

**EXECUTION COPY**

**COUNTY OF LEWIS INDUSTRIAL DEVELOPMENT AGENCY,  
COUNTY OF LEWIS,  
TOWN OF MARTINSBURG,  
LOWVILLE ACADEMY AND CENTRAL SCHOOL DISTRICT,**

**AND**

**PPM ROARING BROOK, LLC**

**PAYMENT IN LIEU OF TAX AGREEMENT**

**As of October 1, 2019**

## ROARING BROOK WIND FARM PROJECT

### PILOT AGREEMENT

This **PAYMENT IN-LIEU OF TAX AGREEMENT**, dated as of the 1<sup>st</sup> day of October, 2019 (the "Agreement"), by and between the **County of Lewis Industrial Development Agency**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal offices at 7642 North State Street, Lowville, New York (the "Agency"), the **County of Lewis**, a municipal corporation under the laws of the State of New York with an office at 7660 State Street, Lowville, New York (the "County"), the **Town of Martinsburg**, a municipal corporation under the laws of the State of New York with an office at Route 26, Martinsburg, New York (the "Town"), the **Lowville Academy and Central School District**, 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 "School District"), and together with the County and Town, the "Tax Jurisdictions"), and **PPM Roaring Brook, LLC**, a limited liability company organized under the laws of the State of Oregon having an office at 1125 NW Couch Street, Suite 700, Portland, Oregon (the "Company"),

#### WITNESSETH:

**THAT WHEREAS**, Title 1 of Article 18-A of the General Municipal Law of the State of New York ("Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York ("State"); and

**WHEREAS**, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve its standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

**WHEREAS**, pursuant to and in connection with the provisions of the Enabling Act, Chapter 62 of the Laws of 1973 of the State (said chapter and the Enabling Act, both as amended, collectively referred to as the "Act") created the Agency which is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

**WHEREAS**, the Company submitted an application to the Agency requesting that the Agency undertake a project (the "Project") consisting of: (A)(1) the acquisition of an interest in the Company's fee, leasehold, and easement interests in certain parcels of land located in the Town of Martinsburg, County of Lewis, New York (collectively, the "Land"), (2) the

acquisition, construction, installation and equipping on or under the Land of: (i) one or more permanent meteorological towers, (ii) a buried and overhead system to carry electricity to the point of interconnection, (iii) an operation and maintenance building, (iv) a Project substation facility, (v) concrete foundations for Equipment (defined below), and (vi) a system of gravel access roads, parking, landscaping and related improvements to the Land (collectively, the "Improvements"), and (3) the acquisition and installation thereon of certain equipment, including wind turbine generators with a total rated capacity of up to 80.0 megawatts ("MW") to be mounted on steel monopole towers, and related fixtures, furniture, machinery and equipment (the "Equipment"), all of the foregoing for use by the Company as a wind-powered electric generating facility (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemptions from sales and use taxes, mortgage recording taxes and real property taxes for the Project Facility (but not including special assessments and ad valorem levies) (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility by the Company to the Agency and the sublease of the Project Facility by the Agency to the Company; all as contemplated by and in furtherance of the purposes of the Act; and

**WHEREAS**, in order to induce the Company to develop the Project Facility, the Agency is willing to take a leasehold interest in the Project Facility pursuant to that certain Lease Agreement of even date herewith ("Lease Agreement") and sublease the Project Facility back to the Company pursuant to the terms and conditions of that certain Leaseback Agreement of even date herewith ("Leaseback Agreement"); and

**WHEREAS**, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements under its jurisdiction, control or supervision, other than special *ad valorem* levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

**WHEREAS**, the Tax Jurisdictions, the Agency, and the Company (sometimes referred to herein individually as a "Party" and collectively as the "Parties") deem it necessary and proper to execute and deliver this Agreement making provision for payments in lieu of taxes by the Company for the benefit of the Tax Jurisdictions; and

**WHEREAS**, the Tax Jurisdictions constitute all of the Affected Tax Jurisdictions (as such term is defined in the Act) with respect to the Project; and

**WHEREAS**, the Parties desire to enter into an agreement concerning the obligation of the Company to make payments in-lieu of taxes ("PILOT") in relation to the Project;

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual terms, conditions, limitations and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

## **Section 1. Representations and Covenants.**

Each of the Parties, solely for itself, hereby represents and covenants that, as of the date of this Agreement:

a. It is duly organized, validly existing, and in good standing under the laws of the State or the state in which it is organized and has full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this Agreement.

b. All necessary action has been taken to authorize its execution, delivery, and performance of this Agreement, and this Agreement constitutes its legal, valid, and binding obligation enforceable against it in accordance with the terms of this Agreement and applicable law.

c. No governmental approval by or with any government authority is required for the valid execution, delivery, and performance under this Agreement by it except such as have been duly obtained or made.

d. To the best of its knowledge, none of the execution or delivery of this Agreement, the performance of the obligations in connection with the transaction contemplated hereby, or the fulfillment of the terms and conditions hereof will (i) conflict with or violate any of its resolutions, or any of its formation documents, as amended, or of any restriction or any agreement or instrument to which it is a party and by which it is bound; (ii) conflict with, violate, or result in a breach of any applicable law, rule, regulation, or order of any court or other agency or authority of government or ordinance of the State or any political subdivision thereof; or (iii) conflict with, violate, or result in a breach of or constitute a default under or result in the imposition or creation of any mortgage, pledge, lien, security interest, or other encumbrance under this Agreement or under any term or condition of any bond, indenture, or any other agreement or instrument to which it is a party or by which it or any of its properties or assets is bound.

e. To the best of its knowledge, there is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against it, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

f. To the best of its knowledge, the conduct of its business is in compliance with all applicable governmental approvals with respect to which a failure to comply, in any case or in the aggregate, would result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

### **Section 2.1. Notice of Construction Start.**

The Company shall provide notice to the Agency that construction of the Project Facility or acquisition of Equipment (for which the Company intends to claim an exemption from sales tax due to the Agency's involvement in the Project) is about to commence (the "Notice of Construction Start"). For purposes of this Agreement, construction means unlimited and



continuous construction of the Project Facility and does not include testing or surveying (including geotechnical drilling and meteorological testing) to determine the adequacy of the site for construction, tree clearing, or meteorological tower erection. The Notice of Construction Start shall specify the date on which construction of the Project Facility is deemed to commence (the "Construction Start Date").

## **Section 2.2. Notice of Commercial Operation Date.**

The date on which the Project becomes commercially operational, as evidenced by the Company's notice to the New York Independent System Operator ("NYISO"), shall be referred to as the Commercial Operation Date (the "Commercial Operation Date" or "COD"). Within five (5) business days after the Company provides its commercial operation notice to the NYISO, the Company shall provide notice to the Agency of the Commercial Operation Date (the "COD Notice"). Commencement of PILOT Payments (defined below) shall depend on the Commercial Operation Date. The first March 1 taxable status date following the Commercial Operation Date shall be referred to as the COD Taxable Status Date (the "COD Taxable Status Date").

## **Section 2.3. Exemption from Real Property Taxes.**

a. Filing of Form RP 412-a. Promptly after the Company's delivery to the Agency of the Notice of Construction Start, but in no event later than before the first March 1 taxable status date next following such delivery, the Agency shall complete and file with the Town assessor the New York State Form RP-412-a Application For Real Property Tax Exemption for the Project Facility (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law ("RPTL") and Section 874 of the Act. The Company shall provide the Agency the information necessary for the completion and filing of the Exemption Application.

b. Exemption from General Ad Valorem Taxes. Subject to the filing of the Exemption Application with the Town assessor, the Project Facility shall be exempt from all general *ad valorem* real property taxes levied against the Project Facility by the Tax Jurisdictions ("Real Property Taxes") commencing with the Tax Year (as defined below) of the Tax Jurisdictions associated with the first taxable status date occurring after delivery of the Notice of Construction Start and ending with the expiration of the Term (as defined below). "Tax Year" shall mean the set of fiscal years of the Tax Jurisdictions associated with an assessment roll year of the Town.

c. No Exemption from Special District Taxes. The Parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and RPTL Section 412-a does not entitle the Agency (and thereby the Company acting as its agent) to an exemption from special assessments and special *ad valorem* taxes ("Special District Taxes"). Pursuant to the Leaseback Agreement, the Company will be required to pay all Special District Taxes lawfully levied and/or assessed against the Project Facility.

d. Consequence of Denial of Exemption Application. Notwithstanding anything to the contrary contained herein or in the Lease Agreement and the Leaseback Agreement, in the event the Exemption Application is denied for any reason, the Company shall pay (and hereby agrees to pay, subject to the Company's right to challenge the underlying assessments on the

Project Facility pursuant to Section 8(k) hereof) all Real Property Taxes levied upon the Project Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the Project Facility continues to qualify as a “project” under the Act; (ii) neither the Project Facility nor any part of or interest in it would be in any danger of being sold (except as permitted under the Leaseback Agreement), forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Property Taxes except to the extent that such denial results solely from the failure of the Agency or its representatives to timely file the Exemption Application with the appropriate assessor(s) or the Real Property Tax Office of the County.

#### **Section 2.4. Scope of Exemption.**

This Agreement shall cover the Company’s interest in the Project Facility but shall not cover the interests of underlying landowners or improvements owned by underlying landowners. The Company will work with the Town assessor to separately identify the Project Facility using sub-parcels or separate parcels under the Town’s tax parcel identification system.

#### **Section 2.5. Term and PILOT Payment Years.**

The term of this Agreement (the “Term”) shall commence as of the date of this Agreement and shall expire on December 31 of the fiscal years of the Town and the County associated with the last PILOT Payment Year (defined below) hereunder. This Agreement shall provide for payments in-lieu of Real Property Taxes that would otherwise be due (“PILOT Payments”) with respect to the Tax Years associated with the first thirty (30) annual assessment rolls commencing with the Tax Year following the COD Taxable Status Date, as illustrated in the schedule in Section 2.6(c) below (each a “PILOT Payment Year”). For example, the PILOT Payment Year associated with the 2021 assessment roll year (based on the March 1, 2021 taxable status date) covers the 2021-2022 fiscal year of the School District and to the 2022 fiscal years of the Town and the County.

#### **Section 2.6. PILOT Payments.**

a. Payment Rate. The Company shall make annual PILOT Payments to the Agency for the benefit of the Tax Jurisdictions in an aggregate amount equal to the product of (a) the actual nameplate electric generating capability of all turbines installed as part of the Project Facility (“Project Turbines”), expressed in MW, determined as of December 31 during each year hereof (the “Installed Capacity”), times (b) \$8,000 per MW of Installed Capacity (the “Payment Rate”).

b. Adjustments to Payment Rate. The Payment Rate shall be increased by ten percent (10%) in the PILOT Payment Year following each five-year increment during the Term (as increased, the “Adjusted Payment Rate”), commencing with the sixth (6<sup>th</sup>) PILOT Payment. Notwithstanding the foregoing, starting with the twenty-first (21<sup>st</sup>) PILOT Payment Year, the Adjusted Payment Rate shall be increased by two percent (2%) per year.

c. Illustrative PILOT Payment Schedule. The following schedule is intended to serve as an illustration of the potential PILOT Payments that would be due and the timing of same under this Agreement if the Project Facility, assuming an Installed Capacity of 78.0 MW, is constructed during the 2019 and 2020 construction seasons, and has a COD Taxable Status Date of March 1, 2021.

PILOT Payment Year	Construction Year	Town Roll Year	Town / County Tax Year	School District Tax Year	PILOT Payment Due Date	Payment Rate (per MW)	PILOT Payment
1	2020	2021	2022	2021-2022	January 31, 2022	\$ 8,000	\$ 624,000
2	2021	2022	2023	2022-2023	January 31, 2023	\$ 8,000	\$ 624,000
3	2022	2023	2024	2023-2024	January 31, 2024	\$ 8,000	\$ 624,000
4	2023	2024	2025	2024-2025	January 31, 2025	\$ 8,000	\$ 624,000
5	2024	2025	2026	2025-2026	January 31, 2026	\$ 8,000	\$ 624,000
6	2025	2026	2027	2026-2027	January 31, 2027	\$ 8,800	\$ 686,400
7	2026	2027	2028	2027-2028	January 31, 2028	\$ 8,800	\$ 686,400
8	2027	2028	2029	2028-2029	January 31, 2029	\$ 8,800	\$ 686,400
9	2028	2029	2030	2029-2030	January 31, 2030	\$ 8,800	\$ 686,400
10	2029	2030	2031	2030-2031	January 31, 2031	\$ 8,800	\$ 686,400
11	2030	2031	2032	2031-2032	January 31, 2032	\$ 9,680	\$ 755,040
12	2031	2032	2033	2032-2033	January 31, 2033	\$ 9,680	\$ 755,040
13	2032	2033	2034	2033-2034	January 31, 2034	\$ 9,680	\$ 755,040
14	2033	2034	2035	2034-2035	January 31, 2035	\$ 9,680	\$ 755,040
15	2034	2035	2036	2035-2036	January 31, 2036	\$ 9,680	\$ 755,040
16	2035	2036	2037	2036-2037	January 31, 2037	\$ 10,648	\$ 830,544
17	2036	2037	2038	2037-2038	January 31, 2038	\$ 10,648	\$ 830,544
18	2037	2038	2039	2038-2039	January 31, 2039	\$ 10,648	\$ 830,544
19	2038	2039	2040	2039-2040	January 31, 2040	\$ 10,648	\$ 830,544
20	2039	2040	2041	2040-2041	January 31, 2041	\$ 10,648	\$ 830,544
21	2040	2041	2042	2041-2042	January 31, 2042	\$ 10,861	\$ 847,155
22	2041	2042	2043	2042-2043	January 31, 2043	\$ 11,078	\$ 864,098
23	2042	2043	2044	2043-2044	January 31, 2044	\$ 11,300	\$ 881,380
24	2043	2044	2045	2044-2045	January 31, 2045	\$ 11,526	\$ 899,008
25	2044	2045	2046	2045-2046	January 31, 2046	\$ 11,756	\$ 916,988
26	2045	2046	2047	2046-2047	January 31, 2047	\$ 11,991	\$ 935,327
27	2046	2047	2048	2047-2048	January 31, 2048	\$ 12,231	\$ 954,034
28	2047	2048	2049	2048-2049	January 31, 2049	\$ 12,476	\$ 973,115
29	2048	2049	2050	2049-2050	January 31, 2050	\$ 12,725	\$ 992,577
30	2049	2050	2051	2050-2051	January 31, 2051	\$ 12,980	\$ 1,012,429

d. Power Price Adjustment.

i. Project's Power Sold Without Power Purchase Agreement. In the event the Project sells its power without a power purchase agreement ("PPA") for an entire calendar year and the average annual real-time locational based marginal price ("LBMP") for electricity for Zone E of the NYISO for that calendar year, weighted by the actual MWh production of the Project over the course of such calendar year, is in excess of \$45 per MWh, the Company shall pay an additional PILOT Payment equal to \$400 per MW of Installed Capacity (the "Power Price Adjustment Payment") by March 1 of the succeeding calendar year. A formula for calculation of the Project's weighted average annual real-time electricity price is attached as Exhibit A hereto.

ii. Project's Power Sold Under Power Purchase Agreement. In the event the Project sells its power under a PPA for an entire calendar year, if the PPA's average contract price for all power sold over the course of such calendar year is in excess of \$45 per MWh, the Company shall pay the Power Price Adjustment Payment by March 1 of the succeeding calendar year.

iii. Project's Power Sold Under Power Purchase Agreement for Portion of Calendar Year. In the event the Project sells its power under a PPA for a portion of a calendar year, if the average of (a) the price for all power sold pursuant to such PPA over the course of such portion of the calendar year and (b) the LBMP for electricity for Zone E of the NYISO over the course of the remaining portion of the calendar year, weighted by the actual MWh production of the Project for that portion of the calendar year, is in excess of \$45 per MWh, the Company shall pay the Power Price Adjustment Payment by March 1 of the succeeding calendar year.

iv. Annual Determination. The determination of whether Power Price Adjustment Payment is owed shall be made on a calendar year-by-calendar year basis and shall only be due for payment by the specified date in the calendar year following a triggering event.

e. Certification of Installed Capacity. No less than thirty (30) days prior to the initial PILOT Payment due under the terms of this Agreement, the Company shall certify to the Agency and the Tax Jurisdictions the Installed Capacity of the Project. Thereafter, the Company shall certify to the Agency and the Tax Jurisdictions any change in the Installed Capacity of the Project within thirty (30) days of any such change. A form of such certification is attached hereto as Exhibit B.

f. Allocation of PILOT Payments. The Tax Jurisdictions have agreed and informed the Agency that annual PILOT Payments shall be allocated among them by the Agency in the following fixed percentages throughout the term of this Agreement, notwithstanding any future changes in the relative tax rates of the Tax Jurisdictions:

<u>Tax Jurisdiction</u>	<u>Share</u>
Town	30.00%
School District	37.00%
County	33.00%

**Section 2.7. Credits for Real Property Tax Payments.**

Any Real Property Taxes paid by the Company to the Tax Jurisdictions with respect to the Project Facility or any portion thereof during the Term and with respect to any period after the first March 1 following the Company's delivery of the Notice of Construction Start will be applied as a credit against PILOT Payments due under this Agreement. Except as provided in Section 3 below no credit shall be given for any Special District Taxes paid by the Company. If the Company desires to claim a credit against any particular PILOT Payment due hereunder, the Company shall give the tax levying Tax Jurisdiction(s) and the Agency prior written notice of its intention to claim any credit pursuant to the provisions of this Section, such notice to be given by the Company at least ten (10) days prior to the final date by which such PILOT Payment must be paid hereunder. Such credit shall be applied against the allocated share(s) of the next annual

PILOT Payment made to the levying Tax Jurisdiction(s). To the extent the amount of Real Property Taxes paid by the Company is greater than the allocated share(s) of the levying Tax Jurisdiction(s) for the next annual PILOT Payment, the amount of the credit insufficiency shall be carried forward and applied to the next annual and future PILOT Payment(s) of the levying Tax Jurisdiction(s).

**Section 2.8. Due Dates, Invoices, and Late Payments.**

a. Due Dates. The first PILOT Payment shall be due on or before the first January 31 following the COD Taxable Status Date. Thereafter, each annual PILOT Payment shall be due on or before January 31 of the applicable PILOT Payment Year, as illustrated in the schedule shown in Section 2.6(c) hereof. Due to energy market conditions, among other reasons, the Company is not able to make any representations regarding when the Project will be constructed and therefore when PILOT Payments would actually commence. Notwithstanding anything to the contrary herein, the Company shall not be obligated to make PILOT Payments during construction of the Project and in no event for any period of time prior to the PILOT Payment Year associated with and following the COD Taxable Status Date.

b. Invoices. At least twenty (20) days prior to the due date for an applicable PILOT Payment Year, the Agency shall present an invoice to the Company stating the amount of the respective PILOT Payment and the date when due. Each annual PILOT Payment shall be paid by the Company to the Agency for the benefit of, and distribution by the Agency to, the Tax Jurisdictions.

c. Payee. PILOT Payments shall be made by the Company to the Agency at the following address:

County of Lewis Industrial Development Agency  
7642 North State Street  
PO Box 106  
Lowville, New York 13367

It is understood that the Agency shall receive PILOT Payments in trust for the Tax Jurisdictions. The Agency shall remit to each Tax Jurisdiction its allocated share of such PILOT Payment within thirty (30) days of receipt of same.

d. Late Payments. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any PILOT Payment on or before the due date, the Company shall pay the same to the Agency for distribution to the Tax Jurisdictions, together with a late payment penalty equal to five percent (5%) of the amount due (excluding interest) for the first month of such delinquency, an additional penalty of one percent (1%) of the amount due (excluding interest) for each month or fraction thereof that the PILOT Payment remains delinquent beyond the first month, and interest on the delinquent PILOT Payment (excluding penalties) equal to one percent (1%) per month or fraction thereof until the PILOT Payment, penalties and interest are paid in full.



**Section 2.9. Effect of Decommissioning.**

A Project Turbine shall be deemed "Decommissioned" upon permanent physical removal of such Project Turbine from the Project Facility in compliance with the standards established by the State Environmental Quality Review Act compliance in relation to the Project and Project permits issued by the Town. The Company shall provide written notification to the Town, County, School District, and Agency immediately following each such decommissioning ("Decommissioning Notice"). In the event any portion of the Project is Decommissioned, the Company's obligation to make PILOT Payments hereunder shall terminate, effective upon the date of the Decommissioning Notice, only with respect to Decommissioned Project Turbines, and the Company's obligation to make PILOT Payments hereunder shall continue with respect to any remaining Project Turbines. A pro rata reduction in PILOT Payment obligation shall be calculated as of the date of Decommissioning for the PILOT Payment Year in which a Project Turbine is Decommissioned. The amount of any such reduction shall be applied (in proportion to the Tax Jurisdictions' respective shares of each annual PILOT Payment) as a credit against the ensuing PILOT Payment Year's PILOT Payment. By way of example, if a Project Turbine is Decommissioned on June 1 of a particular calendar year, with respect to the forthcoming PILOT Payment due on January 31 of the succeeding calendar year, the Company shall receive a one month (1/12th) credit on the School District share (37.00%) of the PILOT Payment for that Project Turbine made in the preceding year and a 7 month (7/12th) credit on the County and Town share (63.00%) of the PILOT Payment for that Project Turbine made in that preceding year.

**Section 2.10. Release of Portion of Project Facility.**

a. Release of Portion of Project Facility. Pursuant to the Leaseback Agreement, the Company shall have the option to sell, transfer, or otherwise dispose of any portion of the Project Facility that is no longer necessary or convenient for the Project Facility or the operation thereof. In the event such portion of the Project Facility is sold, transferred, or otherwise disposed of by the Company, this Agreement and the underlying exemption shall terminate with respect to such portion of the Project Facility. Notwithstanding the foregoing, in the event the Company enters into a co-ownership arrangement with respect to such portion of the Project Facility, this Agreement and the underlying exemption shall not terminate with respect to such portion.

b. Transferee's Obligation. During the Term, in the event any portion of the Project Facility is sold, transferred, or disposed of by the Company to a third party not entitled to continue the real property tax exemption thereon, the transferee(s) thereof will thereafter be responsible for payment of Real Property Taxes on such portion of the Project Facility except with respect to co-ownership arrangements covered by Section 2.10(a) hereof.

**Section 2.11. Additional Improvements.**

Any new construction, reconstruction, renovation, re-powering (including Project Turbine substitution), maintenance, modernization and/or upgrading of the Project Facility that does not add generating capacity beyond the Project's Installed Capacity as certified pursuant to Section 2.6 hereof, shall be covered by this Agreement and shall not cause any increase in PILOT Payments payable hereunder. Future improvements that do not become part of the

Project Facility or are not directly and solely related to the operation of the Project shall not be covered by this Agreement.

### **Section 3. Offset for Taxes Paid to New Special Districts.**

In the event any of the Tax Jurisdictions creates a new special district in addition to the special districts having jurisdiction over the Project Facility as of the date hereof (the “Existing Special Districts”) or otherwise expands the jurisdiction of any Existing Special District to cover any portion of the Project (“New Special Districts”), starting with the next due PILOT Payment, the annual PILOT Payment and the share of that PILOT Payment owed to the Tax Jurisdiction responsible for forming such New Special District shall be reduced by an amount equal to the Special District Tax payment(s) made by the Company with respect to such New Special District for the Tax Year(s) prior to the next due PILOT Payment.

### **Section 4. Default.**

a. Event of Default. Any one or more of the following events shall constitute an event of default under this Agreement, and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

i. Failure of the Company to make PILOT Payments by the due date; *provided, however,* that the Company, its Affiliates (as defined in the Leaseback Agreement) and/or its Financing Parties (as defined in the Leaseback Agreement) shall have an opportunity to cure such non-payment by paying the full amount of the PILOT Payment, together with any penalties and interest thereon, within thirty (30) days of written demand for such payment;

ii. Failure of any Party, or in the case of the Company, the Company, its Affiliates (as defined in the Leaseback agreement) and/or its Financing Parties (as defined in the Leaseback Agreement), to perform its obligations under this Agreement, other than the payment of PILOT Payments, for a period of sixty (60) days after written notice from another Party to the defaulting Party specifying the nature of such Default and requesting that it be remedied; *provided, however,* that if such failure is not feasibly capable of cure within sixty (60) days, the defaulting Party, or in the case of the Company, the Company, its Affiliates (as defined in the Leaseback Agreement) and/or its Financing Parties (as defined in the Leaseback Agreement), shall be granted additional time to effect cure, provided the effort to cure has been commenced within such sixty (60) period and prosecuted with due diligence; or

iii. Any material warranty, representation or other statement made by or on behalf of any Party contained in this Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement and, in each case, any material adverse effect of such false or incorrect representation or warranty is not eliminated or addressed to the reasonable satisfaction of the non-defaulting Party within a period of sixty (60) days after receipt of notice by the defaulting Party. If such false or incorrect representation or warranty is not feasibly capable of cure within sixty (60) days, the defaulting Party, or in the case of the Company, the Company, its Affiliates (as defined in the Leaseback Agreement) and/or its Financing Parties (as defined in the Leaseback Agreement), shall be granted additional time to effect cure, provided the effort to cure has been commenced within such sixty (60) period and prosecuted with due diligence.



b. Remedies Upon Default. Upon the occurrence of an uncured Event of Default as specified under this Agreement, a non-defaulting Party may, at its sole discretion, elect to (i) terminate this Agreement by providing the defaulting Party at least thirty (30) days' advance written notice of its election to terminate, or (ii) bring an action or proceeding in New York State Supreme Court, County of Lewis, seeking such remedy or remedies as the non-defaulting Party may elect, including, but not limited to, an order directing specific performance of any obligation which the defaulting Party has failed to discharge, including but not limited to the basis for the declaration of Default; *provided, however*, that prior to the exercise of any remedy hereunder, the non-defaulting Party must provide the defaulting Party with at least thirty (30) days' prior written notice of such Default.

c. No Acceleration. Upon the occurrence and during the continuation of an Event of Default hereunder, the Agency and the Tax Jurisdictions shall not have the right to accelerate future PILOT Payments not yet due and payable as of the date of such exercise of remedies.

**Section 5. Notices.**

All notices, demands, requests, consents, or other communications provided for or permitted to be given pursuant to this Agreement shall be in writing and shall be mailed, telecopied, or delivered (or transmitted by electronic mail, with permission) to the Parties at the respective addresses set forth below:

a. If to the Agency:

County of Lewis Industrial Development Agency  
P.O. Box 106  
7642 North State Street  
Lowville, New York 13367  
Attention: Executive Director

with a copy to:

Campany, McArdle & Randall, PLLC  
7571 State Street, PO Box 311  
Lowville, New York 13367  
Attention: Kevin M. McArdle  
Telephone No.: (315) 376-9445

b. If to the Company:

PPM Roaring Brook, LLC  
c/o Avangrid Renewables, LLC  
1125 NW Couch Street, Suite 700  
Portland, Oregon 97209

with a copy to:

Swartz Moses PLLC  
1583 East Genesee Street  
Skaneateles, New York 13152  
Attention: Peter H. Swartz  
Telephone No.: (315) 554-8166

c. If to any of the Tax Jurisdictions:

Addressed to:	With a copy to:
County of Lewis 7660 State Street Lowville, New York 13367 Attn: County Manager	Lewis County Attorney 7660 State Street Lowville, New York 13367 Attn: Joan E. McNichol, Esq.
Town of Martinsburg Route 26 Martinsburg, New York 13404 Attn: Supervisor	Barclay Damon LLP 120 Washington Street, Suite 500 Watertown, New York 13601 Attn: Mark Gebo, Esq.
Lowville Academy and CSD 7668 State Street Lowville, New York 13367 Attn: Superintendent	Harris Beach PLLC 677 Broadway, Suite 1101 Albany, New York 12207 Attn: Robert Ryan, Esq.

All such notices, demands, requests, consents, or other communications shall be deemed to have been duly given when transmitted by telecopy or electronic mail with an Adobe portable document format attachment or personally delivered or, in the case of a mailed notice, upon receipt, in each case addressed as aforesaid. Each of the Parties may from time to time change its address for notices by written notice of such change to the other Parties given in accordance with this Section.

**Section 6. No Binding Effect for the Maple Ridge Wind Farm.**

PILOT Payment and Power Price Adjustment Payment amounts are based on the unique circumstances surrounding the Project and market conditions for new development, and shall not have any payment or value implications, or be binding against the Tax Jurisdictions, for the Maple Ridge Wind Farm.

**Section 7. Escrow and Agency Fee.**

a. Escrow. The Company shall have the right to close the straight-lease transaction in escrow ("Escrow"), with such Escrow to be broken upon the Company's issuance of the Notice of Construction Start, as required by Section 2.1 above.

b. Agency Fee. The Agency's administrative fee for its participation in the Project shall be \$550,000 and paid to the Agency as follows:

- i. \$50,000, payable upon execution of this Agreement;
- ii. \$50,000, payable upon the breaking of Escrow;
- iii. \$112,500, payable on the first anniversary of the breaking of Escrow;
- iv. \$112,500, payable on the second anniversary of the breaking of Escrow;
- v. \$112,500, payable on the third anniversary of the breaking of Escrow; and
- vi. \$112,500, payable on the fourth anniversary of the breaking of Escrow.

## **Section 8. Miscellaneous.**

a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State without giving effect to the conflict of laws principles thereof. All disputes arising out of or in connection with this Agreement shall be decided in the first instance by the New York State Supreme Court, County of Lewis, to the exclusion of all other courts, except that the Parties shall have all appeal rights allowed by State law. The Parties executing this Agreement hereby submit to the jurisdiction of the New York State Supreme Court, County of Lewis, for purposes of all such suits.

b. Severability. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court or regulatory authority of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected so long as the Parties renegotiate the unenforceable or invalid provision(s) in order to accomplish the goal and intent of this Agreement.

c. No Recourse; Limited Obligations of the Parties. All obligations of the Parties contained in this Agreement shall be deemed to be the corporate obligations of the respective Parties and not obligations of any member, officer, official, agent, servant, employee, or affiliate of the Parties. No recourse or claim based upon any obligation contained in this Agreement, or otherwise based on or in respect of this Agreement, shall be had, brought or asserted, directly or indirectly, against any past, present, or future member, officer, official, agent, servant, employee, or affiliate of the Parties. All such liability of any such member, officer, official, agent, servant, employee, or affiliate is hereby, to the extent permitted by law, expressly waived and released by the Parties as part of the consideration for execution of and entry into this Agreement.

d. Entire Agreement; Amendment. This Agreement constitutes the entire agreement and understanding of the Parties and it supersedes all prior agreements and understandings, written or oral, between the Parties. This Agreement may not be amended except by an instrument in writing signed by the Parties hereto.

e. Assignment. This Agreement may be assigned by the Company in connection with an assignment of its interest in the Leaseback Agreement, which assignment shall be subject to all of the terms and conditions of Section 6.3 of the Leaseback Agreement.

f. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon each of the Parties and, as permitted by this Agreement, their respective successors and permitted assigns.

g. Termination.

i. Company Option to Terminate. The Company shall have the option to terminate this Agreement, the Lease Agreement, and the Leaseback Agreement at any time during the term hereof on sixty (60) days' advance notice to the Agency and the Tax Jurisdictions, provided that the Company has made payment of all sums then due and payable to the Agency for the benefit of the Tax Jurisdictions (without acceleration) pursuant to this Agreement, the Lease Agreement, and the Leaseback Agreement.

ii. Election to Terminate Following Event of Default. Subject to Section 4(b) hereof, a non-defaulting Party may elect to terminate this Agreement following an Event of Default.

iii. Payments Upon Termination. Following termination of this Agreement, the parties anticipate that the Tax Jurisdictions will levy or re-levy Real Property Taxes on the Project Facility for all or portions of the Tax Years following the Tax Years covered by the final PILOT Payment. However, in the event Real Property Taxes are levied or re-levied on the Project Facility following such termination for a period of time covered by any Tax Year(s) for which a PILOT Payment has already been made by the Company, the Tax Jurisdictions shall refund to the Company their allocated shares of the portion of such PILOT Payment attributable to the portion of their respective fiscal years following the effective date of termination. In the event this Agreement is terminated effective as of a date after the commencement of the current fiscal year of School District and before the Company's payment of the PILOT Payment falling due on January 31 of that fiscal year, the Company shall, not later than the effective date of termination, make a partial PILOT Payment to the Agency equal to the elapsed portion of that fiscal year at the time of termination multiplied by the portion of the forthcoming PILOT Payment which would have been due the School District pursuant to Section 2.6 above.

h. Execution in Counterpart. This Agreement may be executed by the Parties hereto in several counterparts, and each such counterpart shall be deemed to be an original and all of which constitute together but one and the same agreement. This Agreement may be executed by a signature delivered electronically by facsimile or by the use of Adobe portable document format, which shall be deemed the same as an original signature.

i. Section Headings Not Controlling. The section headings in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Agreement.

j. Effective Date. This Agreement shall be effective as of the date first written above.

k. Right to Contest Assessments. In the event that, during the term hereof, an assessment shall be placed on any portion of the Project by the Town, the Company shall have the rights of an owner of taxable property to challenge any such assessment, including seeking judicial review of an assessment pursuant to Article 7 of the RPTL. The Company shall provide the School District and the County with written notice of any such challenge.

l. Change in Identification Numbers. The change, amendment, increase, or decrease of the tax identification or parcel numbers currently used by the Town to identify or classify all or any part of the Project Facility shall not cause this Agreement to change.

m. Indemnification. The Company shall indemnify, defend and hold the Agency (and its directors, officers, members, agents (except the Company), employees, servants and their successors, representative and assigns) harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever in relation to the Project, including expenses incurred by the Agency (and its directors, officers, members, agents (except the Company), employees, servants and their successors, representatives and assigns) in defending any claim, suit or action which may result as a result of the foregoing.

### **Section 9. Mortgagee Right to Cure.**

a. Whenever any Event of Default hereof shall have occurred and be continuing with respect to this Agreement, the remedies of the Agency shall be limited to the rights hereunder, subject to the rights of Mortgagees (as defined in Section 8(b) hereof) to cure any such Event of Default as set forth below.

b. For the purposes of this Agreement, the terms "Mortgage" or "Mortgages" shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments secured by the Project Facility and used in the jurisdiction in which the Project Facility is located, such as, without limitation, mortgages, deeds of trust, financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a lender may require, and the term "Mortgagee" shall mean the secured party under any of the foregoing instruments.

c. If the Company ("Mortgagor") and/or its successors and assigns, shall mortgage or grant a security interest in its interest in the Project Facility, or a portion thereof, the Agency agrees to join in such Mortgage or security agreement with respect to the Agency's interest in the Project Facility. ANY SUCH MORTGAGE OR SECURITY AGREEMENT SHALL BE A LIMITED, NON-RECOURSE OBLIGATION OF THE AGENCY AND SHALL IN NO EVENT REQUIRE THE PAYMENT BY THE AGENCY TO ANY PARTY OF ANY AMOUNT INCLUDING, BUT NOT LIMITED TO, PRINCIPAL, INTEREST OR ANY OTHER AMOUNT SECURED BY ANY SUCH MORTGAGE. With respect to any such Mortgage, so long as such Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Mortgagee to the Agency, the following provisions shall, subject to and unless otherwise prohibited by all applicable law including, but not limited to, the Act, apply (in respect of such Mortgage and of any other Mortgages which also comply with the above):

i. The Agency shall simultaneously serve a copy of any communications declaring an Event of Default upon the Mortgagee in the manner set forth in Section 4 hereof, and no such notice or other communication to the Company shall be deemed received unless a copy is so served upon the Mortgagee in the manner provided in Section 5 of this Agreement for the giving of notice.


ii. In the event of a Default, the Mortgagee shall have thirty (30) days after notice to the Mortgagee of such default (which notice shall be given in the manner set forth in Section 5 hereof), to cure or to cause to be cured the Default complained of and the Agency shall accept such performance by or at the instigation of such Mortgagee as if same had been done by the Company. Each notice of Default given by the Agency will state the amounts of any payments herein provided that are then claimed to be in default.

iii. If, before the expiration of Mortgagee's cure period as provided in Section 8(c)(ii) hereof, Mortgagee shall have paid or caused to be paid to the Agency, all payments provided for and then in Default, and/or in the case of non-monetary Defaults, shall have commenced or caused to be commenced the cure of such non-monetary Defaults, if any are then in Default, and shall prosecute or cause the prosecution of same to completion with reasonable diligence (collectively, the "Extended Cure Period"), then the Agency shall not exercise any of its rights and remedies hereunder until expiration of the Extended Cure Period.

iv. The Company (and not the Agency) shall give the Mortgagee notice of any arbitration or other proceeding or dispute by or between the parties hereto, and the Mortgagee shall have the right to intervene therein and be made a party to any such arbitration or other proceeding.

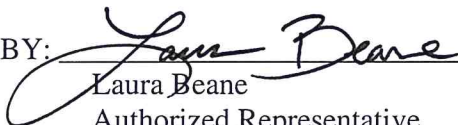
IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the day and year first above written.


**COUNTY OF LEWIS INDUSTRIAL DEVELOPMENT AGENCY**

BY:   
Name: Eric J. Vorkler  
Title: Executive Director

**PPM ROARING BROOK, LLC**

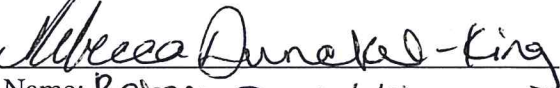
BY: Avangrid Renewables, LLC,  
An Oregon limited liability company,  
Its Manager and Sole Member

BY:   
Name: Laura Beane  
Title: Authorized Representative

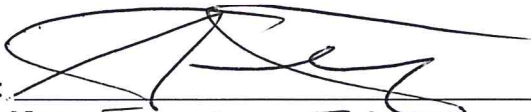
BY:   
Name: Steve Krump  
Title: Authorized Representative

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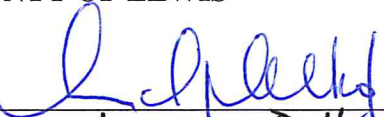
**LOWVILLE ACADEMY AND CENTRAL SCHOOL DISTRICT**

BY:   
Name: Rebecca Dunkel-King  
Title: Superintendent

**TOWN OF MARTINSBURG**

BY:   
Name: Terrence Thisse  
Title: Town Supervisor


**COUNTY OF LEWIS**

BY:   
Name: Larry Dolhof  
Title: Chairman of the Board



STATE OF NEW YORK )  
 )ss:  
COUNTY OF LEWIS )


On the 2nd day of October, in the year 2019, before me, the undersigned, personally appeared Eric S. Viola, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
KEVIN M. MOTT, Notary Public  
Notary Public, State of New York  
No. 4817358  
Qualified in Lewis County  
My Commission Expires April 30, 2022

STATE OF OREGON )  
 )ss:  
COUNTY OF MULTNOMAH )

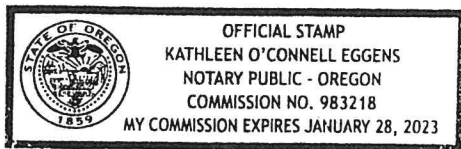
On the 27th day of September, in the year 2019, before me, the undersigned, personally appeared Laura Beane, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.




  
\_\_\_\_\_  
Notary Public

STATE OF OREGON )  
 )ss:  
COUNTY OF MULTNOMAH )

On the 27th day of September, in the year 2019, before me, the undersigned, personally appeared Steve Krump, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



  
\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 )ss:  
COUNTY OF LEWIS )

On the 8th day of October, in the year 2019, before me, the undersigned, personally appeared Rebecca King, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

ERIC J. VIRKLER  
Notary Public, State of New York  
No. 01VI6176307  
Qualified in Lewis County  
Commission Expires October 29, 2023

Eric J. Virkler  
Notary Public

STATE OF NEW YORK )  
 )ss:  
COUNTY OF LEWIS )

On the 23rd day of October, in the year 2019, before me, the undersigned, personally appeared Terrance Thissé personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Angel Mantelli  
Notary Public

ANGEL MANTELLI  
Notary Public, State of New York  
No. 01MA6317934  
Qualified in Lewis County  
Commission Expires 01/12/23

STATE OF NEW YORK )  
 )ss:  
COUNTY OF LEWIS )

On the 3rd day of October, in the year 2019, before me, the undersigned, personally appeared Larry Decker, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

ERIC J. VIRKLER  
Notary Public, State of New York  
No. 01VI6176307  
Qualified in Lewis County  
Commission Expires October 29, 2023

Eric J. Virkler  
Notary Public

## EXHIBIT A

### CALCULATION OF AVERAGE ANNUAL ELECTRICITY PRICE FOR PURPOSES OF DETERMINING POWER PRICE ADJUSTMENT PAYMENT

Calculation of weighted average annual real-time electricity price (assuming the Project sells its power without a power purchase agreement):

- Step 1: For each hour of the involved calendar year, multiply the actual production of the Project (measured in MWh) by the corresponding hourly NYISO Zone E real-time LBMP price for electricity (the "Hourly Project Revenue").
- Step 2: Sum up the Hourly Project Revenue for the calendar year ("Annual Project Revenue").
- Step 3: Divide Annual Project Revenue by the total actual annual production of the Project (measured in MWh) to arrive at the weighted average annual real-time electricity price for the Project (the "Weighted Average Annual Project Electricity Price").
- Step 4: If the Weighted Average Annual Project Electricity Price for a calendar year is greater than \$45/MWh, a Power Price Adjustment Payment shall be owed for that calendar year, payable by March 1 of the succeeding calendar year as provided in Section 2.6(d).

**EXHIBIT B**

**FORM OF INSTALLED CAPACITY CERTIFICATION**

[Date]

County of Lewis  
7660 State Street  
Lowville, New York 13367  
Attn: County Manager

Lowville Academy and Central School District  
7668 State Street  
Lowville, New York 13367  
Attn: Superintendent

Town of Martinsburg  
Route 26  
Martinsburg, New York 13404  
Attn: Supervisor

County of Lewis Industrial Development Agency  
P.O. Box 106  
7642 North State Street  
Lowville, New York 13367

Re: Roaring Brook Wind Farm Installed Capacity Certification.

PPM Roaring Brook, LLC hereby certifies that as of date of this letter, the Roaring Brook wind-powered electric generating facility (the "Project") has an installed nameplate electric generating capability ("Installed Capacity"), measured in megawatts ("MW"), of [\_\_\_] MW.

PPM Roaring Brook, LLC

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