

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2022-01

**Petition for Declaratory Ruling Regarding Avangrid Renewables, LLC
and Lempster Wind, LLC**

Joint Statement of Material Facts

Introductory Statement

The Parties to this proceeding, the Town of Lempster, Avangrid Renewables, LLC, Lempster Wind, LLC and Kevin and Debra Onnela, submit the following Joint Statement of Material Facts as required by the Prehearing Order dated April 28, 2022. Discussions between counsel for the parties in formulating this Joint Statement have included additional material facts, mostly in the prior SEC record, that the parties cannot agree should be in this Joint Statement. However, the parties do agree they would like to bring those additional facts separately to the SEC's attention and have them made part of the record in this proceeding.

The parties' Joint Statement of Material Facts is as follows:

1. In 2006, Lempster Wind, LLC ("Lempster Wind") filed an application ("the application") with the New Hampshire Site Evaluation Committee ("SEC") to build a wind energy facility ("the project") in Lempster, New Hampshire ("the Town").
2. Most of the project was proposed to be constructed on private property owned by Kevin and Debra Onnela ("the Onnelas").
3. Prior to the SEC's decision, both the Town and Lempster Wind proposed a draft agreement governing the project ("the Draft Town Agreement"). In addition, Lempster Wind

and Counsel for the Public entered into a similar agreement. (“the Public Counsel Agreement”).

See attached Exhibits A and B.

4. Both agreements refer to the use of locked gates to bar entrance to the project site.

Section 4.a of the Public Counsel Agreement specifies that:

“[e]ntrances to the Project site shall be gated, and locked during non-working hours. If problems with unauthorized access are identified, the Project shall work to install additional gated access points.”

Section 4.1.3 of the Draft Town Agreement uses identical language.

5. The Draft Town Agreement defines “project site” as “Property with rights as conveyed to Owner by lease, easement or other agreement with a Participating Landowner that includes all Wind Turbines, access roads, and other facilities required for construction and operation of the Wind Park”. “Owner” means Lempster Wind. “Participating Landowner” includes the Onnelas.

6. The SEC granted the application by issuing a Decision and Order on June 28, 2006. The Draft Town Agreement was finalized and signed thereafter. See attached Exhibit C.

7. In relation to public access to the project, the SEC adopted the conditions established in both agreements. Specifically, the SEC Decision and Order required Lempster Wind to “[g]ate and lock entrances to the project site.”

8. Once the SEC granted the application, Lempster Wind completed construction of the project. The layout of the project area includes several roads running between the windmills as well as another road, Bean Mountain Road, running through the site.

9. In 2008, Lempster Wind installed a gate and a warning sign at the intersection of Nichols Road and Bean Mountain Road, northwest of the facility (Gate 1 on map below).

Respectfully submitted,
TOWN OF LEMPSTER
By Its Attorneys,
UPTON & HATFIELD, LLP

Dated: May 12, 2022

By: /s/ Michael P. Courtney
Michael P. Courtney (NH Bar #21150)
10 Centre St., P. O. Box 1090
Concord, NH 03302-1090
(603) 224-7791
mcourtney@uptonhatfield.com

**AVANGRID RENEWABLES, LLC and
LEMPSTER WIND, LLC**
By their Attorneys,
ORR & RENO, P.A.

By: /s/ Susan S. Geiger
Susan S. Geiger (NH Bar # 925)
45 South Main Street
P.O. Box 3550
Concord, NH 03302-3550
603-223-9154
sgeiger@orr-reno.com

KEVIN AND DEBRA ONNELA
By their attorneys,
DEVINE, MILLIMET & BRANCH, P.A.

By: /s/ Thomas Quarles, Jr.
Thomas Quarles, Jr., Esq. (NH Bar #2077)
111 Amherst Street
Manchester, NH 03101
(603) 669-1000
tquarles@devinemillimet.com

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2022, a copy of the Town Statement of Facts was forwarded via e-mail to:

Counsel to Avangrid Renewables, LLC and Lempster Wind, LLC

- Susan Geiger, Esquire (sgeiger@orr-reno.com)
- Robert S. Carey, Esquire (rcarey@orr-reno.com)
- Meredith R. Farrell, Esquire (mfarrell@orr-reno.com)

Counsel for Kevin and Debra Onnela

- Thomas Quarles, Jr., Esquire (tquarles@devinemillimet.com).

Dated: May 12, 2022

By: /s/ Michael P. Courtney
Michael P. Courtney (NH Bar #21150)
10 Centre St., P. O. Box 1090
Concord, NH 03302-1090
(603) 224-7791
mcourtney@uptonhatfield.com

**State of New Hampshire
Site Evaluation Committee
Application of Lempster Wind, LLC
Docket No. 2006-01**

**Proposed Certificate Conditions Pursuant to
Agreement of Counsel for the Public and the Applicant**

Now come Lempster Wind, LLC (the "Applicant" or the "Project") and Peter C.L. Roth, Counsel to the Public ("NHOAG" or "Counsel to the Public"), and jointly submit the following as agreed upon conditions to any certificate for operation granted by the New Hampshire Site Evaluation Committee ("NHSEC") in this docket.

These conditions shall become effective when ordered and adopted by the Committee. If the NHSEC does not adopt any particular condition(s), or adopts particular conditions with modification or in part, the remaining conditions shall remain effective.

1. Avian species protection

- a. A balanced technical committee shall be assembled with voluntary participation of organizations including New Hampshire Fish and Game Department ("NHFG"), United States Fish & Wildlife Service ("USF&W"), NHOAG, Town of Lempster, NH Audubon, representatives of the Project, representatives of Public Service Company of New Hampshire ("PSNH") and technical consultants selected by NHOAG and the Project (the "technical committee").
- b. The Project shall report spring 2007 avian survey results to NH SEC, and the technical committee.
- c. The Project shall conduct post-construction avian and bat mortality surveys similar to those implemented at other constructed wind projects in the United States, using protocols reviewed and approved by the technical committee that includes searches of individual turbines at entire project site, searcher efficiency trials, and scavenging rate (carcass removal) trials. Surveys will be conducted for a period of two years following commercial operation of the wind turbines, including spring and fall migration seasons. A brief report on the number and locations of fatalities will be provided after each season. A final report will then be prepared that summarizes all seasons combined, and will present estimates of the overall annual rate of fatalities at the project.

- d. The periodic reports and final report will be presented to the technical committee for review. The technical committee shall have the opportunity to comment on the report. The Project shall be obligated to review and respond to the technical committee comments within a reasonable time.
- e. The technical committee may recommend additional investigations and the technical committee will work collaboratively to address any concerns identified by the report.
- f. If the technical committee cannot achieve general consensus on the issue, Counsel to the Public may petition the NHSEC.
- g. If after notice and an opportunity to be heard, the Site Evaluation Committee determines that the Project is having an unreasonable adverse impact on any avian species, it may take appropriate action within its jurisdiction.
- h. This condition is not intended, nor shall it be deemed to constitute a permit to take any species, or as any waiver of any of the entities that are represented on the technical committee, of its enforcement rights and powers under the federal Migratory Bird Treaty Act or any other applicable law.

2. Noise:

- a. The Project shall, in its Agreement with the Town of Lempster and consultation with Counsel to the Public, develop standards for noise restrictions that include:
 - Limitations on audible sound from the wind power project, including sound level metric (55 dBA), duration of measurement (3 minutes in any hour of the day), and location of compliance (within 300 feet of a residence or at the property line, whichever is less.)
 - The specific limitation on audible sound at the Goshen-Lempster School shall be 45 dBA.
 - Pre-operation measurement of ambient noise conditions will be conducted by a qualified and independent sound engineer, at the Project's cost. Measurements will be conducted during a summer and winter test using standard protocols for wind noise measurement at defined receptor locations, including the Goshen-Lempster School.
 - Reporting of results to the Town of Lempster and NHOAG
 - Maintaining compliance with noise restrictions; if standards are exceeded, the Project shall undertake operational measures to come into compliance.

3. Ice shedding:

- a. Project on-site personnel and remote operations centers shall monitor turbine conditions (regardless of the time of day) to determine the presence of ice, and

respond with operational measures to limit potential ice throw. Personnel shall ensure that turbines are free of accumulated ice before any restart of turbines that have been suspended due to icing.

- b. The Project shall post warning signs at visible locations on access roads and at turbine sites to alert unauthorized or recreational users of the site property to the danger of ice shedding during winter storm conditions.

4. Access:

- a. Entrances to the Project site shall be gated, and locked during non-working hours. If problems with unauthorized access are identified, the Project shall work to install additional gated access points.
- b. Turbine exteriors shall not be climbable up to fifteen (15) feet above ground surface.
- c. All access doors to wind turbines and above-ground electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.
- d. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers, above-ground electrical collection facilities, switching or interconnection facilities, and substations.

5. Conservation Easement:

- a. As a condition of the certificate, the Project, in consultation with NHOAG and the Town of Lempster, shall, prior to the commercial operation date, donate the lands owned by the Project in the Town of Lempster (Tax parcel 12-036,324, "Earl's Lane") or such other parcel as they may agree upon, to an organization approved by Counsel to the Public for conservation purposes and subject to a conservation easement.
- b. The Project shall maintain permanent easement rights upon Earl's Lane necessary to operate, maintain and decommission the Project utilizing access roads and facilities as constructed. The Project shall install and maintain gated access to the Project site at a point on the north end of Earl's Lane access road.
- c. The Project shall return the Earl's Lane access road and disturbed area to the final post-construction width and conditions consistent with the Project's erosion and sediment control plan.

The Applicant and Counsel to the Public respectfully request that the NHSEC adopt these conditions and incorporate them within any certificate that the NHSEC may issue to the Applicant with this docket.

Respectfully submitted this 6th day of April 2007,

COUNSEL TO THE PUBLIC

PETER C.L. ROTH

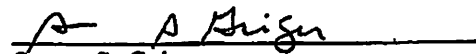


Peter C.L. Roth
Senior Assistant Attorney General

LEMPSTER WIND, LLC

By its attorneys

ORR & RENO
Professional Association



Susan S. Geiger
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Draft Subject to Final Approval by Legal Counsel
April 6, 2007

**AGREEMENT BETWEEN TOWN OF LEMPSTER
AND LEMPSTER WIND, LLC, DEVELOPER/OWNER OF THE
LEMPSTER MOUNTAIN WIND POWER PROJECT**

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**AGREEMENT BETWEEN TOWN OF LEMPSTER
AND LEMPSTER WIND, LLC, DEVELOPER/OWNER OF THE
LEMPSTER MOUNTAIN WIND POWER PROJECT**

1. Definitions

- 1.1. "Agreement" - This agreement between the Town of Lempster, New Hampshire and Lempster Wind LLC, and its successors and assigns.
- 1.2. "Ambient Sound Pressure" - The sound pressure level excluding that contributed by the operation of the Wind Park.
- 1.3. "End of Useful Life" - The Wind Park or each of its individual Wind Turbines will be deemed to be at the End of Useful Life if no electricity is generated by the Wind Park or turbine for a continuous period of twelve months.
- 1.4. "Non-Participating Landowner" - Any landowner in the Town of Lempster, other than a Participating Landowner.
- 1.5. "Owner" - The entity or entities having equity interest in the Wind Park, including their respective successors and assigns.
- 1.6. "Occupied Building" - A permanent structure used as a year-round or seasonal residence, school, hospital, church, public library or other building used for gathering that is occupied or in use as of the time that the permit application was submitted to the New Hampshire Site Evaluation Committee.
- 1.7. "Participating Landowner" - Any landowner having entered into an agreement with the Owner for hosting Wind Park facilities, providing easements for access, entry or conveyance of other rights related to the Wind Park, or any other agreement related to the construction or operation of the Wind Park.
- 1.8. "Project Site" - Property with rights as conveyed to Owner by lease, easement or other agreement with a Participating Landowner that includes all Wind Turbines, access roads, and other facilities required for construction and operation of the Wind Park.
- 1.9. "Town" - Town of Lempster, New Hampshire.

- 1.10. "Turbine Height" - The distance from the surface of the tower foundation to the tip of the uppermost blade when in a vertical position. For the Lempster Wind Power Project, this height is approximately 424 feet.
- 1.11. "Wind Turbine" - A wind energy conversion system that converts wind energy for the generation of electricity, including a tower, a nacelle housing the generator and transformer, and a 3-blade rotor.
- 1.12. "Wind Park" - The totality of the Wind Turbines, cables, accessory buildings and structures including substations, meteorological towers, electric infrastructure and cables and other appurtenant structures and facilities that comprise the Lempster Mountain Wind Power Project under development by Owner.

2. General Provisions

- 2.1. **Enforceability.** This Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Park or any Wind Turbines after the End of Useful Life.
- 2.2. **Applicability to Owner.** This Agreement shall apply to the Owner only to the extent of Owner's rights and responsibilities related to the Wind Park and Project Site as conferred to Owner by Participating Landowner Agreements.
- 2.3. **Recording.**
 - 2.3.1. Owner shall submit to the Town evidence of all Participating Landowner agreements, which may take the form of memoranda recorded with the Sullivan County Registry of Deeds.
 - 2.3.2. This Agreement shall be recorded at the Sullivan County Registry of Deeds.
- 2.4. **Survivability.** The invalidity, in whole or in part, of any of this agreement will not affect any other paragraph in this Agreement.

2.5. Limitation on Turbines. This Agreement is for the installation and operation of a Wind Park that utilizes up to twelve Wind Turbines. The Owner shall not construct more than twelve Wind Turbines on the site without prior agreement with the Town. Communications or other equipment attached to the Wind Turbines shall be limited to that incidental and necessary for the safe and efficient operation of the Wind Park.

2.6. On-site Burning. The Owner will obtain a permit from the Lempster Fire Chief and comply with all State requirements before any onsite burning occurs.

2.7. Warnings

2.7.1. A clearly visible warning sign identifying danger from voltage must be placed at the base of all pad-mounted transformers, electrical collection facilities, switching or interconnection facilities, and substations.

2.7.2. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on all anchor points of guy wires, if any, and along the guy wires up to a height of ten feet from the ground.

2.7.3. A clearly visible warning sign concerning safety risks related to winter or storm conditions shall be placed no less than 300 feet from each Wind Turbine tower base on access roads.

2.8. Access. The Town shall have access to the Project Site for the purpose of emergency response. The Owner shall provide access to the Project Site, Wind Turbines or other facilities upon request of the Town for the purpose of building or safety inspections under Town ordinances. The Owner shall provide access for emergency response purposes pursuant to the protocols provided under Section 7 of this Agreement

2.9. Liability Insurance. There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least \$10 million in the aggregate. Certificates shall be made available to the Town upon request.

2.10. Indemnification. The Owner specifically and expressly agrees to indemnify, defend, and hold harmless the Town and its officers, elected officials, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of any negligence or wrongful

acts of the Owner, its employees, agents, representatives or Subcontractors of any tier, their employees, agents or representatives in the connection with the Wind Park. The indemnity obligations under this Article shall include without limitation:

2.10.1. Loss of or damage to any property of the Town, the Owner or any third party;

2.10.2. Bodily or personal injury to, or death of any person(s), including without limitation employees of the Town, or of the Owner or its Subcontractors of any tier.

The Owner's indemnity obligation under this Article shall not extend to any liability caused by the sole negligence of any of the Indemnitees.

3. Wind Turbine Equipment and Facilities

3.1. Visual Appearance

3.1.1. Wind Turbines shall be a non-obtrusive color such as white, off-white, or gray.

3.1.2. Wind Turbines shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.

3.1.3. Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer and/or Owner.

3.2. Controls and Brakes. All Wind Turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

3.3. Electrical Components. All electrical components of the Wind Park shall conform to relevant and applicable local, state, and national codes, and relevant and applicable international standards.

3.4. Power Lines. On-site transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.

4. Project Security

- 4.1.1. Wind Turbines shall not be climbable up to fifteen (15) feet above ground surface.
- 4.1.2. All access doors to Wind Turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.
- 4.1.3. Entrance to the Project Site shall be gated, and locked during non-working hours. If problems with unauthorized access are identified, the Owner shall work to install additional gated access points.

5. Public Information, Communications and Complaints

- 5.1. **Public Inquiries and Complaints.** During construction and operation of the Wind Park, the Owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints through completion of decommissioning. The Owner shall make reasonable efforts to respond to the public's inquiries and complaints.
- 5.2. **Complaint Resolution.** The Owner shall develop and submit to the Town a process to resolve complaints from Town residents concerning the construction or operation of the Wind Park. The process shall not preclude the local government from acting on a complaint.
- 5.3. **Public Information Facility.** Within six months of commercial operation of the Wind Park, the Owner will construct and maintain a public information kiosk at a public location designated by the Town. The Owner will be responsible for keeping the kiosk in good condition, and the Town will be responsible for maintaining the site of the kiosk, including public security.
- 5.4. **Signs.** Signs shall be reasonably sized and limited to those necessary to identify the Project Site and provide warnings or liability information, construction information, or identification of private property. There will be no signs placed in the public right of way. The Owner and Town may agree on the placement of signs in the public right of way that relate to a Public Information Facility.

6. Reports to the Town of Lempster

- 6.1. **Incident Reports.** The Owner shall notify the Chairman of the Board of Selectmen or his designee as soon as possible with:

6.1.1. copies of reporting of environmental incidents or industrial accidents that require a report to U.S. EPA, New Hampshire Department of Environmental Services, OSHA or another federal or state government agency; and

6.1.2. all complaints from Town residents as submitted through the complaint resolution process under Section 5.2 of this Agreement

6.2 Periodic Reports. The owner shall submit, on an annual basis, starting one year from commercial operation of the Wind Park, a report to the Selectmen of the Town of Lempster, providing, as a minimum, the following information:

6.2.1 If applicable, status of any additional construction activities, including schedule for completion;

6.2.2 Copies of all reporting of environmental incidents or industrial accidents that require a report to U.S. EPA, New Hampshire Department of Environmental Services, OSHA or another federal or state government agency; and

6.2.3 Details on any calls for emergency police or fire assistance;

6.2.4 Location of all on-site fire suppression equipment; and

6.2.5 Identity of hazardous materials including volumes and locations as reported to state and federal agencies.

7. Emergency Response

7.1. Upon request, the Owner shall cooperate with the Town's emergency services and any emergency services that may be called upon to deal with a fire or other emergency at the Wind Park through a mutual aid agreement, to develop and coordinate implementation of an emergency response plan for the Wind Park. The Owner and Town will establish protocols to provide emergency response access to the Turbine Towers within 30 minutes of an alarm or other request for emergency response.

7.2. The Owner shall cooperate with the Town's emergency services to determine the need for the purchase of any equipment required to provide an adequate response to an emergency at the Wind Park that would not otherwise need to be purchased by the Town. If agreed between the Town and Owner, Owner shall purchase any specialized equipment for storage at a mutually agreeable location. The Town and

Owner shall review together on an annual basis the equipment requirements for emergency response at the Wind Park.

- 7.3. The Owner shall provide and maintain protocols for direct notification of emergency response personnel designated by the Town. The Owner shall provide the Town with contact information of personnel available at every hour of the day.
- 7.4. The Owner shall provide training to emergency response personnel identified by the Town. Those identified for training will include First Alarm mutual aid responders. Training shall be conducted at times agreed to by the Town and the Owner prior to the commencement of commercial operation and on an annual basis during operation of the Wind Park. The training shall include, but not be limited to, the location and operation of on-site fire suppression equipment, Project Site and Wind Turbine access, and communication protocols.
- 7.5. The Owner shall maintain fire alarm systems and fire extinguisher equipment that are installed in all Wind Turbines and facilities. The Town and Owner shall work to identify sources of water on or around the Project Site that may be utilized in the event of a fire at the Project Site outside the Wind Turbines, and collaborate on a process for utilizing the identified sources.
- 7.6. In the event of an emergency response event that creates an extraordinary expense for the Town based on obligations under a mutual aid agreement, Owner shall reimburse the Town for reasonable expenses.
- 7.7. In the event Lempster Fire Department changes from an all-volunteer department to a department with firefighters being paid for services, the Owner and Town will determine whether direct reimbursement for emergency response by the Town is appropriate.

8. Roads

8.1. Public Roads

- 8.1.1. The Owner shall identify all state and local public roads to be used within the Town to transport equipment and parts for construction, operation or maintenance of the facility.
- 8.1.2. The Owner shall hire a qualified professional engineer, as mutually agreed with the Town, to document road conditions prior to

construction and again thirty days after construction is completed or as weather permits.

8.1.3. Any road damage caused by the Owner or its contractors at any time shall be promptly repaired at the Owner's expense.

8.1.4. The Owner will reimburse the Town for costs associated with special details required to direct or monitor traffic within the Town limits during construction.

8.1.5. The Owner shall demonstrate by financial guarantee of the Owner or its parent or affiliates, that it will provide appropriate financial assurance to ensure prompt repair of damaged roads. If such financial assurance is not provided in a form acceptable to the Town, the Town may require a bond or cash deposit to meet this obligation.

8.2. Wind Park Access Roads. The Owner shall construct and maintain roads at the Wind Park that allow for year-round access to each Wind Turbine at a level that permits passage of emergency response vehicles. The Owner shall provide assurance, in the form of a financial guarantee from the Owner or its parent or affiliates, that Wind Park roads will be maintained to permit such emergency access.

8.2.1. The Owner shall construct and maintain roads at the Wind Park that allow for year-round access to each Wind Turbine at a level that permits passage and turnaround of emergency response vehicles. The Owner shall provide assurance by a financial guarantee from the Owner or its parent or affiliates, in a form acceptable to the Town, that Wind Park roads will be maintained at all times to permit such emergency access.

8.2.2. Any use of the Access Roads that is beyond what is necessary to service the Wind Park or that are beyond the Participation Landowner Agreements, shall be subject to approvals under relevant Town ordinances or regulations, or state or federal laws.

9. Construction Period Requirements

9.1. **Site Plan.** Prior to the commencement of construction, the Owner shall provide the Town with a copy of the final Soil Erosion and Sediment Control site plans showing the construction layout of the Wind Park.

9.2. **Construction Schedule.** Prior to the commencement of construction activities at the Wind Park, the Owner shall provide the Town with a schedule for construction activities, including anticipated use of public roads for the transport of oversize and overweight vehicles. The Owner

shall provide updated information and schedules regarding construction activities to the Town on a monthly basis, or upon request of the Town.

9.3. Disposal of Construction Debris. Tree stumps, slash and brush will be disposed of onsite or removed consistent with state law. Construction debris shall not be disposed of at Town facilities.

9.4. Blasting. The handling, storage, sale, transportation and use of explosive materials shall conform to all state and federal rules and regulations. In addition, the Owner shall comply with the following Town requirements.

9.4.1. At least ten days before blasting commences, the Owner shall brief Town officials on the blasting plan. The briefing shall include the necessity of blasting and the safeguards that will be in place to ensure that building foundations, wells or other structures will not be damaged by the blasting.

9.4.2. In accordance with the rules of the State of New Hampshire, the Owner shall notify the Lempster police and fire chiefs before blasting commences. Any changes to the schedule for blasting must be reported immediately and in person to the police and fire chiefs.

9.4.3. A Pre-Blast Survey will cover residents within 500 ft. of the work area, and a copy of the survey will be recorded in the Town office. Residents within 500 feet will be notified in person whenever possible, or by registered mail, prior to work in the area.

9.4.4. A copy of the appropriate Insurance Policy and Blasting License will be recorded in the Town office.

9.5. Storm Water Pollution Control The Owner shall obtain a New Hampshire Site-Specific Permit and conform to all of its requirements including the Storm Water Pollution Prevention Plan and requirements for inspections as included or referenced therein. The Owner shall provide the Town with a copy of all state and federal storm water, wetlands, or water quality permits and related conditions.

9.6. Design Safety Certification. The design of the Wind Park shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.

9.7. Construction Vehicles

9.7.1. Construction vehicles shall only use a route approved by the Town. There shall be no staging or idling of vehicles on public roads. The Town shall be notified at least 24 hours before each construction vehicle with a Gross Vertical Weight greater than 88,000 pounds is to use a Town road. Acceptance by the Town of vehicles exceeding this level is not a waiver of the Owner's obligation to repair all damage to roadways caused by vehicles used during construction or during any other time through the completion of decommissioning.

9.7.2. Construction vehicles will not travel on Town roads before 6:00 am or after 7:00 pm, Monday through Saturday. Construction vehicles will not travel on Town roads on Sunday, unless prior approval is obtained from the Town.

9.7.3. Construction will only be conducted between 6:00 am and 7:00 pm, Monday – Saturday. Construction will not be conducted on Sundays.

9.7.4. The start-up and idling of trucks and equipment will conform to all applicable Department of Transportation regulations. In addition, the start-up and idling of trucks and equipment will only be conducted between 6:00 am and 7:00 pm, Monday through Saturday

10. Operating Period Requirements

10.1. Spill Protection

10.1.1. The Owner shall take reasonable and prudent steps to prevent spills of hazardous substances, including but not limited to oil and oil-based products, used during the construction and operation of the Wind Park. This includes oil, gasoline, and other hazardous substances from construction related vehicles and machinery, permanently stored oil, and oil used for operation of permanent equipment. Owner shall provide the Town with a copy of the Spill Prevention, Control and Countermeasure (SPCC) for the Wind Park as required by state or federal agencies.

10.2. **Pesticides and Herbicides.** The Owner shall not use herbicides or pesticides for maintaining clearances around the Wind Turbines or for any other maintenance at the Wind Park.

10.3. **Signal Interference.** The Owner shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television, or similar

signals, and shall mitigate any harm caused by the Wind Park, subject to the Complaint Resolution process as provided pursuant to Section 5.2.

11. Noise Restrictions

11.1. Residential Noise Restrictions. Audible sound from the Wind Park shall not exceed 55 dB(A) as measured at 300 feet from any existing Occupied Building on a Non-Participating Landowner's property, or at the property line if it is less than 300 feet from an existing Occupied Building. This sound pressure level shall not be exceeded for more than 3 minutes in any hour of the day. If the Ambient Sound Pressure Level exceeds 55 dB(A), the standard shall be ambient dB(A) level plus 5 dB(A).

11.2. Goshen-Lempster School Noise Restriction. Audible sound from the Wind Park at the Goshen-Lempster School shall not exceed 45 dB(A). If the Ambient Sound Pressure Level at the Goshen-Lempster School exceeds 45 dB(A), at the school, the standard shall be ambient dB(A) plus 5 dB(A).

11.3. Post-Construction Noise Measurements. After commercial operation of the Wind Park, the Owner shall retain an independent qualified acoustics engineer to take sound pressure level measurements in accordance with the most current version of ANSI S12.18. The measurements shall be taken at sensitive receptor locations as identified by the Owner and Town, and shall include the Goshen-Lempster School both inside and outside of the school building. The periods of the noise measurements shall include, as a minimum, daytime, winter and summer seasons, nighttime after 10 pm, and, for measurements at the school, periods when school is in session. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. The Owner shall provide the report of the acoustics engineer once available to the Town.

12. Setbacks

12.1. Setback From Occupied Buildings. The setback distance between a Wind Turbine tower and a Non-Participating landowner's existing Occupied Building shall be not less than three times the Turbine Height. The setback distance shall be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.

12.2. Setback From Property Lines. The setback distance between a Wind Turbine tower and Non-Participating landowner's property line shall be not less than 1.1 times the Turbine Height. The setback distance shall be measured to the center of the Wind Turbine base.

12.3. Setback From Public Roads. All Wind Turbines shall be setback from the nearest public road a distance of not less than 1.5 times the Turbine Height as measured from the right-of-way line of the nearest public road to the center of the Wind Turbine base.

13. Waiver of Restrictions

13.1. Waiver of Noise Restrictions. A Participating Landowner or Non-Participating Landowner may waive the noise provisions of Section 12 of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. The written waiver shall state that the consent is granted for the Wind Park to not comply with the sound limit in this Agreement.

13.2. Waiver of Setback Requirements. A Participating Landowner or Non-Participating Landowner may waive the setback provisions of Section 14 of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. Such a waiver shall identify the applicable setback requirements provision(s) in this Agreement and the proposed changes, including a description of how the Wind Park is not in compliance with the requirements in this Agreement and a statement that consent is granted for the Owner to not be in compliance with the requirements in this Agreement. Upon application, the Town may waive the setback requirement for public roads for good cause.

13.3. Recording. A memorandum summarizing a waiver or agreement containing a waiver pursuant to Section 13.1 or 13.2 of this Agreement shall be recorded in the Registry of Deeds for Sullivan County, New Hampshire. The memorandum shall describe the properties benefited and burdened and advise all subsequent purchasers of the burdened property of the basic terms of the waiver or agreement, including time duration.

14. Decommissioning

14.1. Scope of Decommissioning Activities

14.1.1. The Owner shall submit a detailed site-specific decommissioning estimate to the Town before construction of the Wind Park

commences. This estimate shall be updated and submitted to the Town every five years thereafter.

14.1.2. The Owner shall, at its expense, complete decommissioning of the Wind Park, or individual Wind Turbines, pursuant to Section 14.1.3 of this Agreement, within 12 months after the End of Useful Life of the Wind Park or individual Wind Turbines.

14.1.3. The Owner shall provide a decommissioning plan to the Town no less than three months before decommissioning is to begin. The decommissioning plan shall provide a detailed description of all Wind Park equipment, facilities or appurtenances proposed to be removed, the process for removal, and the post-removal site conditions. The Town will consider the remaining useful life of any improvement before requiring its removal as part of decommissioning. Approval of the Town must be received before decommissioning can begin.

14.2. Decommissioning Funding Assurance

14.2.1. The Owner shall provide funding assurance for the complete decommissioning of the Wind Park, or individual Wind Turbines in a form acceptable to the Town. ("Decommissioning Funding Assurance") The Wind Park or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated from the Wind Park or any individual Wind Turbine for a continuous period of twelve months.

14.2.2. Before commencement of construction of the Wind Park, the Owner shall provide Decommissioning Funding Assurance in an amount equal to the site-specific decommissioning estimate or \$2,000,000, whichever is greater. The Owner shall adjust the amount of the Decommissioning Funding Assurance to reflect the updated decommissioning costs after each update of the decommissioning estimate, if the estimate exceeds \$2,000,000.

14.2.3. Decommissioning Funding Assurance in the amount described in Section 14.2.2 shall be provided by a financial guarantee from the Owner, its parent or affiliates, in a form acceptable to the Town. If Owner does not provide such financial guarantee, the Town may require another form of decommissioning assurance such as prepayment, external sinking funds, insurance, performance bond, surety bond, letters of credit, form of surety, or other method, or combination of methods as may be acceptable to the Board of Selectmen of the Town of Lempster.

14.2.4. Funds expended in connections with the Decommissioning Funding Assurance shall only be used for expenses associated with the cost of decommissioning the Wind Park. Any funds remaining after decommissioning has been completed shall be distributed to the current Owner.

14.2.5. If the Owner fails to complete decommissioning within the period proscribed by this agreement, the Town of Lempster may, at its sole discretion, enforce the financial guarantee and require the expenditure of decommissioning funds on such measures as necessary to complete decommissioning.

14.3. Transfer of Decommissioning Responsibility

14.3.1. Consistent with Section 2.1 of this Agreement, the provisions of Section 14 of this Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Park or any Wind Turbines after the End of Useful Life.

14.3.2. Owner shall not enter into any agreement with any party, including a Participating Landowner and successor in ownership, which waives the responsibilities of the Owner for decommissioning or the requirement to maintain decommissioning assurance without first receiving the written agreement of the Town.

**AGREEMENT BETWEEN TOWN OF LEMPSTER
AND LEMPSTER WIND, LLC, DEVELOPER/OWNER OF THE
LEMPSTER MOUNTAIN WIND POWER PROJECT**

1. Definitions

- 1.1. "Agreement" - This agreement between the Town of Lempster, New Hampshire and Lempster Wind LLC, and its successors and assigns.
- 1.2. "Ambient Sound Pressure" - The sound pressure level excluded that contributed by the operation of the Wind Park.
- 1.3. "Decommissioning Funding Assurance" - An assurance provided by the Owner in a form acceptable to the Town that guarantees completion of decommissioning, as provided in this Agreement.
- 1.4. "End of Useful Life" - The Wind Park or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated for a continuous period of twelve months.
- 1.5. "Non-Participating Landowner" - Any landowner in the Town of Lempster, other than a Participating Landowner.
- 1.6. "Owner" - The entity or entities having equity interest in the Wind Park, including their respective successors and assigns.
- 1.7. "Occupied Building" - A permanent structure used as a year-round or seasonal residence, school, hospital, church, public library or other building used for gathering that is occupied or in use as of the time that the permit application was submitted to the New Hampshire Site Evaluation Committee.
- 1.8. "Participating Landowner" - Any landowner having entered into an agreement with the Owner for hosting Wind Park facilities, providing easements for access, entry or conveyance of other rights related to the Wind Park, or any other agreement related to the construction or operation of the Wind Park.
- 1.9. "Project Site" - Property with rights as conveyed to Owner by lease, easement or other agreement with a Participating Landowner that includes all Wind Turbines, access roads, and other facilities required for construction and operation of the Wind Park.
- 1.10. "Town" - Town of Lempster, New Hampshire.
- 1.11. "Turbine Height" - The distance from the surface of the tower foundation to the tip of the uppermost blade when in a vertical position. For the Lempster Wind Power Project, this height is approximately 424 feet.
- 1.12. "Wind Turbine" - A wind energy conversion system that converts wind energy for the generation of electricity, including a tower, a nacelle housing the generator and transformer, and a 3-blade rotor.

1.13. "Wind Park" - The totality of the Wind Turbines, cables, accessory buildings and structures including substations, meteorological towers, electric infrastructure and cables and other appurtenant structures and facilities that comprise the Lempster Mountain Wind Power Project under development by Owner.

2. General Provisions

2.1. **Enforceability.** This Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Park or any Wind Turbines after the End of Useful Life.

2.2. **Applicability to Owner.** This Agreement shall apply to the Owner only to the extent of Owner's rights and responsibilities related to the Wind Park and Project Site as conferred to Owner by Participating Landowner agreements.

2.3. **Recording.**

2.3.1. Owner shall submit to the Town evidence of all Participating Landowner agreements, which may take the form of memoranda recorded with the Sullivan County Registry of Deeds.

2.3.2. This Agreement shall be recorded at the Sullivan County Registry of Deeds.

2.4. **Survivability.** The invalidity, in whole or in part, of any of this Agreement will not affect any other paragraph in this Agreement.

2.5. **Limitation on Turbines.** This Agreement is for the installation and operation of a Wind Park that utilizes up to twelve Wind Turbines. The Owner shall not construct more than twelve Wind Turbines on the site without prior agreement with the Town. Communications or other equipment attached to the Wind Turbines shall be limited to that incidental and necessary for the safe and efficient operation of the Wind Park.

2.6. **On-site Burning.** The Owner will obtain a permit from the Lempster Fire Department and comply with all State requirements before Owner or its agents perform any on-site burning.

2.7. **Warnings.**

2.7.1. A clearly visible warning sign concerning voltage must be placed at the base of all above-ground electrical collection facilities, switching or interconnection facilities, and substations.

2.7.2. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on all anchor points of guy wires, if any, and along the guy wires up to a height of ten feet from the ground.

2.7.3. A clearly visible warning sign concerning safety risks related to winter or storm conditions shall be placed no less than 300 feet from each Wind Turbine tower base on access roads

2.8. **Access.** The Town shall have keyed access to all gated entrances to the Project Site for the purpose of emergency response. The Owner shall provide access to the Project Site, Wind Turbines or other facilities upon reasonable request of the Town for the purpose of building or safety inspections under Town ordinances. The Owner shall provide access for emergency response purposes pursuant to the protocols provided under Section 7 of this Agreement.

2.9. **Liability Insurance.** There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least \$10 million in the aggregate. Certificates shall be made available to the Town upon request.

2.10. **Indemnification.** The Owner specifically and expressly agrees to indemnify, defend, and hold harmless the Town and its officers, elected officials, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of any negligence or wrongful acts of the Owner, its employees, agents, representatives or subcontractors of any tier, their employees, agents or representatives in connection with the Wind Park. The indemnity obligations under this Article shall include without limitation:

2.10.1. Loss of or damage to any property of the Town or any third party or, to the extent that loss of or damage to property of Owner, results in a third party claim against the Town, loss of or damage to any property of Owner;

2.10.2. Bodily or personal injury to, or death of any person(s), including without limitation employees of the Town, or of the Owner or its subcontractors of any tier.

The Owner's indemnity obligation under this Article shall not extend to any liability caused by the negligence or willful misconduct of any of the Indemnitees.

3. Wind Turbine Equipment and Facilities

3.1. **Visual Appearance.**

3.1.1. Wind Turbines shall be a non-obtrusive color such as white, off-white, or gray.

3.1.2. Wind Turbines shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or any other applicable authority that regulates air safety.

3.1.3. Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer and/or Owner.

3.2. **Controls and Brakes.** All Wind Turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

3.3. **Electrical Components.** All electrical components of the Wind Park shall conform to relevant and applicable local, state, and national codes, and relevant and applicable international standards.

3.4. **Power Lines.** On-site transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.

4. Project Site Security

4.1. Wind Turbines exteriors shall not be climbable up to fifteen (15) feet above ground surface.

4.2. All access doors to Wind Turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

4.3. Entrances to the Project Site shall be gated, and locked during non-working hours. If problems with unauthorized access are identified, the Project shall work to implement additional security measures.

5. Public Information, Communications and Complaints

5.1. **Public Inquiries and Complaints.** During construction and operation of the Wind Park, and continuing through completion of decommissioning of the Wind Park, the Owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints. The Owner shall make reasonable efforts to respond to the public's inquiries and complaints.

5.2. **Complaint Resolution.** The Owner shall develop and submit to the Town a process to resolve complaints from Town residents concerning the construction or operation of the Wind Park. The process shall not preclude the local government from acting on a complaint.

5.3. **Public Information Facility.** Within six months of commercial operation of the Wind Park, the Owner will construct a public information kiosk at a public location designated by the Town. The Owner will be responsible for keeping the kiosk in good condition and the Town will be responsible for maintaining the site of the kiosk, including public security.

5.4. **Signs.** Signs shall be reasonably sized and limited to those necessary to identify the Project Site and provide warnings or liability information, construction information, or identification of private property. There will be no signs placed in

the public right of way. After the completion of construction, signs visible from public roads shall be unlit and be no larger than six square feet, unless otherwise approved by the Town. The Owner and Town may agree on the placement of signs in the public right of way that relate to a Public Information Facility.

6. Reports to the Town of Lempster

6.1. **Incident Reports.** The Owner shall provide the following to the Chairman of the Board of Selectmen or his designee as soon as possible:

6.1.1. Copies of all reporting of environmental incidents or industrial accidents that require a report to U.S. EPA, New Hampshire Department of Environmental Services, OSHA or another federal or state government agency; and

6.1.2. All complaints from Town residents as submitted through the complaint resolution process under Section 5.2 of this Agreement.

6.2. **Periodic Reports.** The owner shall submit, on an annual basis starting one year from commercial operation of the Wind Park, a report to the Board of Selectmen of the Town of Lempster, providing, at a minimum, the following information:

6.2.1 If applicable, status of any additional construction activities, including schedule for completion;

6.2.2 Details on any calls for emergency police or fire assistance;

6.2.3 Location of all on-site fire suppression equipment; and

6.2.4 Identity of hazardous materials, including volumes and locations, as reported to state or federal agencies.

7. Emergency Response

7.1. Upon request, the Owner shall cooperate with the Town's emergency services and any emergency services that may be called upon to deal with a fire or other emergency at the Wind Park through a mutual aid agreement, to develop and coordinate implementation of an emergency response plan for the Wind Park. The Owner shall provide and maintain protocols for direct notification of emergency response personnel designated by the Town, including provisions for access to the Project Site, Wind Turbines or other facilities within 30 minutes of an alarm or other request for emergency response, and provisions that provide the Town with contact information of personnel available at every hour of the day.

- 7.2. The Owner shall cooperate with the Town's emergency services to determine the need for the purchase of any equipment required to provide an adequate response to an emergency at the Wind Park that would not otherwise need to be purchased by the Town. If agreed between the Town and Owner, Owner shall purchase any specialized equipment for storage at the Project Site. The Town and Owner shall review together on an annual basis the equipment requirements for emergency response at the Wind Park.
- 7.3. The Owner shall provide training to emergency response personnel identified by the Town. Those identified for training will include First Alarm mutual aid responders. Training shall be conducted at times agreed to by the Town and the Owner prior to the commencement of commercial operation and on an annual basis during operation of the Wind Park. The training shall include, but not be limited to, the location and operation of on-site fire suppression equipment, Project Site and Wind Turbine access, and communication protocols.
- 7.4. The Owner shall maintain fire alarm systems, sensor systems and fire extinguisher equipment that are installed in all Wind Turbines and facilities. The Town and Owner shall work to identify sources of water on or around the Project Site that may be utilized in the event of a fire at the Project Site outside the Wind Turbines, and collaborate on a process for utilizing the identified sources.
- 7.5. In the event of an emergency response event that creates an extraordinary expense for the Town based on obligations under a mutual aid agreement, Owner shall reimburse the Town for actual expenses incurred by the Town.
- 7.6. In the event Lempster Fire Department changes from an all volunteer department to a department with firefighters being paid for services, the Owner and Town will work to determine whether direct reimbursement for emergency response by the Town is appropriate.

8. Roads

8.1. Public Roads

- 8.1.1. The Owner shall identify all state and local public roads to be used within the Town to transport equipment and parts for construction, operation or maintenance of the facility.
- 8.1.2. The Owner shall hire a qualified professional engineer, as mutually agreed with the Town, to document road conditions prior to construction and again thirty days after construction is completed or as weather permits.
- 8.1.3. Any road damage caused by the Owner or its contractors at any time shall be promptly repaired at the Owner's expense.
- 8.1.4. The Owner will reimburse the Town for costs associated with special details required to direct or monitor traffic within the Town limits during construction.

8.1.5. The Owner shall demonstrate by financial guarantee of the Owner or its parent or affiliates, that it will provide appropriate financial assurance to ensure prompt repair of damaged roads. If such financial assurance is not provided in a form acceptable to the Town, the Town may require a bond or cash deposit to meet this obligation.

8.2. Wind Park Access Roads

8.2.1. The Owner shall construct and maintain roads at the Wind Park that allow for year-round access to each Wind Turbine at a level that permits passage and turnaround of emergency response vehicles. The Owner shall provide assurance by a financial guarantee from the Owner or its parent or affiliates, in a form acceptable to the Town, that Wind Park roads will be maintained at all times to permit such emergency access.

8.2.2. Any use of the access roads that is beyond what is necessary to service the Wind Park or that are beyond the scope of Participating Landowner agreement(s) shall be subject to approvals under relevant Town ordinances or regulations, or state or federal laws.

9. Construction Period Requirements

9.1. **Site Plan.** Prior to the commencement of construction, the Owner shall provide the Town with a copy of the final Soil Erosion and Sediment Control site plans showing the construction layout of the Wind Park.

9.2. **Construction Schedule.** Prior to the commencement of construction activities at the Wind Park, the Owner shall provide the Town with a schedule for construction activities, including anticipated use of public roads for the transport of oversize and overweight vehicles. The Owner shall provide updated information and schedules regarding construction activities to the Town on a monthly basis, or upon request of the Town.

9.3. **Disposal of Construction Debris.** Tree stumps, slash and brush will be disposed of onsite or removed consistent with state law. Construction debris and stumps shall not be disposed of at Town facilities.

9.4. **Blasting.** The handling, storage, sale, transportation and use of explosive materials shall conform to all state and federal rules and regulations. In addition, the Owner shall comply with the following Town requirements.

9.4.1. At least ten days before blasting commences, the Owner shall brief Town officials on the blasting plan. The briefing shall include the necessity of blasting and the safeguards that will be in place to ensure that building foundations, wells or other structures will not be damaged by the blasting.

9.4.2. In accordance with the rules of the State of New Hampshire, the Owner shall notify the Lempster police and fire chiefs before blasting commences. Any changes to the schedule for blasting must be reported immediately and in person to the police and fire chiefs.

9.4.3. A Pre-Blast Survey will cover residents within 500 ft. of the work area, and a copy of the survey will be recorded in the Town office. Residents within 500 feet will be notified in person whenever possible, or by registered mail, prior to work in the area.

9.4.4. A copy of the appropriate Insurance Policy and Blasting License will be recorded in the Town office.

9.5. **Storm Water Pollution Control.** The Owner shall obtain a New Hampshire Site-Specific Permit and conform to all of its requirements including the Storm Water Pollution Prevention Plan and requirements for inspections as included or referenced therein. The Owner shall provide the Town with a copy of all state and federal stormwater, wetlands, or water quality permits and related conditions.

9.6. **Design Safety Certification.** The design of the Wind Park shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.

9.7. **Construction Vehicles**

9.7.1. Construction vehicles shall only use a route approved by the Town. There shall be no staging or idling of vehicles on public roads. The Town shall be notified at least 24 hours before each construction vehicle with a Gross Vehicle Weight greater than 88,000 pounds is to use a Town road. Acceptance by the Town of vehicles exceeding this level is not a waiver of the Owner's obligation to repair all damage to roadways caused by vehicles used during construction or during any other time through the completion of decommissioning.

9.7.2. Construction vehicles will not travel on Town roads before 6:00 am or after 7:00 pm, Monday through Saturday. Construction vehicles will not travel on Town roads on Sunday, unless prior approval is obtained from the Town.

9.7.3. Construction will only be conducted between 6:00 am and 7:00 pm, Monday – Saturday. Construction will not be conducted on Sundays.

9.7.4. The start-up and idling of trucks and equipment will conform to all applicable Department of Transportation regulations. In addition, the start-up and idling of trucks and equipment will only be conducted between 6:00 am and 7:00 pm, Monday through Saturday.

9.7.5. Notwithstanding anything in this Agreement to the contrary, upon prior approval of the Town, over-sized vehicles delivering equipment and supplies may travel on Town roads between the hours of 7:00 pm and 6:00 am and on Sundays in order to minimize potential disruptions to area roads.

10. Operating Period Requirements

- 10.1. Spill Protection.** The Owner shall take reasonable and prudent steps to prevent spills of hazardous substances used during the construction and operation of the Wind Park. This includes, without limitation, oil and oil-based products, gasoline, and other hazardous substances from construction related vehicles and machinery, permanently stored oil, and oil used for operation of permanent equipment. Owner shall provide the Town with a copy of the Spill Prevention, Control and Countermeasure (SPCC) for the Wind Park as required by state or federal agencies.
- 10.2. Pesticides and Herbicides.** The Owner shall not use herbicides or pesticides for maintaining clearances around the Wind Turbines or for any other maintenance at the Wind Park.
- 10.3. Signal Interference.** The Owner shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television, or similar signals, and shall mitigate any harm caused by the Wind Park, subject to the Complaint Resolution process as provided pursuant to Section 5.2.

11. Noise Restrictions

- 11.1. Residential Noise Restrictions.** Audible sound from the Wind Park shall not exceed 55 dB(A) as measured at 300 feet from any existing Occupied Building on a Non-Participating Landowner's property, or at the property line if it is less than 300 feet from an existing Occupied Building. This sound pressure level shall not be exceeded for more than a total of three minutes during any sixty minute period of the day. If the Ambient Sound Pressure Level exceeds 55 dB(A), the standard shall be ambient dB(A) level plus 5 dB(A).
- 11.2. Goshen-Lempster School Noise Restriction.** Audible sound from the Wind Park at the Goshen-Lempster School shall not exceed 45 dB(A). This sound pressure level shall not be exceeded for more than a total of 3 minutes during any sixty minute period of the day. If the Ambient Sound Pressure Level at the Goshen-Lempster School exceeds 45 dB(A), at the school, the standard shall be ambient dB(A) plus 5 dB(A).
- 11.3. Post-Construction Noise Measurements.** After commercial operation of the Wind Park, the Owner shall retain an independent qualified acoustics engineer to take sound pressure level measurements in accordance with the most current version of ANSI S12.18. The measurements shall be taken at sensitive receptor locations as identified by the Owner and Town, and shall include the Goshen-Lempster School both inside and outside of the school building. The periods of the noise measurements shall include, as a minimum, daytime, winter and summer seasons, nighttime after 10 pm, and, for measurements at the school, periods when school is in session. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4

specifications for a Type II sound meter. The Owner shall provide the report of the acoustics engineer to the Town within 30 days of its receipt by the Owner.

12. Setbacks

- 12.1. Setback From Occupied Buildings.** The setback distance between a Wind Turbine tower and a Non-Participating Landowner's existing Occupied Building shall be not less than three times the Turbine Height. The setback distance shall be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.
- 12.2. Setback From Property Lines.** The setback distance between a Wind Turbine tower and Non-Participating Landowner's property line shall be not less than 1.1 times the Turbine Height. The setback distance shall be measured to the center of the Wind Turbine base.
- 12.3. Setback From Public Roads.** All Wind Turbines shall be setback from the nearest public road a distance of not less than 1.5 times the Turbine Height as measured from the right-of-way line of the nearest public road to the center of the Wind Turbine base.

13. Waiver of Restrictions

- 13.1. Waiver of Noise Restrictions.** A Participating Landowner or Non-Participating Landowner may waive the noise provisions of Section 11 of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. The written waiver shall state that the consent is granted for the Wind Park to not comply with the sound limits set forth in this Agreement.
- 13.2. Waiver of Setback Requirements.** A Participating Landowner or Non-Participating Landowner may waive the setback provisions of Section twelve of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. Such a waiver shall identify the applicable setback requirements provision(s) in this Agreement and the proposed changes, including a description of how the Wind Park is not in compliance with the requirements in this Agreement and a statement that consent is granted for the Owner to not be in compliance with the requirements set forth in this Agreement. Upon application, the Town may waive the setback requirement for public roads for good cause.
- 13.3. Recording.** A memorandum summarizing a waiver or agreement containing a waiver pursuant to Section 13.1 or 13.2 of this Agreement shall be recorded in the Registry of Deeds for Sullivan County, New Hampshire. The memorandum shall describe the properties benefited and burdened and advise all subsequent purchasers of the burdened property of the basic terms of the waiver or agreement, including time duration.

14. Decommissioning

14.1. Scope of Decommissioning Activities

- 14.1.1. The Owner shall submit a detailed site-specific decommissioning estimate of costs associated with decommissioning activities to the Town before construction of the Wind Park commences. This estimate shall be updated and submitted to the Town every five years thereafter.
- 14.1.2. The Owner shall, at its expense, complete decommissioning of the Wind Park or individual Wind Turbines, pursuant to Section 14.1.3 of this Agreement, within twelve months after the End of Useful Life of the Wind Park or individual Wind Turbines.
- 14.1.3. The Owner shall provide a decommissioning plan to the Town no less than three months before decommissioning is to begin. The decommissioning plan shall provide a detailed description of all Wind Park equipment, facilities or appurtenances proposed to be removed, the process for removal, and the post-removal site conditions. The Town will consider the remaining useful life of any improvement before requiring its removal as part of decommissioning. Approval of the Town must be received before decommissioning can begin.

14.2. Decommissioning Funding Assurance

- 14.2.1. The Owner shall provide a Decommissioning Funding Assurance for the complete decommissioning of the Wind Park, or individual Wind Turbines in a form acceptable to the Town. The Wind Park or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated from the Wind Park or any individual Wind Turbine for a continuous period of twelve months.
- 14.2.2. Before commencement of construction of the Wind Park, the Owner shall provide Decommissioning Funding Assurance in an amount equal to the site-specific decommissioning estimate or \$2,000,000, whichever is greater. The Owner shall adjust the amount of the Decommissioning Funding Assurance to reflect the updated decommissioning costs after each update of the decommissioning estimate, if the updated estimate exceeds \$2,000,000.
- 14.2.3. Decommissioning Funding Assurance in the amount described in Section 14.2.2 shall be provided by a financial guarantee from the Owner, its parent or affiliates, in a form reasonably acceptable to the Town. If Owner does not provide such financial guarantee, the Town may require another form of decommissioning assurance such as prepayment, external sinking funds, insurance, performance bond, surety bond, letters of credit, form of surety, or other method, or combination of methods as may be acceptable to the Board of Selectmen of the Town of Lempster.

14.2.4. Funds expended from the Decommissioning Funding Assurance shall only be used for expenses associated with the cost of decommissioning the Wind Park. Any funds remaining after decommissioning has been completed shall be distributed to the current Owner.

14.2.5. If the Owner fails to complete decommissioning within the period proscribed by this Agreement, the Town of Lempster may, at its sole discretion, enforce the financial guarantee and require the expenditure of decommissioning funds on such measures as necessary to complete decommissioning.

14.3. Transfer of Decommissioning Responsibility

14.3.1. Consistent with Section 2.1 of this Agreement, the provisions of Section 14 of this Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Park or any Wind Turbines after the End of Useful Life.

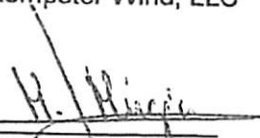
14.3.2. Owner shall not enter into any agreement with any party, including a Participating Landowner and successor in ownership, which waives the responsibilities of the Owner for decommissioning or the requirement to maintain decommissioning assurance without first receiving the written agreement of the Town.

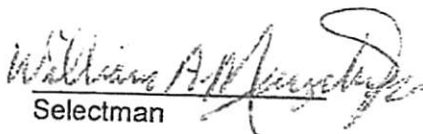
The parties agree the terms of this Agreement are final, enforceable and no longer subject to change as of July 27, 2007, regardless of the date of execution by either party.

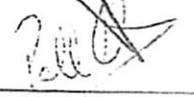
Town of Lempster

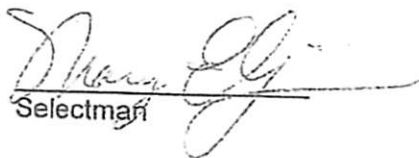
Lempster Wind, LLC


Chairman, Board of Selectmen


Martin Mugica, President
Iberdrola Renewable Energies, USA


Selectman


Pablo Canalés, Chief Financial Officer
Iberdrola Renewable Energies, USA


Selectman