

THIS AGREEMENT ("Agreement")

made in duplicate originals this _____ day of _____, 2020 (the "Effective Date")

BETWEEN:

CARBON COUNTY

by and through the Carbon County Board of County Commissioners

P.O. Box 6

415 West Pine Street

Rawlins, WY 82301

(307) 328-2699

(the "County")

-AND-

Rock Creek Wind, LLC

1 S. Wacker Drive

Suite 1800

Chicago, IL 60606

(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 Rock Creek Wind, LLC or its affiliates, successors, assigns, vendors, contractors, or subcontractors.

"Haul Route(s)" means Roads identified in a map submitted to the Carbon County Road and Bridge department prior to commencement of construction showing 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, and Haul Routes must be approved in writing by County.

"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.

"Project" means:

The Company's Windpower Facilities and construction thereof which will cover approximately one hundred and eight (108) miles of Windpower located throughout Carbon County, Wyoming.

"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) How Carbon County roads will be constructed, modified, improved or maintained as necessary for use by the Company and its contractors and subcontractors during the construction of the project;
- b) 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;
- c) As to how dust control and mitigation will be maintained;
- d) As to how snow removal during winter months will be performed;
- e) As to how noxious weeds will be maintained during and after your finished project;
- f) 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 provide roads which meet minimum standards necessary for purposes of construction and operation of the project, 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, to be identified in the Haul Routes, 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. Any roadways which require alteration, modification, or improvements to build Project will thereafter be returned to County for maintenance after completion of construction of project.
- 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 (5th) 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.

The Haul Routes and County Roads utilized for project must be identified and approved in writing by the Carbon County Superintendent/Coordinator of Road and Bridge prior to any construction. Attached hereto as Exhibit A 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 A. 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, 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.
- 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 shall require that the Company post a surety bond during construction for repairs that are required by paragraph 9(c) below, in an amount to be specified by the County.
- b) The Company shall not haul goods, equipment or materials on the Roads forming the Haul Route until:

- i. It has delivered to the County a surety bond in the minimum amount of \$_____ (_____ per mile of affected Carbon County Roads); and
 - ii. A Pre-Inspection pursuant to 7.1 has been completed.
- c) Any surety bond posted by the Company shall be released by the County within fifteen (15) days following the later to occur of i) receipt of notification by the County of completion of Project construction, and ii) the reasonable acceptance by County of the Post Construction Inspection.

7. INSPECTIONS

7.1- 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 time and at 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 twenty-four (24) hours 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 inspections shall be paid by the Company.

8. ROAD CONSTRUCTION OR MODIFICATION BY THE COMPANY

- a) The Company through submitted plans may alter, improve, modify, widen, or gravel County Roads with written approval of County to bring roads to a standard that will allow for safe construction vehicle use.
- b) The Company will be solely responsible for costs and materials for any improvements and maintaining road standards throughout the term of the construction.
- c) Such alterations will remain and be returned to County after completion of construction and the County will resume maintenance at that time.
- d) Any alterations to the existing right of ways and road course will be through submitted plans and written approval of County, and all costs associated therewith will be the sole responsibility of the Company. Any course change meets and bounds will be surveyed with appropriate land sizes included and a centerline survey of the as built road will be submitted to the County for right-of-way acquisition, and the costs of this will also be the sole responsibility of the Company.

9. 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 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, 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 9(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 as constructed for the project and as 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) Dust Control/Mitigation:

The Company will provide dust mitigation during the summer months for the entire duration of the project. Utilization of dust mitigation and control measures on road surfaces, including, but not limited to the use of magnesium chloride and water, to provide adequate site distance for vehicles and users of the unpaved roads. The Company agrees to coordinate with Carbon County Road & Bridge and provide water truck when water is needed to keep road bladed and maintained by County Operator.

d) Snow Removal

Company must obtain a snow removal permit from Carbon County Road & Bridge for Company to do any of its own snow removal along county roads. All requirements must be followed in snow removal permit. Any snow removal by Carbon County will not occur until priority routes, school bus routes, etc. have been completed. See snow removal policy incorporated herein as Exhibit *.

e) Access Roads/Drainage

If Company is accessing or building other routes from County Roads, Company must obtain access permit from Carbon County Road & Bridge, maintain the access road, and provide proper drainage along ditch.

f) Revegetation/Noxious Weeds

Company must control noxious weeds along haul routes within the County Right of Ways during the entire duration of your project. Company will also need to monitor for noxious weeds 3-5 years following the project completion date.

g) Damages

- i. The Company shall be liable at all times for the repair, to the 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 immediately following notification 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 9(c)(i) above that are immediately following notification, the County, may specify a further period of time within which the Company must complete such repairs.

h) Costs

In the event that the Company fails to complete the repairs required by the County, pursuant to paragraph 9(c)(i) or (ii) above, the County may draw upon the surety bond to effect the repairs in accordance with the provisions of the surety bond.

i) Emergencies

- i. The County may, in emergency situations, 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. The Company will be solely responsible for the cost of all emergency actions taken by the County due to damage from the Company, contractors or subcontractors. The Company shall have the right to receive details of the County's determination that damage was caused by the Company.
- ii. The Company may, in emergency situations, 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.

j) Notification

The County and the Company shall provide notification to each other of any action taken under 9(c), (d), and (e) above as soon as practicable.

k) Indemnity

- i) 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. The Company's liability to the County 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.

ii.) Each party to this Road Use Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other, except as identified in Section 9.g.i.

i) 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 commercial grade 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. Frequency and materials for dust mitigation will meet commercial standards.

j) Governmental immunity

The County does not waive governmental immunity by entering into this Road Use Agreement. The County fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Road Use Agreement.

10.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

Attn: Carbon County Board of County Commissioners

Attention: Willing John Johnson

Address: P.O. Box 6, 415 West Pine Street, Rawlins, WY 82301

Phone: (307) 328-2699

Fax: (307) 328-2669

Email: commissioners@carbonwy.com

Carbon County

Attention: Kandis Fritz

Address: 1016 West Hugus, Rawlins, WY 82301

Phone: (307) 324-9555

Fax: (307) 324-9557

Email: kandisfritz@carbonwy.com**Company:**

Rock Creek Wind, LLC

1 South Wacker Drive

Suite 1800

Chicago, IL 60606

Phone:

(720)283-4316

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 4th 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).

11.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.

12.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.

13.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.

14.TIME IS OF THE ESSENCE

Time shall be of the essence of this Agreement.

15.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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[signatures on following page]

DRAFT

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: Carbon County Board of County Commissioners

BY: _____

PRINT NAME: _____

TITLE: _____

DATE: _____

Attestation: _____

NAME: Carbon County Road and Bridge

BY: _____

PRINT NAME: _____

TITLE: _____

DATE: _____

Attestation: _____

NAME: Rock Creek Wind, LLC

BY: _____

PRINT NAME: TBD

TITLE:

DATE: _____

EXHIBIT A Road

Restrictions

- School buses and any emergency vehicles will have priority use of the roads. Hours of operation on Haul Routes that restrict operation of school buses and emergency vehicles shall be avoided.
- Vehicles will follow haul routes, and those will not be altered without prior approval pursuant to this agreement.
- All heavy, oversized, and otherwise overweight loads will comply with State Highway Standards unless otherwise permitted by the State of Wyoming Department of Transportation.

EXHIBIT B

Haul Route Map
(To be Inserted)