

# BLACK OAK WIND FARM DEVELOPER'S AGREEMENT

**AGREEMENT** made this 8<sup>th</sup> day of March, 2010, between **ENFIELD ENERGY, LLC**, its successors, heirs, and/or assigns (the "Developer") and the **TOWN OF ENFIELD** (the "Town").

## RECITALS:

WHEREAS, the Developer has proposed to develop a commercial site at Black Oak Road, and at various other locations within the western portion of the Town, for the purpose of constructing a commercial-scale wind farm (the "Project"); and

WHEREAS, the Town, in order to regulate large scale wind farms, has adopted Local Law Number 1 of 2009, which is entitled "Wind Energy Facilities Local Law" (the "Wind Law"), a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the Developer desires to facilitate project reviews, including, but not limited to, initial evaluations in relation to site plan review elements, permit reviews, New York State Environmental Quality Review Act ("SEQRA") review, and other reviews of the Project by the Town Board, the Planning Board, and the Town's engineers, attorneys, and other consultants now existing or hereafter to be hired or retained, and in connection therewith; and

WHEREAS, in connection with this Agreement, the Wind Law, and the Project, there are and will be expenses incurred by the Town in relation to the review of the Project, such as, but not limited to, site plan review expenses, inspections, review of building permit applications, and the SEQRA review, some or all of which will require that the Developer obtain approvals or clearances to be able to proceed with the Project (the "Approvals"); and

WHEREAS, the Developer acknowledges and agrees that any expense, liability, risk, or loss assumed, undertaken and/or incurred by the Developer under, pursuant to, or in connection with this Agreement is at the Developer's sole and own risk as: (i) the Town, by authorizing and executing this Agreement makes no representations or promises, direct or implied, as to the feasibility or approval of the Project, conditioned or otherwise; and (ii) the Developer acknowledges and agrees that any expenses undertaken and/or incurred by Developer before Project approval for Project materials or for Developer-hired services are at the Developer's sole and own risk.

NOW, THEREFORE, in consideration of the foregoing recitals and facts, all of which shall be deemed a material part of this Agreement, and upon the exchange of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Developer and the Town, the Developer and the Town agree as follows:

1. The Developer shall comply with the requirements set forth under the Wind Law, including, but not limited to, the permit requirements set forth under Article II, the application requirements set forth under Article III, and the standards for wind energy facilities set forth under Article IV of the Wind Law.

2. Any and all reviews by the Town and its engineer and attorneys, the costs and expenses thereof (excluding any outside of Tompkins County travel time), and all other reasonable and necessary expenses of the Town, including, but not limited to the publication, posting, and mailing of notices, shall be conducted or incurred by the Town when appropriate based upon either: (i) the request of the Developer, or (ii) the Town's determination that the Project requires such action, expense or review in order to obtain the Approvals. Such determination of what expenses are reasonable and necessary shall be made by the Town in its sole discretion, but shall not include out of county travel time. Such reviews and expenses, and any money spent in relation thereto, shall be referred to as the "Review Costs".

3. The Developer shall initially deposit the sum of Fifteen Thousand Dollars (\$15,000.00) with the Town to pay for such anticipated Review Costs (the "Deposit"), and the Town may use such funds to pay its Review Costs. The Town shall hold said funds in a non-interest bearing account, in escrow, to be applied as provided under this Agreement (the "Escrow Account"). Upon consumption or depletion of any Deposit below the sum of Two Thousand Dollars (\$2,000.00), the Developer shall replenish the Escrow Account within fifteen (15) business days notice from the Town in an amount equal to the initial deposit unless otherwise agreed to by the Developer and the Town.

4. At the time of final Project Approval, or in the event of delivery of written notice by Developer indicating that the Developer is abandoning the Project and surrendering all rights, permits and Approvals, if any and as applicable, relative to Project development, the Town will return to the Developer any portion of the Deposit and any replenishments present in the Escrow Account not used to pay any outstanding expenses and/or fees owing by the Town associated with the Project.

5. The Town agrees to provide Developer an accounting of all Review Costs incurred by the Town along with any written notice provided pursuant to Section 3 above, but any such accounting shall not result in the non-payment of any additional funds needed to replenish the Escrow Account as required by this Agreement.

6. The obligations and liabilities set forth in or required by this Agreement shall be binding upon the Developer, its successors, heirs and assigns. This Agreement is and shall be and remain enforceable at law in the Town Court, or at law or in equity in such other court with appropriate jurisdiction. In the event the Town is required to bring suit to collect any Deposit or Review Costs, the Town, if it succeeds in obtaining a judgment, settlement and/or other resolution against the Developer, shall be entitled to recover its reasonable attorneys' and experts' fees and expenses incurred in connection therewith, together with any related court costs and expenses.

7. The Developer acknowledges and agrees that Developer is not an agent of the Town for any purpose, and may not speak for, represent, or bind the Town to any agreement or promise proposed or published in favor of any third party.

8. The Developer shall indemnify and hold the Town harmless, to the fullest extent permitted by law, from and against all third party claims, expenses, losses, liabilities, damages, judgments, suits, and legal proceedings, and any and all costs and expenses arising in connection



therewith (including attorneys' and experts' fees), arising out of or in any manner connected with this Agreement and the Project.

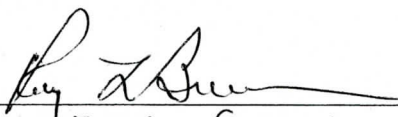
9. If any provision of this Agreement is held invalid or unenforceable by a court or other tribunal of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision, and such invalid provision shall be reformed by the court or tribunal to the minimum extent required to bring it into compliance with applicable law, or to otherwise make such provision enforceable. Such reformation shall be performed by first taking into account the purposes sought by the Town in any such provision; and second, by the intent of the parties as set forth in such provision; and third, by the intent of the parties as gleaned from other provisions in this Agreement. If such reformation is not possible, then such provision shall be severed from this Agreement. Any provision of this Agreement that is held or declared illegal or unenforceable under any set of facts and/or circumstance shall be and be presumed valid and enforceable as to any other set of facts and/or circumstances.

10. Except as otherwise provided for under the Wind Law, this Agreement constitutes the entire understanding of the parties, revokes and supersedes all prior discussions, negotiations, and oral or written agreements between the parties, and is intended as a final expression of their agreement. No waiver by the Town of any requirement of this Agreement or any default hereunder shall be deemed a waiver of any prior or subsequent requirement or default of the same or other provisions or obligations of this Agreement. In the event that there is a conflict between the terms of this Agreement and the Wind Law, the terms of the Wind Law shall govern the respective rights and obligations of the Developer and the Town.

11. Notwithstanding anything to the contrary contained in this Agreement, Developer hereby acknowledges and agrees that it may not assign its rights and obligations under this Agreement to any other person or entity without the prior written consent of the Town.


IN WITNESS WHEREOF, the Developer and the Town have each executed this Agreement as of the date(s) set forth below.

The Town of Enfield

By:   
Its: TOWN SUPERVISOR

Dated: 3-8-10

Enfield Energy, LLC

By:   
Its: John Kowich

Dated: 3/8/10