

# Town of Denmark

## Minutes

### September 08, 2016: Special Meeting Minutes

#### Body:

The Town of Denmark Town Board held a special meeting on September 8, 2016. Town Clerk, Prudence L. Kunert, notified the media of the meeting via email on Tuesday, August 30, 2016 and posted a notice on the Town Clerk's bulletin board. .

The meeting was called to order by Supervisor Fleming at 6:00pm.

Town Board Members present: Supervisor Fleming  
Councilman

Der

Councilman Fazio  
Councilman Thoma  
Councilman Jones

Others present:

Supt. Mahar  
Budget Officer Sharon Fleming  
Clerk Kunert  
Attorney Mark Gebo (leaves at 6:45)  
Matt Cooper of BCA (enters at 6:01 leaves at 7:32)  
Sandra Jones  
Deb Der (leaves at 6:45 reenters at 6:52)  
Eric Keefer

The meeting was called to order by Supervisor Fleming at 6:00pm with the Pledge of Allegiance. Councilman Fazio made a motion, seconded by Councilman Der to accept the agenda of the meeting.

Vote recorded as:

Councilman Der	Aye
Councilman Fazio	Aye
Supervisor Fleming	Aye
Councilman Thoma	Aye
Councilman Jones	Aye

**SUPERVISOR'S REPORT:** Supervisor Fleming asked Attorney Gebo to review the Copenhagen Wind Farm, LLC Financial Term Sheet. July 19, 2016 Update (for PILOT Payment Split percentages)

#### **COPENHAGEN WIND FARM, LLC PROJECT FINANCIAL TERM SHEET**

**AGREEMENT** (this "Agreement") dated as of June 1, 2013, by and between:

**COUNTY OF LEWIS**, a body corporate and politic under the laws of the State of New York with an office at 7660 State Street, Lowville, New York 13367 (the "County"),

**COPENHAGEN CENTRAL SCHOOL DISTRICT**, a body corporate and politic under the laws of the State of New York with an office at 3020 Mechanic Street, Copenhagen, New York 13626 (the 'Copenhagen CSD'),

**LOWVILLE CENTRAL SCHOOL DISTRICT**, a body corporate and politic under the laws of the State of New York with an office at 7668 State Street, New York 13367 (the "Lowville CSD"),

**TOWN OF DENMARK**, a body corporate and politic under the laws of the State of New York, with an office at 3707 Roberts Road, Carthage, New York 13619, (the "Town") (the County, Copenhagen CSD, Lowville CSD, and Town are collectively referred to herein as the "Taxing Jurisdictions"), and

**COPENHAGEN WIND FARM, LLC**, a foreign limited liability company organized in the State of Delaware, authorized to do business in the State of New York, and having its principal place of business located at 45 Main Street, Suite 536, Brooklyn, New York 11201 (the "Company").

RECITALS:

**WHEREAS**, the Company proposes to acquire, construct and install an approximately 80 Megawatt ("MW") wind-powered electric generating facility in the Town, together with associated electric transmission facilities, support facilities, and related infrastructure (the "Project"); and

**WHEREAS**, the parties intend to enter into a payment in-lieu of tax agreement (the "PILOT Agreement") involving the Lewis County Industrial Development Agency (the "Agency") and have negotiated an agreement as to the financial terms to be incorporated into the PILOT Agreement and, before requesting that the Agency implement the PILOT Agreement as part of financial assistance requested of it by the Company, wish to memorialize the agreed upon financial terms;

**NOW THEREFORE**, the parties agree as follows:

**Involvement of the Agency:** The Company has applied for financial assistance from the Agency for the Project in the form of sales tax exemption, mortgage recording tax exemption, and real property tax exemption to support the PILOT Agreement, and the Taxing Jurisdictions support the Agency's involvement to confer that assistance. The Taxing Jurisdictions shall also be parties to the PILOT Agreement in order to approve the financial terms thereof and to establish their respective shares of the payments under the PILOT Agreement (the "PILOT Payments").

2. **Term of the PILOT Agreement and Escrow:** The term of the PILOT Agreement will be twenty (20) years, commencing with the set of Taxing Jurisdiction fiscal years tied to the first assessment roll following the Project's commercial operation date, as evidenced by the Company's notice to the New York Independent System Operator of having achieved commercial operation (the "COD"). It is anticipated that the PILOT Agreement and other Agency documents will be executed and placed in escrow pending delivery by the Company to the Agency of a notice of construction start. Upon delivery of such notice, the escrow will be broken, Agency documents recorded, and the Agency's administrative fee paid. Agency expenses will be paid at escrow closing.
3. **PILOT Payment:** PILOT Payments will be determined by the nameplate rated capacity of wind turbines actually installed as part of the Project (as certified by the Company within thirty days following COD and within thirty days following any change in installed nameplate rated capacity thereafter). The initial PILOT Payment will be \$8,400 per MW of installed capacity.
4. **Annual Escalator:** The PILOT payment shall increase at a rate of 2.5% per year commencing upon the first anniversary of the initial PILOT Payment and adjusted annually on each January 1 thereafter throughout the remaining term of the PILOT Agreement.
5. **First Payment Due Date and Illustrative Payment Schedule:** The first PILOT payment shall be due on the January 1<sup>st</sup> following the first March 1<sup>st</sup> after COD. The Company agrees to pay the amounts due within thirty (30) days of the date that such amounts are due. The following schedule illustrates the PILOT Payment amounts for the PILOT Agreement term, along with the associated Taxing Jurisdiction fiscal years, with the timing of initial PILOT Payment receipt dependent upon the year the Project achieves COD (for purposes of illustration, it is assumed to occur in 2015). PILOT Payments shall be in advance for Town and County purposes and mid-fiscal year for school district purposes.

PILOT Year	PILOT Payment Due Date	Town Roll Year	School District Tax Year	Town / County Tax Year	PILOT Payment rate per MW
1	January 1, 2017	2016	2016-2017	2017	\$8,400
2	January 1, 2018	2017	2017-2018	2018	\$8,610
3	January 1, 2019	2018	2018-2019	2019	\$8,825
4	January 1, 2020	2019	2019-2020	2020	\$9,046
5	January 1, 2021	2020	2020-2021	2021	\$9,272
6	January 1, 2022	2021	2021-2022	2022	\$9,504
7	January 1, 2023	2022	2022-2023	2023	\$9,741
8	January 1, 2024	2023	2023-2024	2024	\$9,985
9	January 1, 2025	2024	2024-2025	2025	\$10,235
10	January 1, 2026	2025	2025-2026	2026	\$10,490
11	January 1, 2027	2026	2026-2027	2027	\$10,753
12	January 1, 2028	2027	2027-2028	2028	\$11,022
13	January 1, 2029	2028	2028-2029	2029	\$11,297
14	January 1, 2030	2029	2029-2030	2030	\$11,579
15	January 1, 2031	2030	2030-2031	2031	\$11,869
16	January 1, 2032	2031	2031-2032	2032	\$12,166
17	January 1, 2033	2032	2032-2034	2033	\$12,470
18	January 1, 2034	2033	2034-2035	2034	\$12,782
19	January 1, 2035	2034	2035-2036	2035	\$13,101
20	January 1, 2036	2035	2036-2037	2036	\$13,429

\*Illustrative table assumes COD occurs during 2015 calendar year.

**PILOT Payment Split:** The Taxing Jurisdictions agree that their respective shares of each PILOT Payment are as follows:

For turbines located in the Copenhagen CSD:

Town: 31.07%  
 County: 30.85%  
 Copenhagen CSD: 38.07%

For turbines located in the Lowville CSD:

Town: 32.58%  
 County: 32.35%  
 Lowville CSD: 35.07%

**Transmission Line Substation and Interconnection:** The Project plans to construct a transmission line which would carry electricity it produces to a point of interconnection with the National Grid electric transmission system at a location in Jefferson County.

The Company intends to ask the Agency to include adjoining and contiguous property located in Jefferson County as an extra-territorial part of its project within Lewis County. The Taxing Jurisdictions will support the inclusion of the transmission line and substation as part of the Company's project with the Agency and the involved improvements will

not alter the PILOT Payments agreed to in this Agreement. So long as the Agency is able to extend its project outside of Lewis County and the Jefferson County tax jurisdictions agree to and implement a Real Property Tax Law ("RPTL") Section 487 PILOT agreement applying RPTL Section 485-b abatement for the Town of Champion, Town of Rutland, and Jefferson County, and implementing a 15-year waiver of payment for the Copenhagen CSD, the Company's commitment to the PILOT Payments agreed to in this Agreement will not have to be re-negotiated and reduced.

**Impact Payment:** The Company agrees to and did enter into a separate agreement with the Town dated as of December 14, 2015 (the "Host Community Agreement") wherein the Company agrees to make an impact payment to the Town in the total amount of \$430,000, to be paid in three (3) installments, in such amounts and at such times as specified in the Host Community Agreement. The PILOT Agreement shall contain a cross-default provision so that a default in performance under the Host Community Agreement shall be deemed a default under the PILOT Agreement.

**IDA Fees:** The Company agrees that it will pay all applicable fees to the Agency in relation to the Project, including the following:

- a. Administrative Fee: Based on the amount of the total Project costs reported to the IDA, in accordance with the following sliding scale:
- 1% of the first \$10,000,000
  - 1/2% of the next \$ 10,000,000
  - 3/8% of the next \$ 40,000,000
  - 114% of any remaining amount
- b. Application Fee: An application fee of \$250 has already been paid to the Agency.

**Assignment:** It is understood and agreed that this Agreement, the PILOT Agreement, and all other Agency documents shall be freely assignable by the Company without Taxing Jurisdiction consent, provided that any assignee shall agree to be fully bound by the terms of such documents.

**Binding Effect:** Upon execution hereof, it is intended that this Agreement shall be binding upon the parties, and their respective successors and assigns.

**Counterparts:** This Agreement may be simultaneously executed in one or more counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Applicable Law. Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any dispute over the terms and conditions of this Agreement shall be triable only in the Supreme Court of the State of New York with venue in the County of Lewis.

**Authority to Execute Agreement:** The signatories to this Agreement each represent and warrant that they are the duly authorized representatives of their respective organizations, and that they have been duly authorized by their respective governing boards to enter into this Agreement.

**Project Uncertainty:** The Tax Jurisdictions understand that the Project must be financially viable for the Company to proceed with its development. Although the Company is vigorously pursuing efforts to improve Project economics (e.g. applying for a Renewable Energy Credit contract award through NYSERDA, seeking extension of the Federal Production Tax Credit for wind energy, trying to identify lenders or investors willing to support the Project with financing, etc.), the Company is not in a position to represent that the Project will be sufficiently financially viable to be built, and the terms of this Agreement are therefore conditioned on the success of those efforts.

He noted that in this draft (which was originally discussed at the August 8, 2016 Town Board meeting) paragraph 8 references the Host Agreement. Supervisor Fleming had concern about not listing the Host Agreement payment dates in this document as well. Mr. Gebo is of the opinion that the reference is enough because that document was signed in December of 2015. In paragraph 5 the Illustrative Payment Schedule has been updated to reflect more current dates.

Discussion was held on the document as presented.

Councilman Fazio made a motion that Supervisor Fleming sign the July 19, 2016 **COPENHAGEN WIND FARM, LLC PROJECT FINANCIAL TERM SHEET**. His motion was seconded by Councilman Thoma.

Vote recorded as follows:

Councilman Der	Aye
Councilman Fazio	Aye
Supervisor Fleming	Aye
Councilman Thoma	Aye
Councilman Jones	Abstains

Discussion was held on the need for revisions to the Cultural Mitigation Agreement. The monetary amounts have been increased and will now be \$60,300.00 over 3 years. A potential plan has been developed and approved by NYS SHPO. Discussion was held. The Town of Denmark Town Board was not consulted in the development of the proposed plan which calls for the following:

- Fund Storykeepers Humanities Curriculum for Copenhagen Central School Grade 6 program and adult workshops for 3 years with a budget of \$29,300.00
- Fund construction of a permanent exhibit to showcase artifacts significant to local history to be installed in the Copenhagen Central School library \$with a budget of \$11,000.00
- Fund maintenance and restoration of local historic cemeteries. Eligible projects may include design and installation of interpretive signage; repair/stabilization of stonewalls, fences, or other features; and/or trimming or removal of hazardous or overgrown vegetation, including trees. All proposed repair/stabilization work would be conducted in accordance with the Secretary of the Interior's Standards with a budget of \$20,000.00

Discussion was held on the needs of the Town Cemeteries and historical preservation of Registrar Records in the Town Clerk's Office. Mr. Gebo will contact SHPO and see if changes can be made.

Discussion was held on the Road Agreement. Supt. Mahar has reviewed the document and is satisfied with it at this time.

#### **AGREEMENT FOR ROAD USE, REPAIR AND IMPROVEMENTS**

This AGREEMENT FOR ROAD USE, REPAIR AND IMPROVEMENTS (this "Agreement") is made and entered into this \_\_\_ day of September, 2015 by and among the TOWN OF DENMARK, a municipal corporation with offices at 3707 Roberts Road, Carthage, New York ("Denmark" or "Town"), COUNTY OF LEWIS, a body corporate and politic under the laws of the State of New York with an office at 7668 State Street, Lowville, New York (the "County") and COPENHAGEN WIND FARM, LLC, a Delaware limited liability company with offices at 45 Main St., Suite 536 Brooklyn, New York ("Copenhagen Wind" or "Company"). Denmark, the County and Copenhagen Wind are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

#### RECITALS

The Company has been developing a wind-powered electric generating facility located in the Town of Denmark, in Lewis County, New York (the "Copenhagen Wind Farm").

The Copenhagen Wind Farm has a planned nameplate capacity of up to approximately 79.9 MW (the "Project") and is owned by Copenhagen Wind Farm, LLC, a limited liability company currently controlled by OWNENERGY, Inc.

The Copenhagen Wind Farm advances the County's and Town's desire for environmentally sound production of electrical power.

The Town and County are responsible for the maintenance of certain roads and highways within Lewis County.

In connection with the development, construction, operation and maintenance of the Project, it will be necessary for Copenhagen Wind and its contractors and subcontractors or designees to: (i) transport heavy equipment and materials over the certain roads and highways located in the Town and County (the "Designated Roads"), which may in certain cases be in excess of the design limits of the Designated Roads; (ii) transport certain locally sourced materials, such as concrete and gravel, on such Designated Roads; (iii) widen certain Designated Roads and make certain modifications and improvements (both temporary and permanent) to such Designated Roads (including to certain culverts, bridges, road shoulders and other related fixtures) to permit such equipment and materials to pass; and (iv) place certain electrical cables for the Project adjacent to, under or across certain roads for the purposes of carrying electrical current from the Project to the point of interconnection substation on National Grid's Black River – Lighthouse Hill 115KV in Rutland Township, New York.

The Town, County and Copenhagen Wind wish to enter into an agreement for the use, repair and improvement of the Designated Roads by Copenhagen Wind, all in accordance with the terms and conditions set forth herein.

This Agreement is a condition to the Town and County issuing special use and other permits, as applicable, pursuant to the authority granted to the Town and the County under New York law.

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## **ARTICLE I USE OF DESIGNATED ROADS BY COPENHAGEN WIND**

**Section 1.1** Use of Designated Roads by Copenhagen Wind. In connection with the development, construction, operation and maintenance of the Project, the Town and County hereby acknowledge and agree that Copenhagen Wind, its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns (collectively, the "Copenhagen Wind Parties") may use the roads and highways located in the Town and County identified on Appendix A hereto (the "Designated Roads"). Except in exceptional circumstances, concrete or other aggregate material trucks are limited to use from 6:00 AM to 8:00 PM, seven days a week. The Designated Roads may be used by Copenhagen Wind and the Copenhagen Wind Parties only in connection with the development, construction, operation, and maintenance of the Project, including the transportation of heavy equipment and materials to and from the Project. The Parties understand that deviations from the Project schedule may cause monetary and other harm to Copenhagen Wind. Accordingly, the Town and County agree to use best efforts to accommodate the use of the Designated Roads by Copenhagen Wind and the Copenhagen Wind Parties outside the Period of Use during the period of construction. In addition to identifying the Designated Roads that will be used by Copenhagen Wind, Appendix A identifies the routes over the Designated Roads that will be used for: (i) transportation and delivery of wind turbine equipment and components and other materials and equipment to be used in connection with the Project; (ii) truck transportation leaving the Project site following delivery of equipment and materials; (iii) movement of the assembled cranes, the route for which is set forth on Appendix A-I; and (iv) transportation and delivery of locally sourced materials, including concrete and gravel (provided, however, that in the event the materials contemplated by the Parties in the development of the routes in Appendix A are not reasonably available, the Parties shall cooperate in good faith to amend the routes so as to allow for the alternate sourcing of those materials). Subject to the terms of the foregoing and the other terms of this Agreement, the Parties agree that, to the extent Copenhagen Wind's requirements for the Designated Roads change as a result of modifications to Copenhagen Wind's haul routes, the Parties shall substitute such other roads for the Designated Roads as Copenhagen Wind reasonably requests. Copenhagen Wind shall provide the Town Highway Superintendent reasonable notice that it anticipates the use of substitute roads. Substitute roads may only be used on consent of the Town Highway Superintendent and such consent shall not be unreasonably withheld. In the event that the Town Highway Superintendent does not respond within five (5) business days of a request to use a substitute road, the Town Highway Superintendent shall be deemed to have agreed to such substitute road being used. The Parties also agree that the restrictions in this Agreement pertaining to Designated Roads and Period of Use do not apply to usage by passenger vehicles and light duty trucks that are properly licensed for use on public roadways in the State of New York.

**Section 1.2** Construction Period Meetings. Beginning with commencement of construction of the Project, Copenhagen Wind, the Copenhagen Wind Parties and a representative from the Town and County ("Designees") shall meet on a weekly basis to discuss the expected use of the Designated Roads in the next succeeding week, including the construction schedule and the haul routes to be used. The Designees shall have authority to act on behalf of the Town and County, including the right to allow use of the Designated Roads outside the Period of Use and approve use of substitute roads. To the extent necessary, the Designees and Copenhagen Wind may invite certain landowners to attend the weekly meetings if their property is near or adjacent to the areas of use. Within ten (10) days after the execution of this Agreement by the Parties, the Town and County shall provide the names and contact information for each of its respective Designees. It is Copenhagen Wind's sole responsibility and obligation to inform the Copenhagen Wind Parties of all obligations, restrictions and liabilities contained within this Agreement and specifically that, without limiting any other rights to use Town and County roads and highways, the Copenhagen Wind Parties are permitted the limited right to use the Town and County roads and highways as set forth herein or applicable law.

**Section 1.3** Additional Conditions of Use. The acknowledgement of use by Copenhagen Wind and the Copenhagen Wind Parties set forth in Section 1.1 shall be contained in special use permits issued by the Town and/or County simultaneously herewith and is subject to the following conditions:

In the event of an exceptional circumstance and Copenhagen and the Copenhagen Wind Parties determine it is necessary for the Project to use the Designated Roads outside the Period of Use, then Copenhagen Wind or, if applicable, the Copenhagen Wind Parties shall seek approval of the Designees, describing in detail such use and the reasons therefore. The Designees will take into account weather conditions and the conditions of the roads in making their determination to grant permission for use of the Designated Roads outside of the Period of Use under this Section 1.3, which permission shall not be unreasonably withheld. In the event that the Designees fail to respond within three (3) business days, the Designees shall be deemed to have agreed to such use.

In the event Copenhagen Wind and the Copenhagen Wind Parties determine it is necessary for the Project to use roads and highways of the Town and County not identified on Appendix A as Designated Roads, then Copenhagen Wind or, if applicable, the Copenhagen Wind Parties shall notify the Designees, describing in detail such use and the reasons therefore. Copenhagen Wind shall provide the Designees reasonable notice that it anticipates the use of substitute roads. Substitute roads may only be used on consent of the Designees and such consent shall not be unreasonably withheld. In the event that the Designees do not respond within three (3) business days of a request to use a substitute road, the Designees shall be deemed to have agreed to such substitute road being used.

Once construction begins on the Project, the Designees shall be entitled, at any time, to notify Copenhagen Wind and the Copenhagen Wind Parties that use of the Designated Roads may result in excessive damage to the Designated Roads due to weather conditions. Copenhagen Wind shall work with the Designees to develop a plan to mitigate or prevent the effect of such weather conditions. If the Parties are able to develop a plan to mitigate or prevent such damage, then Copenhagen Wind and the Copenhagen Wind Parties may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, Copenhagen Wind and the Copenhagen Wind Parties may propose an alternate route to the Project site for approval by the Designees of the Town and County (such approval not to be unreasonably withheld).

**Section 1.4** Surveys of Designated Roads. As soon as practicable after the execution of this Agreement, but in any event prior to the commencement of construction at the Project site, the Town, County and Copenhagen Wind shall select a third party to survey the Designated Roads to document the conditions of such roads prior to their use ("Initial Survey"). The Initial Survey shall include for each road or road section: (i) Town or County specifications applicable to the construction of the existing road; (ii) the period of time since the road was constructed or last maintained; (iii) an assessment of the condition of the road based on visual inspection and any information available through road testing. (A scope of the road testing work is attached to this Agreement as Appendix E. The Initial Survey shall also include a survey of the roads and highways within the boundaries of the Town and County anticipated to be used by Copenhagen Wind and the Copenhagen Wind Parties as alternate routes from time to time (the "Non-Project Roads"). The third party surveyor shall take photographs of or videotape the Designated Roads and Non-Project Roads, which photographs or video shall be accompanied by a written summary of findings regarding the condition of the Designated Roads and Non-Project Roads (the "Road Report"). Such Initial Survey, Road Report and any subsequent surveys or road reports shall be completed to the reasonable satisfaction of the Designees. Copies of the photographs or video and the Road Report shall be provided to the Designees and Copenhagen Wind. Within fourteen (14) days from the execution of this Agreement, the Town and County agree to provide Copenhagen Wind a list of locations whereby the Town or County have identified that core samples are required to fully delineate the conditions of the roads. The parties agree to negotiate in good faith and with reasonable efforts to identify a final list of road coring locations which shall be added to this Agreement as Appendix E. The results of these core samples will be incorporated into the Road Report. The costs of the Initial Survey and Road Report will be borne by Copenhagen Wind. Copenhagen Wind shall request the third party surveyor to conduct an additional survey following completion of construction of the Project to determine the then current condition of the Designated Roads and Non-Project Roads. Additional surveys shall only be conducted in the event the Parties mutually agree and the additional survey costs are borne by Copenhagen Wind. Copenhagen Wind agrees that the Initial Survey shall include an assessment of the haul routes identified in Appendix A for rutting conditions and potential for rutting. The post construction road inspection shall assess rutting for the locations identified.

**Section 1.5** Trash Removal; Unnecessary Materials and Equipment. Throughout the term of this Agreement, Copenhagen Wind shall be responsible for keeping, at its cost, the Designated Roads and Non-Project Roads clean and free from rubbish and debris resulting from Copenhagen Wind's use of the Designated Roads and Non-Project Roads. Materials and equipment of Copenhagen Wind or the Copenhagen Wind Parties, if any, shall be removed from the Designated Roads and Non-Project Roads as soon as they are no longer necessary. **Section 1.6** Plowing. The Parties agree that there shall be no plowing of seasonal or minimum maintenance roads during or after construction of the Project except upon the issuance of a special permit by the Town Highway Superintendent.

## ARTICLE II

### REPAIR OF DESIGNATED ROADS AND NON-PROJECT ROADS

**Section 2.1** Obligation to Repair Town and County Roads. In the event that any of the (i) Designated Roads or related appurtenances, including bridges, culverts and other road fixtures, (ii) modifications and improvements made pursuant to Section 3.1 and described on Appendix B, or (iii) Non-Project Roads are damaged as a result of the use by Copenhagen Wind or the Copenhagen Wind Parties, Copenhagen Wind agrees to repair (or cause to be repaired) such damage and to restore such road(s) or related appurtenance to the condition they were in prior to the use (as near as is reasonably practicable having due regard for normal wear and tear) under this Agreement. Copenhagen Wind shall either (i) restore Designated Roads in accordance with the specifications set forth on Appendix C or; (ii) ensure that the restored roads match core samples taken prior to construction. The Parties will mutually agree upon the best alternative and ensure said alternative is representative of the conditions of the Designated Roads which are to be used by Copenhagen Wind in excess of their design limits, both before and after construction in which specified roads are to be used by Copenhagen Wind in excess of their design limits. The Parties shall rely upon the Initial Survey and the Road Report conducted pursuant to Section 1.4 for purposes of determining whether the repair has been performed in accordance with the standard set forth in this Section 2.1. Any repair and restoration shall be promptly performed at such times as mutually agreed by Copenhagen Wind and the Designees, having due regard for time of year, weather, safety, the presence of emergency conditions and the costs of such repairs compared with other times of year. Following completion of such repair, the Designees and Copenhagen Wind shall jointly inspect the repair to determine that it has been satisfactorily completed.

**Section 2.2** Repairs of Designated Roads at the Request of Designees; Failure to Repair. The Designees may request in writing that Copenhagen Wind repair damage shown to be caused by Copenhagen Wind and the Copenhagen Wind Parties to the Designated Roads and related appurtenances and return such roads and appurtenances to the condition such roads and appurtenances were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, the Designees and Copenhagen Wind shall meet to review the damage in relation to the Initial Survey, Road Report or most recent subsequent survey, as applicable. Copenhagen Wind shall repair (or cause to be repaired) such damage and restore the road(s) to the standard set forth in Section 2.1, unless Copenhagen Wind or the Copenhagen Wind Parties demonstrate to the reasonable satisfaction of the Designees that the damage was not caused by Copenhagen Wind or the Copenhagen Wind Parties. Any repair and restoration shall be promptly performed at such times as Copenhagen Wind and the Designees determine, having due regard for the time of year, weather safety, the presence of emergency conditions and the costs of such repairs compared with other times of year. In the event that Copenhagen Wind fails to repair such roads and appurtenances within the agreed period, then, unless the Parties mutually agree otherwise, the Town and/or County may make such repairs and shall invoice Copenhagen Wind for the costs incurred by the Town and/or County in connection with the repair. Copenhagen Wind shall pay such invoiced amounts within forty-five (45) days following receipt of the invoice. The burden shall be on Copenhagen Wind to establish that an invoice is unjustified or unreasonable subject to the dispute resolution provisions set forth in Section 11.2.

**Section 2.3** Repairs of Non-Project Roads at the Request of Designee; Failure to Repair. To the extent that permission is granted for the use of Non-Project Roads, the Designees may, from time to time, request in writing that Copenhagen Wind repair damage caused by Copenhagen Wind and the Copenhagen Wind Parties to the Non-Project Roads that are used by Copenhagen Wind or Copenhagen Wind Parties, and return such roads to the condition such roads were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, the Designees and Copenhagen Wind shall meet to review the damage in relation to the Initial Survey, Road Report or most recent subsequent survey, as applicable. Copenhagen Wind shall repair (or cause to be repaired) such damage and restore the road(s) to the standard set forth in Section 2.1, unless Copenhagen Wind or the Copenhagen Wind Parties demonstrate to the reasonable satisfaction of the Designees that the damage was not caused by Copenhagen Wind or the Copenhagen Wind Parties. Any repair and restoration shall be promptly performed at such times as Copenhagen Wind and the Designees determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. In the event that Copenhagen Wind fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, and if Copenhagen Wind fails to agree to undertake such repairs within five (5) days of its receipt of notice from the Town and/or County, then the Town and/or County may make such repairs and shall invoice Copenhagen Wind for the costs incurred by the Town and/or County in connection with the repair. Copenhagen Wind shall pay such invoiced amounts within forty-five (45) days following receipt of the invoice. The burden shall be on Copenhagen Wind to establish that an invoice is unjustified or unreasonable subject to the dispute resolution provisions set forth in Article 11.2.

**Section 2.4** Term of Obligation to Repair. Notwithstanding anything herein to the contrary, the obligations of Copenhagen Wind and the Copenhagen Wind Parties to repair certain roads in accordance with Sections 2.1, 2.2 and 2.3 shall terminate 240 days from completion of construction or such earlier date as the parties may agree. Copenhagen Wind shall notify the Town and County in writing sixty (60) days prior to the date on which completion of construction is anticipated to occur.

## ARTICLE III

### IMPROVEMENT AND MODIFICATIONS TO DESIGNATED ROADS

Section 3.1 Improvements and Modifications to Designated Roads. The Parties acknowledge and agree that certain modifications and improvements to the Designated Roads and related appurtenant structures are necessary to accommodate the use of the Designated Roads by Copenhagen Wind and the Copenhagen Wind Parties contemplated hereby, including the widening of certain roads and modifications and improvements necessary to accommodate the heavy equipment and materials to be transported on the Designated Roads. The modifications and improvements that shall be made by Copenhagen Wind are described in detail on Appendix B hereto. Copenhagen Wind reserves the right to amend this Agreement to add roads and appurtenant structures if deemed necessary upon five (5) days' notice to the Town and County. The Town, County and Copenhagen Wind agree that such improvements and modifications shall be made in accordance with the specifications set forth on Appendix C. Notwithstanding anything herein to the contrary, upon the reasonable request of Copenhagen Wind, the Designees of the Town and County are authorized from time to time to grant consent to deviations from the specifications set forth on Appendix C.

Section 3.2 List of Materials and Construction Techniques. Ten (10) days prior to the commencement of any modification or improvement pursuant to this Article III, Copenhagen Wind shall deliver to the Designees of the Town and County a list of all materials to be used and construction techniques to be employed in connection therewith, subject to the approval of the Designees of the Town and County (not to be unreasonably withheld).

Section 3.3 Review of Designated Road Construction. Within seven (7) business days following completion of the work contemplated in Section 3.1, the Town Highway Superintendent and County Highway Superintendent, as applicable, may review the pre-construction improvements and modifications.

Section 3.4 Compliance with Law. Copenhagen Wind agrees that all modifications and improvements shall comply with all applicable laws, and be in compliance with all permits and other authorizations issued by the Town or the State, including all mitigation measures and conditions identified in the Findings Statement and Special Use or Site Plan permits.

Section 3.5 Collection System Cabling. The Parties acknowledge that Copenhagen Wind may desire to route certain wires, cables, conduits and/or lines (and their associated equipment) related to the transmission of electricity at a voltage of up to 34.5 kV from the Project below ground at a location adjacent to, under or across certain Designated Roads, as identified on Appendix D (the "34.5 kV Installation"). The 34.5 kV Installation will include a fiber-optic communication cable that will be installed in conjunction with the electrical cables. In connection with the 34.5 kV Installation, the Parties further agree that Copenhagen Wind shall be responsible for obtaining all private land rights as are necessary to permit Copenhagen Wind to complete the 34.5 kV Installation and make the modifications and improvements to the Designated Roads contemplated by this Agreement, including obtaining all necessary land rights from private landowners adjacent to the Designated Roads. In connection with the 34.5kV Installation, the Town and County hereby grants to Copenhagen Wind all such authorizations and approvals from the Town and County as are necessary to complete the 34.5kV Installation, subject only to Copenhagen Wind's obtaining all private land rights as are required in connection therewith. In no event, shall underground cables be located within 25 feet of any culverts at crossings. When crossing town roads, cuts must be tapered back from center of cut 10 feet each way from half the distance of depth of cut.

Section 3.6 Permits. Copenhagen Wind shall obtain all necessary governmental permits and approvals that are necessary to permit Copenhagen Wind to make the modifications and improvements to the Designated Roads other than permits required from the Town and County which is provided herein, contemplated herein, including obtaining all necessary private land rights that may be required in connection with Section 3.5.

#### **ARTICLE IV WARRANTIES BY COPENHAGEN WIND**

##### Section 4.1 Workmanship and Material Warranties.

Copenhagen Wind's engineering responsibility, including the selection of material and equipment suitable for the repair of, and modifications and improvements to, the Designated Roads and Non-Project Roads shall be carried out in accordance with generally accepted engineering practices, and Copenhagen Wind's construction responsibility shall be carried out in accordance with sound construction practices, subject to the provisions of Section 3.2. Copenhagen Wind shall require from its construction contractors and subcontractors the same standards of engineering and construction practice. Copenhagen Wind warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.

Copenhagen Wind warrants during the Applicable Warranty Period (as defined below) that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. Copenhagen Wind shall remedy any defects in the repairs, modifications and improvements performed hereunder, workmanship, materials and equipment, including repairs, modifications and improvements, workmanship, materials and equipment provided by subcontractors, in accordance with Section 4.2 which appear during the "Applicable Warranty Period". A "defect" means any and all design, engineering, construction, manufacturing, installation, materials, equipment, repairs, modifications or improvements which (i) does not conform to the terms of this Agreement, (ii) fails to comply with the standards set forth in Section 4.1 (a), (iii) is not of specified quality, (iv) is of improper or inferior workmanship, or (v) is not suitable for use under the applicable climatic and range of operating conditions. As used herein, "Applicable Warranty Period" means, with respect to any repair, modification, or improvement by Copenhagen Wind hereunder, the time period that begins on the date repairs, modifications or improvements to Designated Roads are identified by Copenhagen Wind to the Town and County as complete and ending on the date that is twelve (12) months after such completion date.

Section 4.2 Remedies. During the Applicable Warranty Period, the Town and/or County shall notify Copenhagen Wind in writing within fifteen (15) days of discovery by the Town or County of any defects in the repairs, modifications or improvements, provided that any delay by the Town and/or County beyond such fifteen (15) days in notifying Copenhagen Wind shall relieve Copenhagen Wind from liability only to the extent of any additional expense which may arise as the direct result of such delay. At no additional cost to the Town and County, Copenhagen Wind shall proceed promptly to take such action relating to its performance hereunder as is necessary to cause the repairs, modifications and improvements to comply with the warranties specified in this Agreement. Copenhagen Wind shall be available either at the Project or by telephone for the performance of warranty repairs on a seven (7) day a week, twenty-four (24) hours per day basis. Copenhagen Wind shall not be obligated to remedy any materials, equipment, repairs, modifications or improvements which becomes defective as a result of improper operation or maintenance by the Town and/or County or which results from normal wear and tear or use by parties other than Copenhagen Wind or the Copenhagen Wind Parties. In the event that Copenhagen Wind fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, and if Copenhagen Wind fails to agree to undertake such repairs within five (5) days of its receipt of notice from the Town and/or County, then the Town and/or County may make such repairs and shall invoice Copenhagen Wind for the costs incurred by the Town and/or County in connection with the repair. Copenhagen Wind shall pay such invoiced amounts within forty-five (45) days following receipt of the invoice. The burden shall be on Copenhagen Wind to establish that an invoice is unjustified or unreasonable subject to the dispute resolution provisions set forth in Section 11.2.

Section 4.3 Warranty. Copenhagen Wind warrants that all repairs, modifications, improvements and materials furnished in connection with the performance by Copenhagen Wind and the Copenhagen Wind Parties under this Agreement shall be free and clear of all liens.

#### **ARTICLE V POST CONSTRUCTION USE OF TOWN AND COUNTY ROADS AND HIGHWAYS**

Section 5.1 Operating, Maintaining, and Decommissioning Project. In the event operating, maintaining, or decommissioning of the Project requires the use by Copenhagen Wind of oversized or overweight vehicles, prior to entry upon roads and highways with such vehicles, Copenhagen Wind shall inspect the affected roads and highways pursuant to this Agreement and produce to the Town an updated Post-Construction Report ("Updated Post Construction Report"). In the event of subsequent damage caused by operating, maintaining, or decommissioning of

the Project (measured against the Updated Post-Construction Report), the Parties agree that this Agreement would be re-instated for a term necessary to repair such damage, in which event Copenhagen's rights and obligations hereunder, including the warranty provisions of Article IV, shall be restored for the period necessary to repair such damage, if any. In no event shall the post-construction road use obligations limit the use of ordinary commercial trucks (i.e. pick-up trucks) in use for the Project.

## **ARTICLE VI INDEMNIFICATION; LIMITATION OF LIABILITY**

### Section 6.1 Indemnification by Copenhagen Wind.

Copenhagen Wind hereby releases and agrees to indemnify and hold harmless the Town and its respective officers, employees and agents, and its respective heirs, executors, administrators, successors and assigns (hereinafter collectively "Town Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Town Releasees arising out of or relating to the performance by Copenhagen Wind and the Copenhagen Wind Parties of their respective obligations under this Agreement. More particularly, but without in any way limiting the foregoing, Copenhagen Wind hereby releases the Town Releasees and agrees to indemnify and hold harmless the Town Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Designated Road or Non-Project Road by Copenhagen Wind, the Copenhagen Wind Parties and their respective employees, agents, representatives or contractors.

Copenhagen Wind hereby releases and agrees to indemnify and hold harmless the County and its respective officers, employees and agents, and its respective heirs, executors, administrators, successors and assigns (hereinafter collectively "County Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the County Releasees arising out of or relating to the performance by Copenhagen Wind and the Copenhagen Wind Parties of their respective obligations under this Agreement. More particularly, but without in any way limiting the foregoing, Copenhagen Wind hereby releases the County Releasees and agrees to indemnify and hold harmless the County Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Designated Road or Non-Project Road by Copenhagen Wind, the Copenhagen Wind Parties and their respective employees, agents, representatives or contractors.

Section 6.2 Indemnification by the Town. The Town hereby releases and agrees to indemnify and hold harmless Copenhagen Wind and its members, officers, directors, contractors, subcontractors, employees and agents, and their respective employees, heirs, executors, administrators, successors and assigns (hereinafter collectively "Copenhagen Wind Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Copenhagen Wind Releasees arising out of or relating to the performance by the Town of its obligations under this Agreement. More particularly, but without in any way limiting the foregoing, the Town hereby releases the Copenhagen Wind Releasees and agree to indemnify and hold harmless the Copenhagen Wind Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Designated Road by the Town, its respective employees, agents, representatives or contractors or its respective employees, agents or representatives.

Section 6.3 Indemnification by the County. The County hereby releases and agrees to indemnify and hold harmless Copenhagen Wind and its members, officers, directors, contractors, subcontractors, employees and agents, and their respective employees, heirs, executors, administrators, successors and assigns (hereinafter collectively "Copenhagen Wind Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Copenhagen Wind Releasees arising out of or relating to the performance by the County of its obligations under this Agreement. More particularly, but without in any way limiting the foregoing, the County hereby releases the Copenhagen Wind Releasees and agree to indemnify and hold harmless the Copenhagen Wind Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Designated Road by the County, its respective employees, agents, representatives or contractors or its respective employees, agents or representatives.

Section 6.4 Limitation of Liability. Except as expressly set forth herein, the acts of each party are provided hereunder without warranty of any kind, express or implied, and each party hereby disclaims any such warranty including, without limitation any warranty of merchantability or fitness for a particular purpose. The Parties waive all claims against each other (and against each other's parent company and Affiliates and their respective members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory.

## **ARTICLE VII INSURANCE**

Section 7.1 Required Insurance. Copenhagen Wind shall at all times throughout the term of this Agreement maintain in full force and effect worker's compensation insurance in an amount required by applicable law and general liability insurance, naming the Town and County as additional insureds, in (5,000,000) . Copenhagen Wind may utilize any combination of primary and/or excess insurance to satisfy this requirement. Copenhagen Wind may elect to self-insure any or all of the insurance requirements contained in this Agreement. Copenhagen Wind will provide proof of such insurance in the form of a certificate of insurance or proof of self-insurance upon request of the Town or County. If the Town or County perform repair, Copenhagen Wind shall have no obligation relative to indemnity or insurance for work completed by the Town or County and the Town or County shall be responsible for its own insurance protection.

## **ARTICLE VIII TERM; DEFAULT AND REMEDIES**

Section 8.1 Term of Agreement. This Agreement shall become effective as of the date first written above and shall remain in effect, unless terminated earlier in accordance with this Agreement, until the date that is thirty (30) days after the date on which the Project facilities are decommissioned in accordance with Article V.

Section 8.2 Events of Default. The occurrence of anyone or more of the following events shall constitute an "Event of Default" hereunder:

Failure by Copenhagen Wind to make any payment or reimbursement due under the terms of the Agreement when due and payable, and such failure continues for thirty (30) days after receipt by Copenhagen Wind of written notice of such failure from the Town and County.

Any representation or warranty made by Copenhagen Wind in this Agreement or in any report, certificate, financial statement, or other instrument furnished at any time under or in connection with this Agreement shall prove to have been false, misleading, or incorrect in any material respect as of the date made.

Failure by Copenhagen Wind to comply with any covenant, agreement or obligation contained in this Agreement, and such failure continues for thirty (30) days (or such longer period as the Parties may agree if such failure is not susceptible of cure within such thirty (30) day period) after receipt by Copenhagen Wind of written notice of such failure from the Town and County.

Copenhagen Wind's:

- i. application for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property;
- . admission in writing of its inability to pay its debts as such debts become due;
- . making of a general assignment for the benefit of its creditors;
- . commencing a voluntary case under the United States Federal Bankruptcy Code (as now or hereafter in effect);
- v. filing of a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; or
- vi. failure to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the United States Federal Bankruptcy Code.

The institution of a case or proceeding against Copenhagen Wind in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up or composition or readjustment of debts of Copenhagen Wind; or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of Copenhagen Wind or of all or any substantial part of its assets, unless such proceeding or case is dismissed within sixty (60) days thereafter.

**Section 8.3 Remedies Upon Default.** Whenever an Event of Default described in Section 8.2 shall have occurred, the Town and County shall have the right to take any or all of the following actions:

Declare Copenhagen Wind in default and to seek immediate payment of any amount due hereunder from any surety guaranteeing Copenhagen Wind's full and faithful performance hereunder, such payment to be immediately due and payable together with interest thereon at the rate of nine percent (9%) per annum from the date of default through the date of payment, without any further notice of demand of any kind or any presentment or protest.

Take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce the performance or observance of any obligations, agreements, or covenants of Copenhagen Wind under this Agreement.

**Section 8.4 Remedies Cumulative.** The rights and remedies of the Town and County under this Agreement shall be cumulative and shall not exclude any other rights or remedies the Town and County may have at law or in equity with respect to any Event of Default under this Agreement.

**Section 8.5 Arbitrary and Capricious.** If at any time Copenhagen Wind shall disagree with the Designees, Copenhagen Wind may commence an Article 78 or other proceeding to determine whether such Designees have acted in an arbitrary or capricious manner. Any such litigation may only be commenced in Supreme Court, Lewis County, or within the same judicial district.

**Section 8.6 Attorney's Fees.** In the event that the Town and/or County have to take any actions to enforce this Agreement or otherwise obtain compliance with its terms, Copenhagen Wind agrees to reimburse the Town and/or County for all costs so incurred, including reasonable attorney's fees.

## **ARTICLE IX**

### **PROVISION OF SECURITY FOR PERFORMANCE**

**Section 9.1 Form of Security.** For the period commencing on the date that construction of the Project begins and ending on the date that commercial operation of the Project is achieved, Copenhagen Wind agrees to furnish a payment and performance bond or other reasonably equivalent form of security or guarantee (including, without limitation, a parental guarantee) which Copenhagen Wind may elect to provide (i) in the amount of One Million Dollars (\$1,000,000) for the joint and several benefit of the Town and County, with such surety and on such terms as are reasonably satisfactory to the beneficiaries, guaranteeing (i) the full and faithful performance of the repairs, modifications and improvements by Copenhagen Wind and the Copenhagen Wind Parties hereunder and (ii) the payment of all liens of all persons performing labor or providing services, materials, equipment, supplies, machinery, and other items in connection with the performance of such repairs, modifications and improvements by Copenhagen Wind and the Copenhagen Wind Parties hereunder. The amount of the payment and performance bonds is not intended to limit in any way the obligation of Copenhagen Wind to perform its obligations, all in accordance with this Agreement.

**Section 9.2 Release of Security.** Upon the achievement of commercial operation of the Project and the completion of the repair work to the reasonable satisfaction of the Designees, the Designees shall issue to Copenhagen Wind a certification in writing that the performance is accepted in the form provided in Appendix F. If further repair work is required to return roads to a condition that is not worse than the conditions identified in the initial survey, the bond shall be reduced to an amount to cover the reasonable "repair" expenses for the remaining pre-construction repair work. Upon completion of the post-construction repair work, the Town or County shall issue the certificate contained in Appendix E, and release the funds remaining in the bond. At such time the security provided pursuant to Section 9.1 shall be returned to Copenhagen Wind.

## **ARTICLE X**

### **FORCE MAJEURE EVENT**

**Section 10.1 Force Majeure Event Defined.** As used in this Agreement, "Force Majeure Event" means, causes or events that are beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Force Majeure Event, including, without limitation, natural disasters; fire; lightning strikes; earthquake; unavailability of equipment; acts of God; unusually or unseasonably severe actions of the elements such as snow, floods, hurricanes, or tornadoes; causes or events affecting the performance of third-party suppliers of goods or services to the extent caused by an event that otherwise is a Force Majeure Event under this Section 10.1; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act (including expropriation and requisition) of any governmental agency, to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money).

**Section 10.2 Applicability of Force Majeure Event.** No Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

the non-performing Party will give the other Parties written notice within forty eight (48) hours of the commencement of the Force Majeure Event, with details to be supplied within fourteen (14) calendar days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;

the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;

the Party whose performance is delayed or prevented will proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance and will provide a written report to the other Parties during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance will no longer be affected by the Force Majeure Event; and

when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party will give the other Parties written notice to that effect.

## **ARTICLE XI**

### **DISPUTE RESOLUTION**

**Section 11.1 Disputes Regarding Repair Work.** In the event Copenhagen Wind or the Copenhagen Parties and the Town or County do not agree regarding the quality or completeness of any repair work conducted pursuant to this agreement, Copenhagen Wind and the Town and County, depending on whether the repair involves a Town road or County highway shall commence mediation for adjudication of the dispute by notifying the independent engineer identified pursuant to this Agreement as the "mediator". If the mediator is satisfied with the quality and completeness of the repair work, no further work shall be required. If the mediator is satisfied with the scope of the repair work, the Town or County, depending on whether the repair work involves a Town or County road, shall be responsible to pay the full amount of the mediator's invoice within 45 days. If the mediator is not satisfied with the quality and completeness of the repair, Copenhagen Wind shall perform the repair activities identified by the

mediator but shall not be required to perform repair beyond what the Town or County had requested of Copenhagen Wind. If the mediator determines that the additional work was necessary, the mediator shall determine the appropriate amount of work which shall be performed by Copenhagen Wind. In the event that the work was deemed inadequate, Copenhagen Wind shall pay the full cost of the mediator's invoice.

Section 11.2 The mediator for such disputes regarding road work shall be C&S Engineers unless changed by mutual agreement of the parties.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

Section 12.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflict of laws provisions in such state.

Section 12.2 Amendments and Integration. This Agreement (including Appendices) shall constitute the complete and entire agreement between the Parties with respect to the subject matter hereof. No prior statement or agreement, oral or written, shall vary or modify the written terms hereof. This Agreement may be amended only by a written agreement signed by all of the Parties.

Section 12.3 Assignment.  
Except as provided in subsections (b), (c), and (d) below, no Party to this Agreement shall assign, transfer, delegate or encumber this Agreement or any or all of its rights, interests or obligations under this Agreement without the prior written consent of the other Parties. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned or delayed; and (ii) without limiting the foregoing, in the case of the Town and County, the Town's approval and the County's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of Copenhagen Wind pursuant to this Agreement.

Copenhagen Wind may with reasonable notice to the Town or the County, assign this Agreement or any or *all* of its rights, interests or obligations under this Agreement to (i) an affiliate of Copenhagen Wind or (ii) an entity to which Copenhagen Wind has conveyed or leased the Project provided the assignment is in connection with the conveyance or lease of the Project; provided further that, the Copenhagen Wind assignee agrees in writing to be bound by the terms of this Agreement.

Copenhagen Wind may, without the consent of the Town or the County, pledge, mortgage, grant a security interest in, or otherwise collaterally assign this Agreement or any or all of its rights, interests and obligations under this Agreement to any lender providing financing for the Project as security for Copenhagen Wind's obligations under the financing agreements (including a trustee or agent for the benefit of its lenders) (a "Permitted Collateral Assignee"). In connection with any such collateral assignment to a Permitted Collateral Assignee, the Town and County, shall, upon the request of Copenhagen Wind, deliver to Copenhagen Wind and the Permitted Collateral Assignee without delay a consent agreement in a form reasonably requested by Copenhagen Wind and the Permitted Assignee and which shall contain customary provisions.

Copenhagen Wind may, without the consent of the Town or the County, assign this Agreement or any or all of its rights, interests and obligations under this Agreement to any corporation, partnership, limited liability company or other business entity that acquires all or substantially all of the assets used in connection with the Project or (ii) any corporation, partnership, limited liability company or other business entity that acquires all or a portion of the membership interests in Copenhagen Wind, provided that, in each case, such Copenhagen Wind assignee agrees in writing to be bound by the terms of this Agreement.

Section 12.4 Notices. All notices, requests, demands and other communications required or permitted to be given by the Parties hereunder shall be in writing and shall be delivered in person or by facsimile or by first class certified mail, postage and fees prepaid, to the address of the intended recipient as set forth below. Notice delivered in person shall be acknowledged in writing at the time of receipt. Notice delivered by facsimile shall be acknowledged by return facsimile within twenty-four (24) hours, excluding Saturdays, Sundays, and public holidays. All such notices, requests, demands and other communications shall be deemed to have been received by the addressee, if by first class certified mail, three (3) days following mailing; if by facsimile, immediately following transmission; or if by personal delivery, upon such delivery. All such notices, requests, demands and other communications shall be sent to the following addresses:

To Denmark:

Town of Denmark  
3707 Roberts Road  
Carthage, New York 13619  
Attn: Supervisor

To Lewis County:

Lewis County  
7660 N State St

Lowville, NY 13367  
Attn: County Executive

To Copenhagen Wind:

OwnEnergy  
45 Main Street, Suite 536  
Brooklyn, NY 11201  
Attn: James Damon

With a copy to:

James A. Muscato II, Esq.  
Young/Sommer LLC  
5 Palisades Drive  
Albany, New York 12205

The foregoing addresses may be changed by any Party by giving written notice to the other Parties as provided above.

Section 12.5 Exercise of Rights and Waiver. The failure of any Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

Section 12.6 Independent Contractor; Relation of the Parties. The status of Copenhagen Wind under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, Copenhagen Wind and its officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of the Town or County. As an independent contractor, Copenhagen Wind shall accept full responsibility for providing to its employees all statutory coverage for worker's compensation, unemployment, disability or other coverage required by law.

Section 12.7 Severability. In the event that any clause, provision or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

Section 12.8 Headings and Construction. The section headings in this Agreement are inserted for convenience of reference only and shall in no way effect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be

construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement has been prepared by one of the Parties, all of the Parties confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting party shall not apply. All Appendices and Exhibits referenced in this Agreement are incorporated in and form a part of this Agreement.

Section 12.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 12.10 No Third Party Beneficiary. No provisions of this Agreement shall in any way inure to the benefit of any person or third party so as to constitute any such person or third party as a third-party beneficiary under this Agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party hereto.

Section 12.11 Confidentiality. All data and information acquired by the Town and County from Copenhagen Wind (or its affiliates, representatives, agents or contractors) in connection with the performance by Copenhagen Wind of its obligations hereunder, including information regarding the Project, shall be confidential, subject to the limitations on confidential records and the related provisions of the NY Freedom of Information Law, and will not be disclosed by the Town and County to any third party, and upon request of Copenhagen Wind will be returned thereto, except that the Town and County will not be obligated to return any such information contained in documents generated by the Town and/or County that are stored electronically by the Town or County. With respect to any such retained electronically stored confidential information, the Town and County will continue to comply with the obligations of this Section 11.12, subject to the Town and County's obligations under the New York Freedom of Information Law. Notwithstanding the foregoing, the Parties acknowledge and agree that such confidential information may be disclosed to third parties as may be necessary for Copenhagen Wind, the Town, and the County to perform their respective obligations under this Agreement. This provision will not prevent the Town and/or County from providing any confidential information or in response to the reasonable request of any government agency charged with regulating such party's affairs, provided that, if feasible, the Town and County will give prior notice to Copenhagen Wind of such disclosure and, if so requested by Copenhagen Wind, will have used all reasonable efforts to oppose or resist the requested disclosure, as appropriate under the circumstance, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality.

Section 12.12 Representative of Copenhagen Wind. Copenhagen Wind shall appoint a representative to act as the manager and coordinator of this Agreement on Copenhagen Wind's behalf ("Copenhagen Wind Representative"). The Copenhagen Wind Representative shall act as liaison for Copenhagen Wind's communications with the Town and County, and their respective Designees. All written communications given to or received from the Copenhagen Wind Representative shall be binding on Copenhagen Wind.

Section 12.13 Safety. Copenhagen Wind and the Copenhagen Wind Parties shall perform the work hereunder in a safe manner and shall obey all safety requirements of Copenhagen Wind that may be established from time to time. While work is being done on Designated Roads, Copenhagen Wind shall cause the Copenhagen Wind Parties to (i) place signs stating that people and vehicles are entering a construction area and (ii) identify certain hazards that may be present on the road. Copenhagen Wind also agrees to cause the Copenhagen Wind Parties to provide traffic control on the Designated Roads when such roads are blocked during their use by Copenhagen Wind or the Copenhagen Wind Parties under this Agreement.

Section 12.14 Dust Control. Prior to commencing work under this Agreement, Copenhagen Wind shall prepare a plan for dust control drilling periods of construction or repair of the Designated Roads, which plan shall be subject to approval by the Designees of the Town and County (which shall not be unreasonably withheld, conditioned or delayed). If the Plan is not reviewed and either approved or disapproved within 5 business days, the plan is deemed approved. Copenhagen Wind agrees to use environmentally approved chemicals to control dust in necessary areas where water is not a sufficient source to keep dust under control for safety and visibility reasons. Copenhagen Wind shall maintain reasonable dust control measures throughout construction including applying water or other dust control palliative on the Designated Roads used during construction. In the event Copenhagen Wind does not maintain a reasonable level of dust control, the Denmark Highway Department or County, after notifying Copenhagen Wind of their failure to maintain proper level of dust control, will apply liquid dust control during Project construction and Copenhagen Wind agrees to reimburse the Town or County for said costs.

Section 12.15 Excess Materials. Copenhagen Wind and the Copenhagen Wind Parties agree that in connection with certain improvements to be made hereunder, there may be certain materials removed that are no longer necessary (the "Excess Materials"). Copenhagen Wind agrees to remove such materials from Town and County roads and intersections and stockpile them for use by the Town and County. The Designees of the Town and County agree to designate the place on Town or County property or such other location as the parties reasonably agree in which the Excess Materials will be stored.

**IN WITNESS WHEREOF**, the Parties have caused their authorized representatives to execute this Agreement for Road Use, Repair and Improvements this \_\_\_ day of \_\_\_\_\_ 2014.

Lewis County

Town of Denmark  
By: \_\_\_\_\_  
Name:  
Title: Town Supervisor

By: \_\_\_\_\_  
Name:  
Title:

Copenhagen Wind, LLC  
By: \_\_\_\_\_  
Name:  
Title:

Councilman Thoma made a motion that Supervisor Fleming signs the Road Agreement. His motion was seconded by Councilman Fazio.

Vote recorded as follows:

Councilman Der Aye  
Councilman Fazio Aye  
Supervisor Fleming Aye  
Councilman Thoma Aye  
Councilman Jones Abstains

Mr. Gebo updated the Town Board on the Planning Board's progress with the application. A few issues still need addressed including language about culvert pipes, revision dates of drawings, study results of engineers about under road electrical lines, chain of command for road issues and a few other items. The Planning Board has tentatively set a special meeting for later in September to allow submission by Copenhagen Wind of the requested documents.

Supervisor Fleming asked about oversight during construction to ensure permit compliance. Mr. Gebo explained that the agencies involved in the permits will (DOT, DEC, Lewis County) Supt. Mahar will most likely oversee road issues. The Town could hire an outside entity to oversee the process if they wish.

Mr. Gebo has received a draft of the proposed Teamster Contract for review. He has contacted the teamsters with a few corrections including:

That the contract be for a term of 3 years

Attachment of the schedule of rates for the Component Plan insurance beginning in 2018.

Language for designation of a beneficiary for final paycheck and accrues vacation time.

Mr. Gebo left the meeting at 6:45pm.

Debra Der exited the meeting at 6:45pm.

Mr. Cooper of BCA discussed with the Town Board the next steps in the Water District 1 expansion project. The Town has received a \$1.5 million grant from NYS EFC and a \$600,000.00 loan at 0% interest to be paid back over 30 years. With the \$400,000.00 grant awarded previously for shared services the project now has the funding needed to proceed. With the funding the projected average user rate is \$740.00 annually.

Deb Der reentered the meeting at 6:52.

The timeline for the project has been developed and is fairly aggressive. Mr. Cooper will prepare and finalize the District maps at the direction of the Town Board, a public hearing will need to be held after the Board accepts the maps, laterals will need to be mapped for new connections and easements will need to be completed, bid packages will need to be developed, bids will be sought in January and opened in February. The land for the water tower needs to be purchased by the Town. Supervisor Fleming has continued discussions with the Carroll's.

Discussion was held on laterals. If a residence is connected to municipal water the same residence cannot be on a private well, DOH will not allow this due to the risk of contamination.

People along existing Village lines would not be forced to join but those along Town owned lines will pay an EDU of some rate whether connected or not.

Mr. Keefer asked if lines would be looped. They will not. The Town will flush lines as needed to comply with DOH regulations.

Councilman Fazio made a motion that BCA be authorized to precede with the design services for the Town of Denmark Water District #1 expansion. His motion was seconded by Councilman Thoma.

Vote recorded as follows:

Councilman Der	Aye
Councilman Fazio	Aye
Supervisor Fleming	Aye
Councilman Thoma	Aye
Councilman Jones	Aye

Supervisor Fleming will continue his work on the purchase of the 2 acre piece of land for the water tower.

Mr. Cooper exits the meeting at 7:32pm.

Budget Officer Sharon Fleming began her presentation of the 2017 Budget. Budget requests submitted by various departments were discussed. Budget vs. Actual dated 8/25/16 was provided by Mrs. Fleming so that the Town Board could review current income and expenses as in guide in the budget process.

Discussion was held.

Supervisor Fleming asked if any other business needed discussion. Councilman Der offered a motion that the Town Board authorizes attendance at the October Government Conference in Potsdam by any town official or appointee with the Town reimbursing expenses, a meal if needed and mileage. His motion was seconded by Councilman Fazio.

Vote recorded as follows:

Councilman Der	Aye
Councilman Fazio	Aye
Supervisor Fleming	Aye
Councilman Thoma	Aye
Councilman Jones	Aye

Councilman Fazio made a motion to adjourn the meeting at 9:04pm. His motion was seconded by Councilman Thoma.

Vote recorded as follows:

Councilman Der	Aye
Councilman Fazio	Aye
Supervisor Fleming	Aye
Councilman Thoma	Aye
Councilman Jones	Aye

Meeting adjourned at 9:04pm.

**Next regular meeting scheduled for September 12, 2016 at 6:00pm.**

Town Clerk  
Prudence L. Kunert

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