall approve or

disapprove such designs within five (5) business days following receipt of same from the Company.

SECTION 2.5 REINFORCEMENT ACTIVITIES.

If the results of the Pre-Construction Inspection Report reveal deficiencies or inadequacies in the Roads and Road Structures relative to planned Project-related construction and transportation activities, the Company shall include within the Pre-Construction Inspection Report designs of Reinforcement Activities it deems are appropriate to address such deficiencies or inadequacies. Designs for Reinforcement Activities are subject to the approval of the Town Highway Superintendent pursuant to Section 5.4 above. Following approval by the Town Highway Superintendent, the Town authorizes the Company to perform Reinforcement Activities. Reinforcement Activities may be performed at any time during the course of construction of the Project. Reinforcement Activities on the Roads and Road Structures shall be conducted so as to minimize the effects on local transportation and shall be coordinated with the Town with respect to its planned construction (if any) affecting the Roads and Road Structures.

SECTION 2.6 REPAIR ACTIVITIES.

a. Obligation to Repair. Following completion of construction of the Project, but in no event later than one (1) year (as such period may be extended by the Parties due to delays caused by Force Majeure, including environmental conditions) following receipt by the Company of Certificates of Completion for all Turbines, the Company shall repair any damage to the Roads and Road Structures caused by construction of the Project to at least the condition that existed prior to Commencement of Construction of the Project (as documented in the Pre-Construction Inspection Report and contemplated by the planned Reinforcement Activities identified therein); *provided, however*, that the Company shall not be responsible for the repair of damage to Roads and Road Structures caused by normal wear and tear, weather, or third parties not working on the Project on behalf of the Company. For purposes of this Agreement, “damage” to Roads and Road Structure shall be established where the Post-Construction Inspection Report (as defined below) identifies areas showing evidence of cracking, potholing, rutting, or fatigue (alligator) cracking of Road surfaces or Road Structures, or destruction or crushing of Road Structures (e.g. culverts). To determine what repairs are necessary, the Company shall, following the Company’s receipt of Certificates of Completion (as defined below) for all Turbines, conduct a post-construction inspection of the Roads, taking into account the pre-existing road surface, base, sub-base and shoulder, and Road Structures, to identify any damage done to them. The results of the post-construction inspection shall be set forth in a written report certified to the Town by the Civil Engineer and detailing items of damage separately from items of normal wear and tear (the “**Post-Construction Inspection Report**”), and such report shall be subject to approval of the On-Site Monitor and Town Highway Superintendent, whose approval shall not be unreasonably withheld. If the Post-Construction Inspection Report identifies damage to the Roads and Road Structures, measured against the condition established in the Pre-Construction Inspection Report and contemplated by the planned Reinforcement Activities identified therein, such report shall include plans and designs of Repair Activities the Company deems are appropriate to repair such damage. The Post-Construction Inspection Report shall also include an estimate of the cost of repairing the Roads and Road Structures to the condition established in the Pre-Construction Inspection Report and

contemplated by the planned Reinforcement Activities identified therein (the “**Repair Estimate**”). Following performance of the Repair Activities, the Company shall provide the Town with the Civil Engineer’s certification (or the certification of the Company’s road contractor) of such repair as called for by the Post-Construction Inspection Report. The On-Site Monitor shall review such certification and repair work. If the Town Highway Superintendent, in consultation with the On-Site Monitor, is satisfied in his reasonable discretion with such repair work, the Town shall issue to the Company a certificate of restoration (“**Certificate of Restoration**”) within fifteen (15) business days following the On-Site Monitor’s receipt of the Repair Activities completion notice. Upon issuance by the Town of the Certificate of Restoration, the Company’s obligations with respect to repair of Roads and Road Structures shall be deemed to have been satisfied.

b. Temporary Repair Activities During Construction. During construction, the Company shall perform temporary repairs to Roads (e.g. fill potholes) to address damage to Roads caused by construction vehicles performing work on the Project, provided such damage, in the opinion of the Town Highway Superintendent, impairs the safety of the involved Roads or Road Structures, and the Town provides notice (by e-mail or other written method, unless such damage creates an immediate safety concern, in which case notice shall be provided by telephone and the Town Supervisor may choose to erect temporary warning signs to address the concern) to the Company of such damage. The On-Site Monitor shall meet with the Company on a weekly basis to discuss any issues relating to Roads and Road Structures and any requested temporary repairs.

c. Disputes Regarding Repair Activities and Repair Work. In the event the Company and the On-Site Monitor do not agree regarding the quality or completeness of the repair work, the Company and the Town shall engage an independent engineer with road repair experience to resolve the dispute. The cost of the independent engineer shall be borne equally by the Company and the Town. If the independent engineer agrees with the Company regarding the proposed or completed repair work, the Town and/or the On-Site Monitor shall issue to the Company a Certificate of Restoration. If the independent engineer disagrees with the Company regarding the proposed or completed repair work, the Company shall perform Repair Activities required by the independent engineer but shall not be required to perform Repair Activities beyond what the Town requested of the Company.

d. Option Regarding Repair Activities Performed by Town. In the event the Town and the Company agree in writing: (i) on the proposed Repair Activities, (ii) on the Repair Estimate, and (iii) that the Town will undertake performance of such Repair Activities, the Company shall pay the Town an amount equal to the Repair Estimate. If the Repair Estimate was not calculated using prevailing wages, it shall be recalculated using prevailing wages in the case of the Town undertaking the Repair Activities. Upon the Town’s receipt of such payment, the Company’s obligations for Repair Activities under this Agreement shall be fully satisfied and the Town shall forever release the Company from any obligation to repair any damage to the Roads and Road Structures caused by construction of the Project. Within seven (7) days after its receipt of the Repair Estimate payment, the Town shall issue a written receipt to the Company, the form of which is attached hereto as Exhibit “D”.

SECTION 2.7 USE BY OVERSIZED AND AGGREGATE VEHICLES ON APPROVED HAUL ROADS.

The Company agrees that oversized and aggregate vehicles related to the Project shall be restricted to traveling on the Roads (“**Haul Routes**”) during the hours of 6:00 A.M. and 9:00 P.M. local time; *provided, however*, that the foregoing time restriction may be waived on a case by case basis by the Town Highway Superintendent for oversized vehicles used to deliver Turbine components and Project equipment. A copy of the haul route map for vehicles will be finalized during or after the issuance of the Certificate and will be attached hereto as Exhibit “E”. Such haul route may be modified or supplemented from time to time. The Town waives all posted weight limitations and seasonal limitations on Road use for Project-related vehicles during construction of the Project. In addition, the Company’s transportation activities on the Roads shall be conducted so as to minimize the effects on local transportation. Nothing in this Section shall permit the use of Haul Routes at times inconsistent with the Local Law (i.e., delivery schedules will minimize delivery during periods of school bus activity).

SECTION 2.8 OPERATING, MAINTAINING AND DECOMMISSIONING THE PROJECT.

In the event operating, maintaining or decommissioning of the Project requires use by the Company of oversized or overweight vehicles, prior to entry upon Roads with such vehicles the Company shall inspect the affected Roads, and document the condition of the Roads to the Town Highway Superintendent in a manner set forth in Section 2.3 hereof. In the event of subsequent damage caused by operating, maintaining or decommissioning of the Project (measured against the condition of the impacted Roads immediately prior to such use) the Company shall repair such damage in a manner consistent with Section 2.6 hereof.

SECTION 2.9 ROAD CONSTRUCTION CONTRACTORS.

The Company may contract with bonded and insured third party contractors to perform work covered by this Agreement in relation to the Reinforcement Activities and Repair Activities. Nothing in this Agreement shall make the Company or said third party contractors agents or employees of the Town.

SECTION 2.10 INDEMNITY AND INSURANCE.

The Company’s indemnification and insurance obligations set forth in this Agreement shall cover all work performed by the Company and its agents, employees, and contractors pursuant to this Article. If the Town performs Repair Activities, the Company shall have no obligation relative to indemnity and insurance for the Town and the Town shall be responsible for its own insurance protection.

SECTION 2.11 SECURITY.

The Town may require the Company or its BOP Contractor to post a bond, irrevocable letter of credit, or other mutually acceptable cash equivalent in the amount of the Company’s actual construction contract price for Reinforcement Activities or Repair Activities (the “**Construction Security**”), except that, in recognition of the costs the Town would incur if required to perform the work, said security shall reflect prevailing wages if the Company’s actual

construction contract does not use prevailing wages. Upon issuance by the Town of the Certificate of Restoration, the Company's obligation to maintain Construction Security shall terminate and the Town shall return the Construction Security to the Company forthwith. A partial certificate of restoration may be issued with an authorization for proportional partial release of the Security.

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

BARON WINDS LLC

By: _____

Name: _____

Title: _____

TOWN OF _____

By: _____

Name: _____

Title: _____

STATE OF _____) ss:
COUNTY OF _____)

On the ____ day of _____, in the year 2016, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF _____) ss:
COUNTY OF _____)

On the ____ day of _____, in the year 2016, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

List of Exhibits

- Exhibit "A" Schedule of Roads
- Exhibit "B" Pre-Construction Inspection Report
- Exhibit "C" Schedule of Project Facilities Requiring Municipal Franchises, Road Permits and Curb Cuts
- Exhibit "D" Receipt of Repair Estimate Payment and Release from Road Repair Obligations
- Exhibit "E" Haul Route Map for Oversized Vehicles

Exhibit “A” Schedule of Roads

To be attached after Effective Date

Exhibit "B"

Pre-Construction Inspection Report

To be attached after Effective Date

Exhibit “C”

**Schedule of Project Facilities Requiring Municipal Franchises,
Road Permits and Curb Cuts**

To be attached after Effective Date

**Exhibit "D" RECEIPT OF REPAIR ESTIMATE PAYMENT AND
RELEASE FROM ROAD REPAIR OBLIGATIONS TO ALL TO WHOM THESE
PRESENTS SHALL COME OR MAY CONCERN**

KNOW THAT the **TOWN OF** _____, a municipal corporation duly organized and existing under the laws of the State of New York, as **RELEASOR**, in consideration of the sum of _____ dollars (\$_____), and other good and valuable consideration, received from **BARON WINDS LLC**, a limited liability company organized under the State of Delaware and authorized to do business in the State of New York, as **RELEASEE**, receipt of which is hereby acknowledged, forever releases and discharges **RELEASEE**, its successors and assigns, of any and all obligations and claims for damages or otherwise for repair of roads or road structures in the Town of _____ relating to, or arising out of, in any way, the construction of the Baron Winds Wind Project and to hold **RELEASEE** harmless without responsibility for any damages incurred by the Town of _____ as a result.

RELEASOR hereby covenants to **RELEASEE**, and its principals, officers, directors, affiliates, subsidiaries, employees, contractors, agents, members, and/or managers, that **RELEASOR** will not sue or otherwise assert a claim of any nature or description whatsoever against **RELEASEE** with regard to, or associated with, any claims for or arising out of repair of roads or road structures in the Town of _____. This Release may not be changed orally.

IN WITNESS WHEREOF, the **RELEASOR** has executed this Release on the ___ day of _____, _____.

_____ **TOWN OF** _____
By: _____
Its: _____

STATE OF _____) ss:
COUNTY OF _____)

On the ___ day of _____, in the year ____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____ Notary
Public

Exhibit “E” Haul Route Map for Oversized Vehicles To be attached after Effective Date