

**DRAFT**

## AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS

This AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS (this “**Agreement**”) is made and entered into this \_\_\_<sup>rd</sup> day of October 2023 (the “**Effective Date**”), between Lazbuddie Wind Energy LLC (“**Developer**”), a Delaware limited liability company with offices at c/o Invenergy LLC, 1 S. Wacker Dr., Suite 1800, Chicago IL 60606, and Lamb County, Texas (the “**County**”), acting through its duly elected officers. Developer and the County may be referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties**”.

### RECITALS

1. Developer intends to develop a wind-powered electric generating facility with a planned nameplate capacity of up to approximately 265 MW (but no less than 200 MW), located primarily in Parmer County (the “**Project**”).
2. The County is responsible for the maintenance of certain roads within Lamb County.
3. In connection with the development, construction, operation, maintenance, and decommissioning of the Project, it will be necessary for Developer and its contractors and subcontractors or designees to: (i) transport heavy equipment and materials over designated haul routes located in the County, which may in certain cases be in excess of the design limits of such roads; (ii) transport personnel, equipment, and materials on such roads; (iii) widen such roads and make certain modifications and improvements (both temporary and permanent) to such roads to permit such equipment and materials to pass; and (iv) place certain electrical cables for the Project adjacent to, under, or across certain roads for the purposes of the collection, distribution, and transmission of electricity to and from, and between and among various parts of, the Project.
4. The County and Developer wish to enter into an agreement for the use, repair, and improvement of the Designated Roads and their appurtenant rights-of-way (as defined in Appendix A), all in accordance with the terms and conditions set forth herein.

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

### ARTICLE I DEFINITIONS

Capitalized terms used in this Agreement and not otherwise defined shall have the meanings assigned to them in Appendix A.

### ARTICLE II USE OF DESIGNATED ROADS BY DEVELOPER

**2.1 Use of Designated Roads by Developer.** The County hereby acknowledges and agrees that, in connection with the development, construction, operation, maintenance, and decommissioning of the Project, the Developer Parties may use, non-exclusively, all public

County roads. Use of public County roads that are not Designated Roads shall be restricted by all applicable limitations, rules, ordinances, and regulations (together the "Legal Restrictions") concerning their use, whether federal, state, County, or those of any other governmental entity or agency having jurisdiction over such roads. The Developer Parties may use all Designated Roads at any time of day, seven (7) days a week. Such use may include (but is not limited to) the transportation of personnel, equipment, and materials to and from the Project and shall not be subject to Legal Restrictions of the County, except as expressly provided in this Agreement (including Appendix B). From time to time, Developer may request that additional roads be included as Designated Roads by (A) submitting such a request to the County in writing, accompanied by an updated version of Appendix B that includes such additional roads, and (B) performing an Initial Evaluation on such additional roads. Upon Developer's submission of such a request, the County shall promptly (A) review such request and (B) unless there exists a material defect in the form of the updated Appendix B or substantial reasons related to public safety why such request should not be granted, provide written notice that such request has been granted, whereupon Appendix B shall be deemed automatically amended and restated as such updated version of Appendix B without any further action required by either Party.

**2.2 Incidental Use.** The Parties recognize that, while Developer does not currently anticipate use of roads within Lamb County during construction of the Project other than Designated Roads and certain federal and state highways, the Developer Parties may, nevertheless, make some incidental use of roads other than Designated Roads. All Repairs of damage caused by such incidental use shall be dealt with by adding such road to Appendix B, as provided for in Section 2.1, and performing Repairs in accordance with Section 3.2, as if such road had been a Designated Road when such damage occurred.

**2.3 County Designee; Commencement of Construction; Construction Period Meetings.** Within ten (10) days after the execution of this Agreement, the County shall provide the name and contact information for the County Designee, who shall have authority to act on behalf of the County. Developer shall provide to the County Designee at least two Business Days' prior written notice of the commencement of construction on Designated Roads. Beginning with commencement of construction of the Project, Developer and the County Designee shall meet from time to time upon the reasonable request of either Party to discuss the expected use of the Designated Roads, including the construction schedule and haul routes to be used. Developer shall provide the County Designee at least two Business Days' prior written notice of the commencement of Improvements or Repairs on the Designated Roads.

**2.4 Evaluation of Designated Roads.** Except as otherwise stated in Appendix C, Developer shall conduct an Initial Evaluation of Designated Roads prior to commencement of construction of the Project. Developer will notify the County Designee in advance of, and allow the County Designee to participate in, the Initial Evaluation of Designated Roads. During the Initial Evaluation, the entire length of the Designated Roads shall be videotaped and photographs taken by Developer. In addition, the County will provide Developer, if available, with copies of any plans, cross-sections, and specifications relevant to the existing structure of the Designated Roads. Developer will reimburse the County for all documented, reasonable, third-party out-of-pocket amounts actually incurred by the County due to the Initial Evaluation. If, pursuant to Section 2.1, Developer submits to the County an updated version of Appendix B that designates an additional road as a Designated Road, Developer shall perform an Initial Evaluation with respect to such additional Designated Road. The costs of all Initial Evaluations will be borne by Developer.

Evaluations in addition to Initial Evaluations shall be conducted upon mutual agreement of the Parties.

**2.5 Fugitive Dust.** Developer shall be responsible for addressing Significant Fugitive Dust created by the Developer Parties. When requested by the County, Developer shall reasonably address or minimize Significant Fugitive Dust using water, calcium chloride, chemicals, or appropriate other commercially available, reasonable means in Developer's reasonable discretion and subject to County's reasonable satisfaction.

**2.6 Road Closures.** Developer shall use reasonable efforts to avoid the closure of any County road. Nevertheless, Developer shall be permitted to close Designated Roads for such periods as are reasonably necessary (A) in the interest of safety, (B) to permit the passage of large loads or (C) in connection with the installation of Improvements or Repairs; *provided*, that Developer shall have provided the County with twenty-four (24) hours' prior notice of any planned road closure and obtained the County's approval thereof, which approval shall not be withheld except for reasons of public safety or substantial and unavoidable public inconvenience. Notice to the County Designee shall satisfy such requirement, provided that such notice is given by both telephone and either fax or e-mail.

### **ARTICLE III MAINTENANCE AND REPAIR OF DESIGNATED ROADS**

#### **3.1 Maintenance of Designated Roads.**

- (a) The County shall, in a timely fashion and at no additional cost to Developer, maintain Designated Roads as determined by the County Commissioners and in accordance with the County's standard practices for road maintenance, having due regard for safety, prevailing and predicted weather conditions, and the presence of emergency conditions, including without limitation the removal or plowing of snow.
- (b) Developer shall grade and maintain all non-paved Designated Roads during construction of the Project, including such measures for Significant Fugitive Dust as provided in Section 2.5.

**3.2 Repair of Designated Roads.** Developer shall be responsible for Repairs to Designated Roads for damage caused by Developer Parties. Developer shall not be responsible for, or required to Repair, any damage to a County public road that is not caused by a Developer Party or any Repair of damage that results from a pre-existing condition that made or makes the Designated Road or appurtenance inadequate for, or that would cause it to fail under, normal use. Developer shall notify the County of damage caused by the Developer Parties, and of any other damage noted by Developer, to the Designated Roads and request the County's authorization to conduct Repairs for which Developer is responsible pursuant to this Section 3.2. Developer shall provide the County with reasonable details as to the nature, scope, and schedule of Repairs of damage to Designated Roads that Developer desires to perform, and unless the County notifies Developer in writing that substantial County interests would not be properly served by allowing Developer to make such Repairs, the Parties shall agree upon the manner in which Developer may proceed with such Repairs. If the Parties cannot so agree within a reasonable period, taking into account public safety, public inconvenience, and Developer's construction schedule, the County shall perform the

Repairs in a timely fashion, in accordance with the County's standard practices for road repairs and any specific needs of Developer that Developer would address if Developer were making the Repairs, and otherwise having due regard for safety, prevailing and predicted weather conditions, Developer's construction schedule, and the presence of emergency conditions. Prior to the commencement of a Repair, whether by Developer or by the County, the Developer Representative and the County Designee shall, in response to a request by either Party, meet to review the damage in question in relation to any Initial Evaluation or any more recent subsequent evaluation, as applicable, and to discuss the nature, scope, and schedule of Repairs. The Parties shall rely upon any available Initial Evaluation or any subsequent similar evaluation, as applicable, as a benchmark by which to determine (i) the condition of Designated Roads prior to commencement of construction of the Project, (ii) whether the subject damage was caused by the Developer Parties and (iii) whether a Repair was required and performed in accordance with this Agreement. If the County performs Repairs of damage caused by the Developer Parties, Developer shall reimburse the County the documented reasonable costs of Repairs in accordance with Appendix D. At any time during or after completion of a Repair, the Parties shall, upon the request of either Party, promptly conduct a joint inspection of the Repair, or the progress thereof, to determine that the Repair is being performed in accordance with County standards. Upon completion of Repairs performed by the County for which reimbursement is owed by Developer pursuant to this Agreement, but no more often than monthly, the County shall deliver an invoice to Developer in accordance with the invoicing procedures attached hereto as Appendix E. Developer shall pay undisputed invoiced amounts within thirty (30) days after receipt of such invoice. Developer's sole responsibility for Repairs is to return Designated Roads to a better or substantially similar condition as indicated in the Initial Evaluation, to the County's reasonable satisfaction.

**3.3 Collection System Cabling.** The County acknowledges and approves the Electrical/Communications Installation as set forth in Appendix F. In instances where the Electrical/Communications Installations are required to cross a County road, Developer shall design and construct such crossing so as not to permanently interfere with the intended use of such road, public safety, or considerations for future road maintenance by the County. Developer shall also provide such reasonable documentation of the proposed crossings, as set forth in Appendix F, as the County may require. The County shall not require Electrical/Communications Installation cabling to be buried deeper than thirty-six (36) inches except (i) where such a cable crosses a County road, it shall be buried to a minimum depth of forty-two (42) inches, or (ii) as required by state or federal law, whichever is deepest. Electrical/Communications Installations that cross County roads shall be directional bored, unless otherwise agreed by the Parties. For above ground Electrical/Communications Installations, the County shall not require Developer to install such installations greater than the local, state, and/or federal electrical code(s) requires. For the avoidance of doubt, Developer may close a Designated Road to the extent reasonably necessary to carry out this Section 3.3.

**3.4 Road Crossings with Construction Equipment.** The County hereby acknowledges and approves that Developer will need to cross the County roads with heavy construction equipment, such as, but not limited to, cranes, during the construction, operation, maintenance, and decommissioning of the Project. Developer will use commercially reasonable efforts to protect the existing County road from damage during such crossings and shall be responsible for any damages and subsequent Repairs in accordance with Section 3.2.

**3.5 Failure to Maintain or Repair.** With respect to a Designated Road, in the event that the County does not perform maintenance as required by Section 3.1 or does not perform Repairs undertaken by the County pursuant to Section 3.2, Developer may request in writing that the County permit Developer to perform such maintenance or Repair, in which case Developer shall also provide the County with reasonable details as to the nature, scope, and schedule thereof. The Parties shall cooperate so as to permit the County to respond promptly to such a request, which the County shall endeavor in good faith to do. If the County does not object to such request within five (5) business days (or within two (2) business days if exigent circumstances require [e.g., if significant Project maintenance or construction delays might otherwise result]), or if the County grants such request, Developer may perform, or cause to be performed, such maintenance or Repair. If Developer performs such maintenance or Repair, Developer shall complete such maintenance or Repair to standards that are the same as or better than applicable County standards in all material respects and shall cooperate to permit the County to inspect such maintenance and Repair work during and after its performance. The County shall not be required to reimburse or otherwise compensate Developer for performing any such maintenance or Repair. In the event a Repair is not timely performed and it interferes with Developer's construction and/or maintenance schedule, Developer shall have the right to utilize alternative routes on public or private roads as may be required to mitigate any such adverse effect on its schedule, subject to Developer's obligation to repair in accordance with Section 3.2.

#### **ARTICLE IV IMPROVEMENTS AND MODIFICATIONS TO DESIGNATED ROADS**

**4.1 In General.** Developer shall complete Improvements in accordance with this Article IV. Developer shall not be required to complete any improvement or modification, or perform any road work, that is not required by this Article IV, or in the case of Repairs, by Section 3.2, or that is expressly excluded from Developer's scope of work in Appendix B or in the Plans, unless such improvement, modification, or work is required by applicable law.

**4.2 Current Improvements.** Developer shall complete Current Improvements to certain Designated Roads prior to and/or during the construction of the Project and in accordance with Appendix B and the Plans. The County acknowledges that it has received from Developer, and is satisfied with and approves, Plans that are 30% complete for collection, 10% complete for turbines, and 10% complete for transmission. The Parties agree and acknowledge as follows:

- (a) Developer will develop Plans using an engineer licensed in the State of Texas;
- (b) such Plans are not final and shall be revised so as to finalize them and take into account any need for changes as the Plans are finalized and conditions of the Designated Roads and Developer's construction plans change or become better known;
- (c) it is, nevertheless, the Parties' intention that the Current Improvements be similar to the Current Improvements described on the Plans discussed and approved to date;
- (d) the Parties shall consult and cooperate reasonably so as to permit the County's review and approval of final (100% complete) Plans in a timely manner to not disrupt or delay Developer's construction schedule;

- (e) the Parties shall consult and cooperate with regard to the proposed material (including, but not limited to, necessary caliche and chip seal) to be used by Developer to Repair or improve County roads as provided herein; *provided* that so long as such material is not of lesser quality or product than currently used by the County on the Designated Roads, such consultation and cooperation shall not result in disruption or delay to Developer's construction schedule or increase costs borne by Developer hereunder; and
- (f) Developer may make changes to the Plans with the consent of the County and is in no way obligated to complete such Current Improvements if deemed unnecessary by Developer.

**4.3 Driveway Entrances.** Developer will construct new roads on private lands in order to access proposed Project facilities; these roads are for use by (i) Developer only for the construction, operation, maintenance, and decommissioning of the Project and (ii) by the landowner on whose property the private road is constructed. The County hereby acknowledges and grants Developer the right to construct and/or install new driveway entrances from the County roads to these new access roads. Developer shall design, procure, and install driveway culverts to the required size, length, and depth as reasonably deemed necessary by the County, in accordance with the requirements of this Agreement.

**4.4 Future Improvements.** After completion of the construction of the Project and for so long as the Project has not permanently ceased commercial operation, Developer may perform, but shall not be obligated to perform, Future Improvements; *provided*, however, that such Future Improvements shall be subject to the County's customary review and permitting processes, if any, pursuant to statutory and regulatory authority, and in any case, processes applied consistently and in a fashion that treats Developer in a manner similar to other industrial users of County roads.

**4.5 County Jurisdiction.** Nothing in this Article IV or this Agreement shall be construed as limiting or abrogating the County's jurisdiction or duties under applicable law concerning the construction, maintenance, and repair of highways and bridges within the County.

## **ARTICLE V NO CONSEQUENTIAL DAMAGES**

To the extent allowable under state law, the Parties waive all claims against each other (and against each other's parent company and affiliates and their respective members, shareholders, officers, directors, agents, and employees) for any consequential, incidental, indirect, special, exemplary, or punitive damages (including loss of actual or anticipated profits, revenues, or product loss by reason of shutdown or non-operation; increased expense of operation, borrowing, or financing; loss of use or productivity; or increased cost of capital), regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability, or any other legal theory. This Article V shall be fully effective with respect to the subject matter of this Agreement.

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

**6.1 Term of Agreement.** The term of this Agreement shall be from the Effective Date until six (6) months after the Project reaches Commercial Operations, unless either Party terminates this

Agreement as herein provided. Notwithstanding anything herein to the contrary, the following provisions of this Agreement shall survive its termination or expiration for so long as the Project has not permanently ceased commercial operation: (i) Section 3.1, Section 3.3, and Section 3.4, (ii) the right of the Developer Parties under Article IV (but not any obligation) to perform Future Improvements, (iii) this Article VI, and (iii) Article IX, Article X, and Article XI. In the event major maintenance or repairs are required during operation of the Project, the Parties agree to enter into a new Agreement on substantially the same terms and conditions as contained herein.

**6.2 Remedies Upon Default.** Whenever an Event of Default shall have occurred, the Party not in default shall have the right to terminate this Agreement, subject to any right to cure of a Permitted Collateral Assignee, and take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce the performance or observance of any obligations, agreements, or covenants of the Party in default under this Agreement. Notwithstanding the foregoing, if the Project is still in Commercial Operation, no termination of this Agreement by the County shall have the effect of terminating the rights granted to Developer in Section 3.3 or give County the right to require Developer to remove any aspect of the Electrical/Communications Installation that crosses a County road.

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

**6.4 Disputes.** If a dispute arises under this Agreement, any Party may commence a proceeding at law or in equity to resolve such dispute.

## ARTICLE VII FORCE MAJEURE EVENT

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

- (a) the affected Party shall give the other Party written notice describing the particulars of the occurrence, with written notice given promptly after the occurrence of the event, and in no event more than fifteen (15) Business Days after the affected Party becomes aware that such occurrence is a Force Majeure Event; *provided*, however, that any failure of the affected Party to provide such written notice within such five (5) Business Day period shall not waive, prejudice, or otherwise affect such Party's right to relief under this Article VII;
- (b) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;
- (c) the Party whose performance is delayed or prevented will proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance; and
- (d) when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party will give the other Party written notice to that effect.

**ARTICLE VIII  
PERMITTING AND LAND RIGHTS**

**8.1 Review, Approval, and Permitting.**

Except as expressly set forth in Section 3.3, Section 4.2, Section 4.3, and Section 8.2, the County represents, warrants, and covenants that:

- (a) the County has fully and completely reviewed and approved the Plans (as provided to the County as of the Effective Date) and permits Developer's use, maintenance, and upgrading of the Designated Roads, the Electrical/Communications Installation, and technical plans for all of the foregoing, as described in this Agreement and the Plans;
- (b) as of the Effective Date, no further licenses, permits, or approvals are required by or from the County for such use, maintenance, upgrading, completion of the Project, including the Improvements and the Electrical/Communications Installation, or the technical plans, except as provided herein;
- (c) in the event that a requirement for review and/or approval of Plans by, or for any other approval, license, permit, authorization, or consent from, the County comes into effect that would otherwise be applicable to the Project, the County shall, to the maximum extent permissible by law, apply such requirement proactively so as to "grandfather" the Project and maintain the effectiveness of Section 8.1(a) and Section 8.1(b) as written; and
- (d) as of the Effective Date, the County has no land use ordinances, including ordinances relating to zoning, setbacks, buffer zones, noise restrictions, glare, reflection or visibility requirements, or wind project decommissioning, that apply to the Project.

**8.2 Land Rights.** Subject to the terms and conditions of this Agreement, the Parties acknowledge that the Developer Parties may require certain Private Land Rights in order to conduct maintenance or complete Improvements to Designated Roads, complete the Electrical/Communications Installation, or access private lands necessary for any of the foregoing. Except for such Private Land Rights and subject to the terms and conditions of this Agreement, the County represents and warrants that the County possesses and grants to Developer all Land Rights required, and that no further Land Rights are required for Developer (i) to use the Designated Roads, (ii) to maintain and complete Improvements of the Designated Roads, and (iii) to complete the Electrical/Communications Installation insofar as the Designated Roads are affected thereby.

**8.3 Review and Inspection.** Upon request by Developer, the County Designee shall review plans for any road work proposed by Developer and inspect road work completed by Developer under this Agreement for compliance with County specifications and right-of-way or easement restrictions. If the County Designee is able to confirm such compliance, the County Designee shall promptly so notify Developer in writing. On termination of this Agreement, the County Designee shall provide an acknowledgement and release that Developer has performed its obligations under this Agreement and that Developer is released from any and all ongoing maintenance activities on the Designated Roads, other than those that expressly survive the termination of this Agreement.



## ARTICLE IX INDEMNITY

To the fullest extent permitted by law, Developer (as “**Indemnitor**”) shall indemnify and hold harmless the County, each of its elected officials, all of its servants, agents, and employees, and any person or legal entity designated by the County to perform any function required under this Agreement (collectively, “**Indemnitee**”) from and against all Losses, to the extent that such Losses may be caused by or arise out of performance of work upon County roads by Indemnitor or result from any breach of any representation or warranty made in this Agreement by Indemnitor.

## ARTICLE X AVOIDING PARTIAL REPAIR OR IMPROVEMENTS OF ROADS

As a part of the Plans, Developer agrees that where Developer intends to repair, maintain, replace, improve and/or upgrade any portion of a County road, Developer will cooperate in good faith with the County to consider the need to repair, maintain, replace, improve, and/or upgrade such County road for the full length of such County road to the next intersecting County road or highway.

## ARTICLE XI MISCELLANEOUS PROVISIONS

**11.1 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to the conflict of laws provisions in such state.

**11.2 Compliance with Law.** Developer agrees that all Repairs, Improvements, and the Electrical/Communications Installation shall comply with all applicable laws.

**11.3 Amendments and Integration.** This Agreement (including Appendices) shall constitute the complete and entire agreement between the Parties with respect to the subject matter hereof. No prior statement or agreement, oral or written, shall vary or modify the written terms hereof. Except as set out in Section 2.1 of this Agreement, this Agreement may be amended only by a written agreement signed by the Parties.

**11.4 Assignment.**

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

(b) Developer may, without the consent of the County, assign this Agreement or any or all of its rights, interests, or obligations under this Agreement; *provided*, that such assignment

shall be in connection with the conveyance or lease of the Project and Developer's assignee agrees in writing to be bound by the terms of this Agreement. Upon assignment pursuant to this subsection (b), and with no further action by Developer or the County, Developer shall be released from all liability for and obligations under this Agreement.

- (c) Developer may, without the consent of the County, pledge, mortgage, grant a security interest in, or otherwise collaterally assign this Agreement or any or all of its rights, interests and obligations under this Agreement to a Permitted Collateral Assignee. In connection with any such collateral assignment to a Permitted Collateral Assignee, the County shall, upon the request of Developer, deliver to Developer and the Permitted Collateral Assignee without delay a consent agreement and/or an opinion of counsel in a form reasonably requested by Developer and the Permitted Collateral Assignee and which shall contain customary provisions.
- (d) Developer may, without the consent of the County, assign this Agreement or any or all of its rights, interests, and obligations under this Agreement to any corporation, partnership, limited liability company, or other business entity that acquires all or substantially all of the assets used in connection with the Project or (ii) any corporation, partnership, limited liability company, or other business entity that acquires all or a portion of the membership interests in Developer; *provided*, in each case, that such Developer assignee agrees in writing to be bound by the terms of this Agreement.

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

To Developer: Lazbuddie Wind Energy LLC  
c/o Invenergy LLC  
1 S. Wacker Dr., Suite 1800  
Chicago IL 60606  
Attn: Ryan Bartecki

To the County: Lamb County Judge  
Lamb County Courthouse  
100 6th Dr,  
P.O. Box 506  
Littlefield, TX 79339

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

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

**11.7 Nature of Relationship.** The status of Developer under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, each Party and its officers, agents, employees, representatives, and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives, or servants of the other Party. Each Party accepts full responsibility for providing to its own employees all statutory coverage for worker's compensation, unemployment, disability, or other coverage required by law. Notwithstanding the foregoing, it is not the Parties' intention to establish a relationship whereby the County is, and notwithstanding anything to the contrary in this Agreement, the County shall not be, a contractor of Developer with respect to Repairs. Rather, the County shall perform Repairs as part of its ongoing maintenance of County roads, and Developer's only obligation with respect to Repairs performed by the County shall be to reimburse the County in accordance with this Agreement.

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

**11.9 Headings and Construction.** The section headings in this Agreement are inserted for convenience of reference only and shall in no way affect, modify, define, or be used in construing the text of this Agreement. Where the context requires, all singular words in this Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement may have been prepared by one of the Parties, the Parties confirm that they and their respective counsel have reviewed, negotiated, and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole, and any presumption that ambiguities are to be resolved against the primary drafting Party shall not apply. All Appendices and Attachments referenced in this Agreement are incorporated in and form a part of this Agreement.

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

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

**11.12 Confidentiality.** Except to the extent in conflict with laws relating to freedom of information or public access to governmental information, and only to such extent, all data and information acquired by the County from the Developer Parties (or their affiliates, representatives, agents, or contractors) in connection with the performance by Developer of its obligations hereunder, including information regarding the Project, shall be confidential and will not be

disclosed by the County to any third party, and upon request of Developer will be returned thereto. Notwithstanding the foregoing, the Parties acknowledge and agree that such confidential information may be disclosed to third parties as may be necessary for Developer to perform its obligations under this Agreement and that Developer may disclose such confidential information to its investors, potential investors, lenders, and potential lenders (including any tax equity investors). This provision will not prevent the County from providing any confidential information as required by open records laws, open meetings laws, or other laws regarding public information, or in response to the reasonable request of any governmental agency charged with regulating such Party's affairs; *provided*, that in the case of a request by such a governmental agency, if feasible, the County shall give prior notice to Developer of such disclosure and, if so requested by Developer, shall cooperate reasonably, at Developer's expense, in Developer's efforts (i) to oppose or resist the requested disclosure, as appropriate under the circumstances, or (ii) to otherwise make such disclosure subject to a protective order or other similar arrangement for confidentiality.

**11.13 Representative of Developer.** The Developer Representative shall act as the manager and coordinator of this Agreement on Developer's behalf and as liaison for Developer's communications with the County and the County Designee. The initial Developer Representative shall be Ryan Bartecki.

**11.14 Safety.** Developer shall perform the work hereunder in a safe manner and shall obey all safety requirements of the County, and all applicable federal, state, and County laws, rules, and regulations, that may be established from time to time. While work is being done on a Designated Road, Developer shall cause the Developer Parties to (i) place signs stating that people and vehicles are entering a construction area and (ii) identify certain hazards that may be present on the Designated Road. Developer also agrees to cause the Developer Parties to provide traffic control on the Designated Roads when such roads are blocked during their use by Developer or the Developer Parties under this Agreement. All traffic control devices and signage associated with Road construction shall comply with the Manual on Uniform Traffic Control Devices.

**11.15 Cooperation.** Notwithstanding anything contained herein to the contrary, the County agrees to reasonably cooperate with Developer's reasonable use of all County roads for the operation and maintenance of the Project.

**11.16 Extraordinary Events.** The Parties acknowledge that, during the expected life of the Project, circumstances may arise which will make it necessary or advisable for Developer to replace major components or make other repairs to major components or other heavy or bulky equipment beyond ordinary maintenance and that transportation of such components or equipment on or across Designated Roads may be necessary. The Parties agree that, if Developer determines that such circumstances have occurred, Developer will give advance written notice of the intended transportation plans to the County, and the Parties shall work together cooperatively in good faith to control such factors as: unreasonable costs for Developer; delays in transportation; inconvenience to Developer, the County government, the traveling public, and nearby residents; and risks to public safety.

**11.17 Constitutional Limitations.** In accordance with Article XI, section 7 of the Texas Constitution, and notwithstanding anything to the contrary in this Agreement, this Agreement shall not be construed or interpreted as having indebted the County, in any manner or for any purpose, to an amount exceeding in any year the County's income and revenue provided for such year.

**11.18 Reimbursement of Expenses.** Within thirty (30) days of the date of receipt of an invoice, Developer agrees to reimburse the County for or pay directly to the County's attorneys, as applicable, the reasonable and necessary attorney's fees and expenses incurred, directly or indirectly, by the County in connection with the negotiation and formalization of this Agreement in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00).

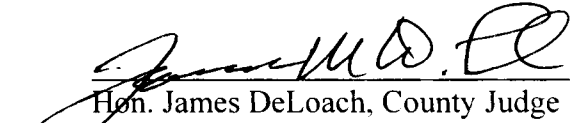
*[next page is signature page]*

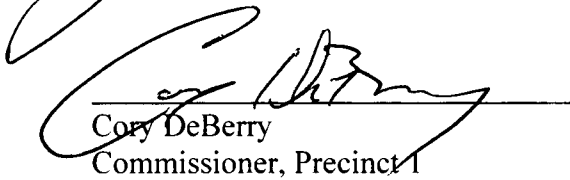
IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Agreement for Road Use, Repair, and Improvements effective as of the date first above written.

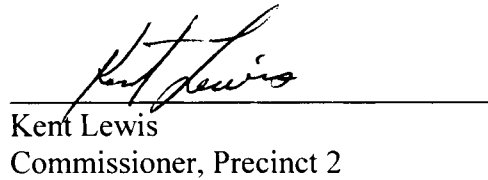
ATTEST/SEAL:

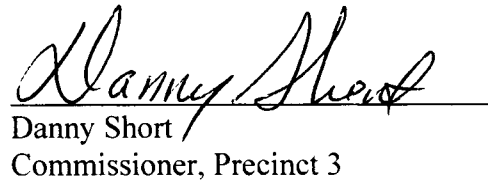
LAMB COUNTY, TEXAS

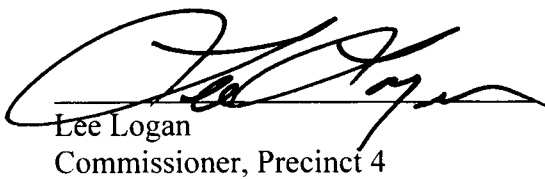
Date: ~~October 27~~, 2023  
*November*

  
Hon. James DeLoach, County Judge

  
Cory DeBerry  
Commissioner, Precinct 1

  
Kent Lewis  
Commissioner, Precinct 2

  
Danny Short  
Commissioner, Precinct 3

  
Lee Logan  
Commissioner, Precinct 4

Attest:

  
Tonya Ritchie, Lamb County Clerk



**LAZBUDDIE WIND ENERGY LLC**  
a Delaware limited liability company

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

Date: \_\_\_\_\_

## APPENDIX A

### DEFINITIONS

“**Agreement**”, “**Developer**”, “**County**”, “**Effective Date**”, “**Parties**”, and “**Party**” have the respective meanings assigned to them in the preamble to the Agreement.

“**Appendix**” shall mean an appendix to the Agreement, including any Attachment to such Appendix.

“**Article**” and “**Section**” shall refer, respectively, to an article and section of the Agreement.

“**Attachment**” shall refer to an attachment to an Appendix.

“**Business Day**” refers each of, and “**Business Days**” refers to all weekdays, except those designated as national holidays or state holidays in either Texas or Virginia.

“**Commercial Operations**” means that the Project has become commercially operational and placed into service for the purpose of generating electricity for sale in one or more commercial markets.

“**County Designee**” means the Lamb County Judge, Lamb County Commissioner, or other person designated by Lamb County in a written notice delivered to Developer.

“**Current Improvements**” means near-term Improvements to the Designated Roads made in accordance with Section 4.2.

“**Designated Road**” means any public road which will be used in the transport of equipment, parts, and materials of the Project specifically and expressly identified as a Designated Road in Appendix B to the Agreement, and “**Designated Roads**” means any two or more thereof; *provided*, however, that Designated Roads do not include any state or federal road or highway, even if depicted in Appendix B.

“**Developer Party**” refers to each of, and “**Developer Parties**” refers to all of, Developer and its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns.

“**Developer Representative**” means the initial representative of Developer designated in Section 11.13 or such other representative of Developer as may be designated by Developer in a written notice delivered to the County from time to time.

“**Electrical/Communications Installation**” means the routing, construction, and installation, above or below ground, at a location adjacent to, under, or across certain roads, as identified on Appendix F, of certain wires, cables, conduits, and/or lines (and their associated equipment) related to the collection, distribution, or transmission of the Project’s (i) electrical power output at a voltage of up to 345 kV and (ii) construction, maintenance, and operation related data.



**“Event of Default”** means the occurrence of any one or more of the following events:

- (a) Failure by Developer to make any payment or reimbursement due under the terms of the Agreement when due and payable, when such failure continues for thirty (30) days after receipt by Developer of written notice of such failure from the County.
- (b) Failure by Developer to comply with any of its non-monetary obligations, covenants, agreements or conditions contained in the Agreement, when such failure continues for thirty (30) days after written notice of default from the County; *provided*, that if such failure cannot reasonably be cured within the thirty (30) day period, a default shall not be deemed to have occurred if Developer begins to cure the breach within the thirty (30) day period and thereafter diligently and in good faith continues to pursue the cure of the breach until cured.
- (c) Either Party experiencing either of the following:
  - (i) Voluntarily commencement of bankruptcy, insolvency, moratorium, reorganization, stay, or similar debtor-relief proceedings, or having become insolvent or generally failing to pay its debts as they become due, or having admitted in writing its inability to pay its debts, or the making of an assignment for the benefit of creditors; or
  - (ii) Bankruptcy, insolvency, receivership, reorganization, or a similar proceeding having been commenced against such Party and such proceeding remaining undismissed or unstayed for a period of ninety (90) days.
- (d) In the event of an Event of Default by Developer, or upon the occurrence or non-occurrence of any event or condition which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the County to terminate the Agreement, the County shall not terminate the Agreement until it first gives written notice of such Event of Default to the Permitted Collateral Assignee (concurrently with the notice of such Event of Default to the Purchaser) and affords the Permitted Collateral Assignee (a) a period of thirty (30) days from receipt of such notice to cure such Event of Default if such Event of Default is the failure to pay amounts to County which are due and payable under the Agreement or (b) with respect to any other Event of Default, a reasonable opportunity, but no fewer than forty five (45) days from receipt of such notice, to cure such non-payment Event of Default (provided that during such cure period the Permitted Collateral Assignee or Developer continues to perform each of Developer’s other obligations under the Agreement, as applicable).

**“Force Majeure Event”** means a cause or event that is beyond the reasonable control, and without the fault or negligence, of the Party claiming such Force Majeure Event, to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money), and includes the following: natural disasters; fire; lightning strikes; earthquake; unavailability of equipment; acts of God; unusually severe actions of the elements such as snow, floods, hurricanes, or tornadoes; causes or events

affecting the performance of third-party suppliers of goods or services to the extent caused by an event that otherwise is a Force Majeure Event under this definition; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act (including expropriation and requisition) of any governmental agency.

**“Future Improvements”** means such reasonable further Improvements as Developer believes to be reasonably necessary to accommodate the use of the Designated Roads by the Developer Parties for operation and maintenance of the Project.

**“Improvements”** means improvements and modifications by Developer to the Designated Roads and may include the strengthening and widening of Designated Roads, the strengthening and/or spanning of existing culverts and bridges thereon, adding caliche and other materials where needed, patching pot holes, installing chip seal, and other improvements and modifications reasonably necessary to accommodate increased traffic and the heavy equipment and materials to be transported on the Designated Roads.

**“Indemnitor”** and **“Indemnitee”** have the respective meaning assigned to them in Article IX.

**“Initial Evaluation”** means the report/survey of the condition of the surface of all Designated Roads included in Appendix B which provides an evaluation of the then-current condition of a Designated Road, as required by the Agreement.

**“Land Rights”** means rights or interests in real estate, including any easement (proscriptive or otherwise), leasehold, right of way, licenses, crossing consents and permits, or title in fee, as well as all consents, authorizations, and approvals that may be required for the full exercise thereof.

**“Losses”** means any and all losses, damages, liabilities, and expenses, including reasonable attorneys’ fees and court costs.

**“Permitted Collateral Assignee”** means any lender, financing party, or investor providing financing of any sort, including equity financing, construction debt, back leveraged debt, or sale-leaseback financing for the Project as security for Developer’s obligations under a financing agreement, purchase and sale agreement, sale leaseback transaction or similar financing mechanism (including a trustee or agent for the benefit of its lenders).

**“Plans”** means plans, drawings, and specifications for Current Improvements.

**“Private Land Rights”** means Land Rights in or to private property which Land Rights are not owned by and do not relate to any real property that lies within any easement or right of way held by the County.

**“Project”** has the meaning assigned to it in the recitals of the Agreement.

**“Repair”** and **“Repairs”** refer to the performance of work (or causing the performance of work) on a Designated Road or related appurtenance (including any bridge, culvert, or other fixture upon such Designated Road) in order to repair damage beyond ordinary wear and tear, so as to restore such Designated Road or related appurtenance to the condition it was in prior to such damage, as

near as is reasonably practicable; *provided*, however, that Repairs performed by or on behalf of Developer shall not include removal or plowing of snow or routine maintenance activities.

**“Significant Fugitive Dust”** means dust that creates a nuisance by drifting beyond the boundary of the property on which such dust is raised, it being understood that a nuisance is not created unless a person is significantly and adversely affected and that dust drifting onto a vacant lot, pasture, or field may not be a nuisance.

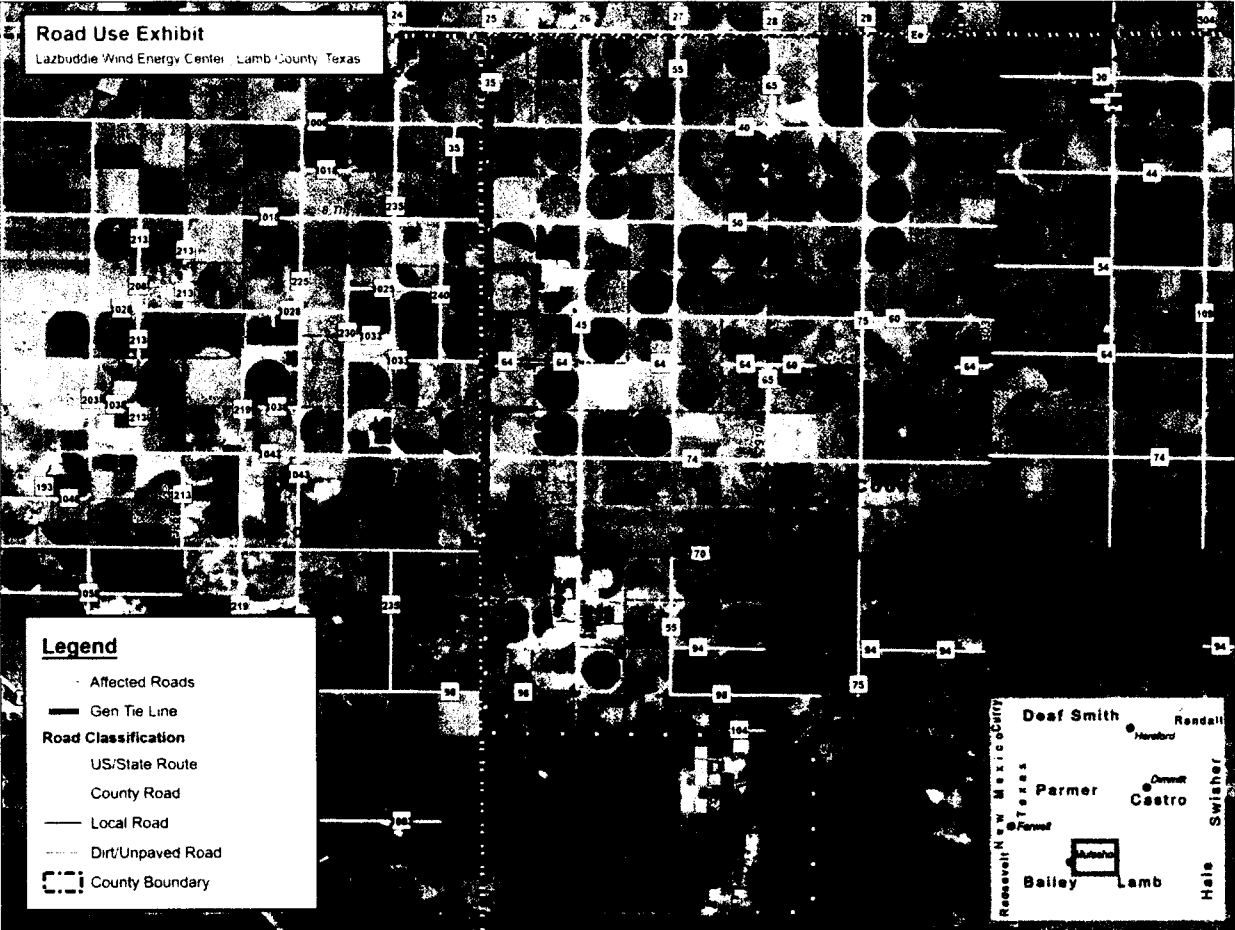
## **APPENDIX B**

### **DESIGNATED ROADS**

Designated Roads are depicted in the Attachments hereto. No other roads are Designated Roads. State highway(s) may be depicted on Attachments (and, if depicted, may be depicted in red). Nevertheless, State highway(s) are not Designated Roads and are not subject to the Agreement.

The Initial Evaluation shall be a report/survey to be provided by Developer to the County within seven (7) days of completion.

The Developer plans to improve and modify the Designated Roads as necessary to use the Designated roads for purposes of delivering and installing Project components to the planned locations as depicted in Appendix B.



**APPENDIX C**

**DESIGNATED ROADS NOT EVALUATED**

*[Intentionally Left Blank]*

## APPENDIX D

### REIMBURSEMENT RATES

- Labor:** With respect to labor used in making Repairs, the County shall be reimbursed for the expense of such labor at the then-prevailing wage rate, as published or provided by the Texas Employment Security Commission for the specific type of labor in question and for the most specific region of Texas of which Lamb County is a part. If a comparable prevailing wage rate cannot be obtained, the rate shall be equal to the County's actual, reasonable, out-of-pocket cost (without mark-up) for such labor.
- Equipment:** With respect to equipment used in making Repairs, the County shall be compensated for the use of such equipment at the rates set out in the then-current "Rental Rate Blue Book (Equipment Cost Recovery)", as published by Equipment Watch. Where such rates are stated in monthly terms, such rate shall be prorated to and billed as an hourly rate, where one month equals 176 hours.
- Materials:** With respect to materials used in making Repairs, the County shall be reimbursed for the expense of such materials at actual, reasonable, out-of-pocket cost (without mark-up).

## **APPENDIX E**

### **INVOICING PROCEDURES**

The County shall invoice Developer in accordance with the invoicing procedures set out below. Invoices shall:

- Identify the invoice as relating to the Agreement for Road Use, Repair, and Improvements, including the Effective Date, between Developer and Lamb County, Texas.
- Set out an itemization of the Repairs made and their location, in each case in such detail and with such supporting documentation as are reasonable to permit Developer to verify the invoiced amounts.
- Be addressed to Developer's address set out in the Agreement's notice provision, to the attention of Project Controls.



## **APPENDIX F**

### **Electrical /Communications Installation**

The attached map(s) depict routing, construction, and installation of the Electrical/Communications Installation adjacent to, under, or across certain roads.