

#19-73

Execution Version

**AGREEMENT CONCERNING REIMBURSEMENT AND
SHARING OF CERTAIN COSTS RELATED TO THE PRAIRIE VIOLET WIND FARM**

This Agreement to reimburse and share certain costs (this "*Agreement*") is made and entered into on the date opposite the last required signature on Page 4 (the "*Effective Date*") by and between Prairie Violet Wind, LLC, a Delaware limited liability company (the "*Wind Company*"), Marshall County, Illinois (the "*County*"), the Belle Plain Township Road District ("*Belle Plain TRD*"), the Bennington Township Road District ("*Bennington TRD*"), and the Evans Township Road District ("*Evans TRD*"). The Township Road District entities may be referred to herein collectively as the "*Road Districts*." The Wind Company, the County and the Road Districts may be referred to herein as a "*Party*" and collectively as the "*Parties*."

RECITALS

- A. The Parties are in discussions regarding a road use agreement to address, among other things, (1) necessary work on the County's and the Road Districts' roads, bridges, culverts, and other infrastructure to build, operate, maintain and decommission the proposed wind farm commonly referred to as the "*Prairie Violet Wind Farm*", (2) transport heavy equipment and materials in vehicles which will exceed the design limits of the local roads, in particular the weight, number and size of the construction vehicles will exceed the design limits of the local roads, (3) build, operate, and maintain an underground electrical cable network laid within the County's and the Road Districts' road rights-of-way, and (4) install driveway entrances from the County's and the Road Districts' roads (the "*Road Use Agreement*").
- B. The County and the Road Districts have advised the Wind Company that they have retained the law firm of Klein, Thorpe & Jenkins, Ltd. of Streator, Illinois as outside legal counsel (the "*Attorney*"), to assist with the review, negotiation, and execution of the Road Use Agreement (the "*Services*") and the County and the Road Districts have and will incur fees and costs with the Attorney.
- C. The Parties desire to set forth their agreement regarding the reimbursement by the Wind Company for the legal fees and costs incurred by the County and the Road Districts with the Attorney.

NOW THEREFORE, in addition to the foregoing and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows herein.

AGREEMENT

1. **Attorney's Fees.** The Wind Company shall reimburse the County and the Road Districts for the reasonable out-of-pocket legal fees and expenses of the Attorney actually incurred by the County and the Road Districts in connection with the Services based on the rates placed in Exhibit A (the "*Attorney's Fees*"), including Attorney's Fees incurred prior to the execution of this Agreement and the Attorney's Fees related to the negotiation and execution of this Agreement.

2. **Invoices.** The Parties agree County shall act as the lead agency and shall oversee the administration and payment of the Attorney's Fees. The Attorney shall submit invoices for the Attorney's Fees to the Wind Company. Invoices should be sent to:

Prairie Violet Wind, LLC
ATTN: Land Department
717 Texas Avenue, Suite 1000
Houston, TX 77002
Tel: 713-830-2000
Fax: 713-830-2001

With a copy to:

Calpine Corporation
ATTN: Chief Legal Officer
717 Texas Avenue, Suite 1000
Houston, TX 77002
Tel: 713-830-2000
Fax: 713-830-2001

The Wind Company shall pay the invoices within thirty (30) calendar days after receipt of such an invoice. The invoices may be redacted as necessary to exclude any description of protected attorney/client communications, but shall contain sufficient detail to identify the work performed and the time spent on such work in support of the invoice amount. If the Wind Company disputes any portion of an invoice, it shall notify the County Engineer in writing of the amount in dispute and the reason for its disagreement within twenty-one (21) calendar days after receipt of the invoice, and shall concurrently pay or reimburse the portion not in dispute. In the event the Wind Company shall fail to pay or reimburse any undisputed invoice within thirty (30) calendar days of receipt of an invoice or reimbursement request, the County and the Road Districts in their sole discretion may suspend further review, negotiations, or discussion with the Wind Company until the amount owed has been paid.

3. **Engagement of Attorney.** The County and the Road Districts shall have the sole responsibility to hire and manage the Attorney in connection with the Services.

4. **Services.** The Services provided by the Attorney subject to reimbursement hereunder shall be limited to those services reasonably necessary to assist the County and the Road Districts with the review, negotiation, and execution of this Agreement and the Road Use Agreement.

5. **Notices.** Notices under this Agreement shall be (i) in writing; (ii) deemed given (a) when personally delivered to the recipient or, (b) one (1) business day after being sent by email provided the recipient provides a written response acknowledging the receipt of the notice served by email or, (c) two (2) business days after delivery to the recipient by a reputable overnight courier or (d) on the date of personal delivery; and (iii) addressed as follows:

If to the County:

Marshal County Highway Department
552 State Route 25
Lacon, Illinois 61540
Attention: County Engineer
309-246-6401
psloan@marshallcountyillinois.com

If to Bennington Township Rd. Dist.

Dan Knight, Highway Commissioner
P.O. Box 262
Toluca, IL 61369
309-830-4938

dcknight85@gmail.com

If to Belle Plain Township Rd. Dist.

Jim Lutz, Highway Commissioner
337 State Route 262
Washburn, IL 61570
*INSERT PHONE
*INSERT EMAIL

If to Evans Township Rd. Dist.

John Lauf, Highway Commissioner
208 S. Chestnut Street
Wenona, IL 61377
815-257-4442
johnelauf@gmail.com

If to Wind Company:

Prairie Violet Wind, LLC
ATTN: Chief Legal Officer
717 Texas Avenue, Suite 1000
Houston, TX 77002
Tel: 713-830-2000
Fax: 713-830-2001

**With a copy of notices to the County
and/or the Road Districts to:**

Sheryl Churney
Klein, Thorpe & Jenkins, Ltd.
7 Northpoint Drive
Streator, IL 61364
815-672-3116
shchurney@ktjlaw.com

Any Party may change its address (and the person(s) to whom notice is to be sent) for purposes of this Section by giving written notice of such change to the other Parties in the manner provided in this Section.

6. **Term of Agreement.** This Agreement shall commence upon the Effective Date and shall terminate at the earlier of (a) one (1) year from the Effective Date; (b) the delivery of written notice of termination by the Wind Company in accordance with Section 5 or (c) the execution of the Road Use Agreement (the earliest of such dates being deemed the "*Termination Date*"). The Wind Company shall not be obligated to reimburse the County or the Road Districts for any Attorney's Fees incurred after the Termination Date under this Agreement and provided, however, that the Wind Company's obligations to pay for Attorney's Fees incurred by the County and the Road Districts in relation to the Services prior to the Termination Date shall survive any such termination.

7. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, without giving effect to the principles of conflicts of laws. The Parties agree that any disputes arising out of, related to, or connected with this Agreement shall be litigated, if at all, solely in the Circuit Court for the Tenth Judicial Circuit, Marshall County, Illinois.

8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon

the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by e-mail or facsimile shall be as effective as delivery of a manually signed counterpart to this Agreement.

9. **Amendment.** This Agreement may not be modified or amended except by a writing signed by the Parties.

10. **Severability.** Should any provision of this Agreement be held to be invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by such holding.

11. **Authority.** The Parties hereby represent and warrant to each other that each person or entity signing this Agreement is authorized to do so and has the unrestricted right, power and authority to enter into and perform its obligations under this Agreement.

12. **Default and Remedies.** Upon an uncured default by a Party under this Agreement, the non-defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, all of which remedies shall be cumulative.

IN WITNESS WHEREOF, the Wind Company, the County and the Road Districts have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date set forth herein.

PRAIRIE VIOLET WIND, LLC,
a Delaware limited liability company

BELL PLAIN TOWNSHIP ROAD DISTRICT

(Signature)

By: William Whitlock
Name: William Whitlock
Title: Vice President
Date: August 15, 2019

By: _____
Name: Jim Lutz
Title: Highway Commissioner
Date: _____, 2019

MARSHALL COUNTY, ILLINOIS

BENNINGTON TOWNSHIP ROAD DISTRICT

By: Gary Kroeschen
Name: Gary R. Kroeschen
Title: County Board Chairman
Date: 10/10, 2019

By: _____
Name: Dan Knight
Title: Highway Commissioner
Date: _____, 2019

and

EVANS TOWNSHIP ROAD DISTRICT

By: Paul Bauer
Name: Paul Bauer
Title: State's Attorney
Date: 10/10, 2019

By: _____
Name: John Lauf
Title: Highway Commissioner
Date: _____, 2019

EXHIBIT A

Attorney Rates

ATTORNEY RATES:

\$300.00 (Partner)
\$255.00 (Sr. Associate)
\$245.00 (Associate)
\$170.00 (Sr. Paralegal)
\$160.00 (Paralegal)
\$135.00 (Law Clerk)

MISCELLANEOUS EXPENSES:

Copying: 20¢ per page
Printing: actual cost
Delivery: actual cost
Filing fees: actual cost
Mileage: current IRS rate
Computer research: actual cost
Secretarial: not charged
Facsimile: not charged