

ROADWAY USE AGREEMENT

This Roadway Use Agreement ("Agreement") is made and entered this ____ of April, 2011 (the "Effective Date"), by and between Converse County, Wyoming, whose address is 107 North 5th Street, Suite 114, Douglas, Wyoming 82633, (hereinafter called "Grantor") and Wasatch Wind LLC, , a Delaware limited liability company licensed to do business in the State of Wyoming, whose address is 2700 Homestead Rd Ste 210, Park City, UT 84098, its successors and assigns (hereinafter called "Grantee").

RECITALS

WHEREAS, Converse County Road 18, a.k.a. Mormon Canyon Road ("Road"), is an existing road which is largely a public road located in Converse County, Wyoming owned, in part, by Grantor, the location and description of the Road being as described in Exhibit A, attached hereto and incorporated herein, a portion of which is paved road and a portion of which is a dirt/gravel road;

WHEREAS, Grantee wishes to use the Road to access, construct, operate, maintain, and service its Pioneer Wind Project (including Pioneer Wind Park I and Pioneer Wind Park 11) (the "Facility");

WHEREAS, Grantee's agents, employees, affiliates, contractors, subcontractors, workforce and related service companies may utilize the Road for access to the Facility and as a haul route to deliver materials and components necessary to erect and construct the Facility;

WHEREAS, Grantee's use of the Road may cause impacts which require mitigation to ensure the public's continued ability to use the Road;

WHEREAS, Grantor desires to grant to Grantee a non-exclusive right to utilize the Road for the purposes described herein in exchange for Grantee's reasonable maintenance and mitigation of impacts caused by Grantee's use of the Road;

NOW, THEREFORE, in consideration often dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. GRANT: Grantor hereby grants to Grantee, its agents, employees, affiliates, contractors, subcontractors and related service companies, subject to the terms of this Agreement, a non-exclusive road right of way to enter upon and utilize the Road, which is more particularly described on the map identified as Exhibit A, for the purposes of accessing, constructing, maintaining, servicing and operating Grantee's Facility. Grantee acknowledges and agrees that the terms of this Agreement only apply to the Road and that separate agreements with

Grantor are required for use of additional roads owned by Grantor in conjunction with construction, operation and maintenance of the Facility.

2. CONSIDERATION FOR USE: As consideration for use of the Road, Grantee shall, at its own cost and expense, as of the Commencement Date (defined below) and during the period of Grantee's construction of the Facility: (i) keep the Road and the surface condition thereof in good repair and condition at all times; (ii) fill all ruts, holes and other depressions caused by Grantee's use of the Road to substantially the same condition as the Commencement Date; (iii) make one application of magnesium chloride to the gravel portion of Grantor's-owned portion of the Road (if warranted), and thereafter use its best efforts to abate dust generated as a result of Grantee's, its agents', employees', affiliates', contractors', subcontractors' and related service companies' use of the Road for construction of the Facility; and (iv) upon conclusion of Grantee's use of the Road, repair any damage so as to put the Road in as good of condition as of the Commencement Date. Grantee, and all contractors hired by Grantee to make repairs to the Road pursuant to this Section 2 shall carry liability insurance an amount of not less than \$1,000,000. Grantor shall not allow the condition of the Road to deteriorate in anticipation of Grantee's period of use and shall maintain the road under its current maintenance schedule up to the Commencement Date. Good repair and condition is defined in this Agreement as substantially the same condition as of the Commencement Date and in compliance with Converse County road standards.

3. DOCUMENTATION OF ROAD CONDITION: Grantee shall notify in writing Scott McWilliams, Foreman, Converse County Road and Bridge Department, P.O. Box 770, Douglas, Wyoming 82633, a minimum of ten (10) working days in advance of the beginning of any of the above described hauling operations so that Grantor can video the condition of the Grantor-owned section of the Road prior to the hauls. Grantee and Grantor shall coordinate their schedules so that Grantee may participate in such video documentation of the Road condition prior to Grantee's use of the Road. The day immediately following such documentation shall be defined as the "Commencement Date" of Grantee's use of the Road. Grantee shall thereafter notify in writing Grantor of Grantee's desire to terminate use of the Road for Grantee's construction activities. Within ten (10) business days of such notification, Grantor and Grantee shall coordinate their schedules so that Grantor may document the condition of the Road with the participation of the Grantee. Should Grantor determine the Road to be substantially in the same condition as the Road on the Commencement Date, Grantee shall have no further responsibility for the Road under this Agreement. Should Grantor determine that further repair is required, Grantor shall notify Grantee in writing within ten (10) business days of the final inspection date of any required repairs. Grantee may dispute Grantor's request for repairs within ten (10) business days of receipt of such notification. If Grantor fails to notify Grantee of any required repairs within the time period set forth above, Grantee shall have no further responsibility for the Road under this Agreement.

4. TERMINATION: This Agreement shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this Agreement and shall remain in full force and effect for a period of one (1) year (hereinafter "Term"). Grantee shall have the right at any time during the Term to terminate this Agreement for any reason effective upon ten (10) days written notice to Grantor. Grantor shall have the right to terminate

this Agreement if: (a) a material default in the performance of Grantee's obligations under the Agreement shall have occurred and remains uncured, (b) Grantor notifies Grantee in writing of the default, which notice shall be delivered by hand or by certified mail and sets forth in reasonable detail the facts pertaining to the default, and (c) the default shall not have been remedied within thirty (30) days after Grantee receives notice thereof, or if the default will take longer than thirty (30) days for Grantee to remedy, Grantee is not working diligently to remedy such default. Upon termination of this Agreement and documentation of the Road condition as set forth in Section 3 of this Agreement, any costs associated with road maintenance, repairs or any other costs paid by Grantee for use of the Road, shall no longer be the responsibility of Grantee.

5. CONDITIONS OF ROAD USE:

- a. Grantee shall at all times keep the Road safe and in good order, free of litter and debris.
- b. Grantee shall not allow or permit erosion of the Road and shall promptly repair and reclaim all erosion sites.
- c. All cattle guards used by Grantee shall be kept in clean condition and in good repair.
- d. Grantee shall not construct any structures or obstructions over or across the Road.
- e. If a fence gate is located on or across the Road, Grantee shall secure and close all gates, either temporary or permanent, and shall use reasonable efforts to prevent any livestock from straying or escaping through such gates at any time during Grantee's use of the roadway granted herein.
- f. The posted speed limit will be observed by all of Grantee's personnel, contractors and subcontractors at all times. Violators will be cited by law enforcement and may be reported by Grantor to Grantee, and Grantee will use its best efforts to control such violations.
- g. Prior to the commencement of use of the Road, Grantee shall post a bond in the amount of \$250,000.00 per paved mile of road used by Grantor, in a form acceptable to Grantor, to ensure the Road is repaired and/or replaced back to the condition it was in as of the Commencement Date.
- h. Should the Road need maintenance work during the period of this Agreement (i.e. plowing or grading), this action must be approved in writing by Scott McWilliams, Foreman, Converse County Road and Bridge Department, P.O. Box 770, Douglas, Wyoming 82633, prior to the commencement of such work. All maintenance and upkeep shall be in accordance with County Road Standards as set out in the County Road Manual.
- i. In the event that traffic patterns change, additional or different roads become necessary to be used in the construction of the Facility, or should any other event arise which requires Grantor or Grantee to seek the use of other roads under the jurisdiction of Converse County, Grantor and Grantee specifically warrant, covenant and agree that they, and each of them, shall expeditiously execute a new Roadway Use Agreement substantially similar in form and content to this Agreement in order to facilitate the use of the new road or roads, protect the condition of any other roads and not interfere with the ongoing construction at the Facility.
- j. Grantee shall replace, at its sole cost and expense, any signs, markers, fence or other such improvements which it may remove to facilitate its use of the Road, or which are damaged by the activities of Grantee during the use of the Road.

k. Notwithstanding the termination of this Agreement, following completion of the construction of the Facility, Grantee shall be solely responsible for any and all costs or expenses related to any snow removal it deems necessary to access the facility. In the event Grantee determines such snow removal is necessary, it shall warrant and ensure that any snow removal company is licensed and have liability insurance of up to \$1 million per occurrence. By executing this Agreement, Grantee further agrees to indemnify and hold harmless Converse County for any liability, harm or damages it may incur as a result of such snow removal.

6. GRANTOR'S USE OF ROAD: Grantor herein retains for the public and itself, the right to fully use and enjoy the Road. Grantor reserves the right to grant successive non-exclusive road rights of way or licenses on the Road or access to the Road on such terms and conditions as Grantor deems necessary or advisable, provided that use of the Road for any other development or access to that development shall be subject to payment of a proportionate cost of maintenance of the Road by Grantor. Grantor shall notify Grantee if additional rights of way or licenses are granted to others for use of the Road for any other development or access to another development during the Term of this Agreement.

7. INDEMNITY: GRANTEE SHALL RELEASE, INDEMNIFY AND HOLD HARMLESS GRANTOR AND ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNEES FROM ANY CAUSE OF ACTION OR CLAIMS OR DEMANDS ARISING OUT OF GRANTEE'S PERFORMANCE UNDER THIS AGREEMENT EXCEPT TO THE EXTENT SUCH CLAIMS OR DAMAGES ARISE FROM THE ACTIONS OR INACTIONS OF THE GRANTOR AND ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNEES.

8. DAMAGES LIMITATION: ANY DAMAGES AWARDED TO EITHER PARTY UNDER THIS AGREEMENT SHALL BE LIMITED TO ONLY THE ACTUAL DAMAGES INCURRED BY SUCH PARTY AND NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES IN TORT OR IN CONTRACT, OR UNDER ANY LEGAL THEORY, AND ALL SUCH DAMAGES ARE HEREBY EXCLUDED AND WAIVED BY THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT AND/OR THE EXERCISE OF RIGHTS HEREUNDER.

9. COVENANT RUNNING WITH THE LAND/ASSIGNMENT: The rights granted in this Agreement are appurtenant to and covenants running with the land and shall extend to and be binding upon, and inure to the benefit of, Grantor and Grantee and each of their respective heirs, executors, administrators, personal representatives, successors and permitted assigns for the Term of this Agreement. Any sale, transfer, conveyance or other disposition of the Road or any interest therein by Grantor shall be subject to the rights granted herein. Grantee may assign to any other party the rights herein granted, either in whole or in part, without Grantor's consent, as long as such assignee agrees to be bound by the terms of this Agreement.

10. NOTICES: All Notices required or permitted hereunder shall be given by certified mail, postage prepaid, return receipt requested, or by overnight express delivery by a nationally recognized overnight courier with signature receipt, directed as follows:

If intended for Grantor, to:

Converse County Attorney, 107 North 5th Street, Suite 114, Douglas, WY 82633

If intended for Grantee, to:

Wasatch Wind LLC, 2700 Homestead Road, Ste 210, Park City, UT 84098

Such notice delivered by (i) certified mail in accordance with the foregoing procedures shall be deemed to have been duly given after such notice is deposited with the United States Post Office; or (ii) overnight express delivery by a nationally recognized overnight courier shall be deemed to have been duly given one (1) business day after such notice is deposited with such overnight courier with instructions to deliver such notice the next following business day. Business day as used herein means any calendar day other than a Saturday, Sunday, or official holiday of the state in which the Road is located.

11. ATTORNEYS FEES: If any action or proceeding is instituted by either party for enforcement or interpretation of any term of this Agreement, the prevailing party shall be entitled to recover from the other party all reasonable costs and expenses incurred by the prevailing party in said action and any appeal therefrom, including court costs, reasonable attorneys' fees and costs of suit as determined by the court.

12. SEVERABILITY: If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law. The parties stipulate and agree that they and their respective counsel have jointly participated in the drafting of this Agreement and therefore this Agreement shall not be construed against either party in the event of an ambiguity or other form of dispute as to its interpretation.

13. COUNTERPARTS: This Agreement may be executed in identical counterparts, including by electronic means, each of which shall together constitute one and the same document and shall be deemed a fully executed and binding original.

14. CHOICE OF LAWS: This Agreement shall be interpreted in accordance with the laws of the State of Wyoming without regard to choice of law principles. Venue for any and all actions brought pursuant to this Agreement, whether in law or in equity, shall be in the appropriate jurisdictional court within Converse County, Wyoming.

15. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between Grantor and Grantee relating to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations, representations, statements and discussions between the Parties, whether oral or written. This Agreement may be modified or amended only by a writing signed by each of the parties hereto.

16. AUTHORITY: By executing this Agreement, the representatives of Grantor and Grantee each respectively warrant and acknowledge that they have the power and authority to execute and deliver this Agreement and to authorize and guarantee their respective obligations under this Agreement, that this Agreement has been duly authorized by all required actions of each such party, and the person or persons signing for each party has been duly authorized by such party to do so. Grantor further warrants, acknowledges and agrees has the legal right to grant to Grantee the rights pursuant to the terms of this Agreement.

17. GRANTOR'S REPRESENTATION: Grantor represents and warrants that there are no undisclosed encumbrances, leases, easements or other rights granted to third parties relating to the Road, or any interest therein, that could materially interfere with Grantee's use and enjoyment of the rights granted herein, except those that have been already disclosed to Grantee.

18. GOVERNMENTAL IMMUNITY: Grantor does not waive its Governmental Immunity as provided by any applicable law, including W.S. § 139-101 *et seq.*, by entering into this Agreement and Grantor fully retains all immunities and defenses provided by law. However, the parties acknowledge and agree that Grantee retains the right to enforce its contract rights arising under this Agreement, to bring an action for interpretation of any provision of this Agreement and Grantor hereby waives any sovereign immunity defense it may otherwise enjoy in any judicial proceeding between Grantor and Grantee, the subject matter of which is this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

GRANTOR:

CONVERSE COUNTY, WYOMING

DATED this ____ day of April, 2011.

FOR THE BOARD OF COMMISSIONERS
CONVERSE COUNTY, WYOMING

Mike Colling, Chairman

ATTEST:

Lucile Taylor
Converse County Clerk

GRANTEE:

WASATCH WIND, LLC

STATE OF UTAH)
) ss.
COUNTY OF _____)

DATED this _____ day of April, 2011.

By:

Subscribed and sworn to before me by _____, as _____ of
Wasatch Wind LLC this _____ day of April _____, 2011.

Notary Public

My Commission Expires: