DEVELOPMENT AGREEMENT

By and between

KITTITAS COUNTY, WASHINGTON

and

SWAUK WIND, LLC

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DEVELOPMENT AGREEMENT
SWAUK WIND PROJECT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into and effective this ___ day of _____, 2012 by and between Kittitas County, a Washington municipal corporation ("**County**") and Swauk Wind, LLC, a Washington limited liability company authorized to do business in the state of Washington ("**Applicant**"). This Agreement is made pursuant to Revised Code of Washington ("**RCW**") 36.70B.170, Kittitas County Code ("**KCC**") Chapter 15A.11, and KCC Chapter 17.61A, and relates to the Swauk Wind Project.

RECITALS

A. RCW Chapter 36.70B and KCC Chapter 15A.11 authorize the County to enter into an agreement regarding development of real property located within the County's jurisdiction with any person having an ownership interest in or control of such real property. KCC Chapter 17.61A requires execution of a development agreement as part of the approval process for wind farm projects.

B. The Applicant desires and intends to develop a wind farm in central Kittitas County known as the Swauk Wind Project (the "**Project**") located approximately 12 miles west of the town of Ellensburg, north of State Route 10. A full Project description is contained in Exhibit A.

C. The Project objective is to develop a wind energy facility with a maximum of 5 wind turbines and Project support facilities necessary to generate and deliver renewable energy to point of interconnection with a nearby Puget Sound Energy local distribution line for distribution within Puget Sound Energy's Kittitas County service area.

D. The Applicant has entered into agreements with the owners of the real property comprising the Project Area, giving it control of this land for the purpose of, and authority to, develop the Project.

E. The Project will be located on land referred to herein as the "**Project Area**". A map showing the location of the Project Area is contained in Exhibit B. The Project Area covers approximately 3,865 acres. The land within the Project Area on which the Project itself will be developed is referred to as the "**Project Site**" further shown on Exhibit B. The Project Site legal descriptions and landownership interests are contained in Exhibit C.

F. On June 29, 2011, the Applicant submitted an Application for Comprehensive Plan Amendment – Map Amendment; Development Code Amendment and Wind Farm Siting Application ("**Plan Amendment Application**") to include the Project Area within those areas designated as wind resource overlay areas under KCC 17.61A.040.

G. On September 21, 2011, Kittitas County published in the Ellensburg Daily Record a Notice of Application for the comprehensive plan amendments, development code

amendments, and wind farm siting application and requested SEPA threshold determination comments through October 10, 2011.

H. On September 13, 2011, the Kittitas County Planning Commission ("**Planning Commission**") conducted a duly noticed open record public hearing on the Plan Amendment Application, and forwarded Findings of Fact, Conclusions of Law and a Recommendation of Approval to the Kittitas County Board of Commissioners ("**BOCC**").

I. On October 25, 2011, the BOCC conducted its own duly noticed open record public hearing on the Plan Amendment Application. By the BOCC's adoption of Ordinance 2011-13 dated December 6, 2011, the property was designated as a wind farm resource overlay zone under KCC 17.61A.040.

J. As the State Environmental Policy Act ("**SEPA**") Lead Agency, Kittitas County issued a Notice of SEPA Action, issuing a Determination of Non-significance ("**DNS**") for the applications for Comprehensive Plan Amendments, and a Mitigated Determination of Non-significance ("**MDNS**") for the Project on October 13, 2011. All recipients of the Notice of SEPA Action were requested to contact the county if it did not receive any of the underlying environmental checklist documents identified for each of the following: Comprehensive Plan Amendments, Development Code Amendments and the Wind Farm Siting Application. A copy of the Project MDNS is attached hereto as Exhibit D. Applicant agrees to abide by the Proposed SEPA Mitigation Measures identified in the MDNS as well as the Development Standards set forth in this Agreement to mitigate impacts to the environment.

K. On March 16, 2012, pursuant to KCC 17.61A.040, the applicant submitted a complete Development Agreement Application with a draft project Development Agreement proposing the development standards and criteria under which the Project is to be constructed, operated and decommissioned. All mitigation measures contained in the MDNS are incorporated as conditions to this Agreement. Applicant also submitted a proposed Cost Reimbursement Agreement which obligates the applicant to reimburse the County for its time, fees and expenses reasonably incurred in reviewing and processing the Development Agreement.

L. On April 17, 2012, a Determination of Completeness was issued to the applicant for its request for a Development Agreement. A combined Notice of Application for Development Agreement and Notice of Public Hearing was mailed to affected agencies, adjacent landowners and interested parties on May 3, 2012 , and Notice of Hearing was published in the Ellensburg Daily Record and North Kittitas County Tribune on June 7, 2012. The proposed project was the subject of a 30-day comment period.

M. This Agreement establishes the commitments made by the County and the Applicant for the purpose of ensuring that the Project is consistent with the Kittitas County Comprehensive Plan and Zoning code, and to ensure that all final permit approvals will be in the best interests of the citizens of Kittitas County, and will reflect the land use planning considerations of Kittitas County.

N. This Agreement establishes that the development of the Project with the Development Standards and proposed SEPA mitigation measures contained herein is consistent

with the County's Comprehensive Plan, zoning and development regulations, and is compatible with surrounding land uses.

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated into the Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Applicant agree as follows:

AGREEMENT

1. Effective Date, Termination and Modification.

1.1 The Effective Date of this Agreement is the last date upon which it was signed by the Parties hereto.

1.2 Termination. This Agreement shall terminate thirty (30) years from the Effective Date of this Agreement, unless earlier terminated by mutual written agreement of the Parties hereto or by Applicant alone pursuant to Section 9, below.

1.3 Modification. On or after a date which is twenty-five (25) years from the Effective Date of this Agreement, the BOCC shall have the ability to review the Project's compliance with County plans for its airport expansion and the then-current Kittitas County Zoning Code, county development regulations, as well as any other applicable local, state or federal laws or regulations and may request that reasonable modifications be made to the Project to accommodate changes in the County's airport plans or County and other governmental regulations. If there is any conflict with a planned landing approach or facility contained in the then-current Bowers Field Airport Master Plan, the County may require reasonable modifications to the Project to mitigate such conflict, so long as the County Airport Management and the FAA determine in writing that there are no other reasonable alternatives to avoid impact to the Project. Any modifications to the Project as a result this process shall be reflected in an amendment to this Agreement, following applicable public notice and hearing requirements, if any.

2. Definitions.

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

2.1 Agreement. "Agreement" means this Development Agreement between Kittitas County, Washington and Swauk Wind, LLC, approved by the BOCC.

2.2 Applicant. "Applicant" means Swauk Wind, LLC, a Washington limited liability company and the successor-in-interest to Swauk Valley Ranch, LLC, or any of Swauk Wind, LLC's Transferee(s) as provided in Section 10.1 below.

2.3 BOCC. "BOCC" means the Board of County Commissioners of Kittitas County, Washington.

2.4 County. "County" means Kittitas County, Washington.

2.5 Construction Buildout Period. "Construction Buildout Period" has the meaning set forth in Section 5.15 of this Agreement.

2.6 Development Standards. "Development Standards" means the requirements stated in Section 5.

2.7 Effective Date. "Effective Date" has the meaning set forth in Section 1.1 of this Agreement

2.8 FAA. "FAA" means Federal Aviation Administration.

2.9 Force Majeure Event. "Force Majeure Event" means any event that directly prevents or delays the performance by the Party affected of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third Parties; riot or similar civil disturbance or commotion; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and actions of a governmental authority with jurisdiction over the Project other than Kittitas County.

2.10 Liability. "Liability" means all loss, damage, cost, expense (including costs of investigation and attorneys' fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims and demands of whatever kind or nature (including those arising under the Federal Employers Liability Act), arising out of an occurrence relating to this Agreement or occurring on or relating to the Project described herein.

2.11 MDNS. "MDNS" means the "Mitigated Determination of Non-Significance" issued by Kittitas County for the Project on October 13, 2011.

2.12 Parties. "Parties" means Kittitas County, Washington and the Applicant, Swauk Wind, LLC, a Washington limited liability company.

2.13 Planning Official. "Planning Official" means the Planning Official of the Kittitas County Department of Community Development Services.

2.14 Project "Project" means the Swauk Wind Project generally consisting of up to 5 Turbines and Project support facilities necessary to generate and deliver electricity as described in Exhibit A, modified as necessary to be consistent with the Development Standards contained herein and the proposed SEPA mitigation measures contained in Exhibit D.

2.15 SEPA. "SEPA" means State Environmental Policy Act.

2.16 Substantial Completion. "Substantial Completion" means the Project is generating and delivering commercial energy to the point of interconnection.

2.17 Transferee. A party to which the Project is transferred or assigned in part or in whole under the provisions contained in Section 10.1 of this Agreement.

2.18 Turbine. "Turbine" means the entire structure that produces electricity. Each Turbine consists of a tower structure anchored to a foundation, a three bladed rotor, and a nacelle housing the generator and other machinery.

3. Project Description.

3.1 The Swauk Wind Project ("Project") generally consists of up to 5 Turbines and Project support facilities necessary to generate and deliver electricity as described in Exhibit A, modified as necessary to be consistent with the Development Standards contained herein and the proposed SEPA mitigation measures contained in Exhibit D.

4. Vesting.

This Agreement vests the Project to the existing County land use plans and regulations effective as of the Effective Date of this Agreement.

5. Development Standards.

5.1 Number of Turbines. Under this Agreement, Applicant shall construct no more than 5 Turbines within the corridors shown on Exhibit B.

5.2 Maximum Turbine Height. The maximum height (measured to the tip of the blade at its highest point to the base of the tower structure) of any Turbine that may be constructed as part of the Project is 300 feet.

5.3 Location and Description of Project. The components of the Project including, but not limited to, Turbines, roadways, electrical collection and transmission system, transformers, and other related Project facilities are described in Exhibit A, and the Project Layout, including Turbine corridors, is illustrated in Exhibit B, which depicts both the Project Area and the Project Site, including the preliminary Project Layout, modified as necessary to be consistent with the following Development Standards and SEPA mitigation measures. Exhibit E illustrates the location of the Project, including Turbines and other necessary Project support facilities in relation to existing residences in the vicinity of the Project. No Turbine may be closer than one-half mile to any residential structure that existed on June 29, 2011. No Turbine shall be located closer than one and one-half times the maximum Turbine height to any

publically accessed road. This does not include those structures or roads which are part of the Project development or operations.

5.4 Fire Protection Plan. Applicant has a pre-existing fire protection services agreement with its local fire district, which plans for effective response to any fires that might occur. This fire protection services agreement shall be maintained for the life of the Project.

5.5 FAA Review. Developers generally must file Notices of Proposed Construction for any structures over 200 above ground level ("AGL") at least forty-five (45) days prior to commencement of construction in order to facilitate the FAA's obstruction evaluation and determination that the structures will not present a hazard to air navigation, air navigation instruments or air navigation facilities. Applicant shall timely apply for any FAA DNH's for any Project structures exceeding the applicable regulatory height threshold and shall provide copies of any issued DNH's to the Planning Official, demonstrating compliance with filings required by federal aviation regulations.

5.6 Project Access Roads. The Project transportation plan does not contemplate Project equipment delivery trucks crossing or using any county roads. The main Project access road entrance from State Route 10 is the current property access point located on the north side of the roadbed. No improvements to State Route 10 are anticipated to be necessary. However, to the extent improvements to this access point are determined to be necessary to accommodate the Project trucks and equipment deliveries, they shall be constructed to commercial access standards as specified in the WSDOT Design Manual figure 920-5. All internal project roads are private.

5.7 Gravel quarries. Gravel quarries on the site (if any) shall be for on-site use during construction only. The Applicant shall comply with Washington State DNR requirements for gravel pit reclamation.

5.8 Concrete batch plants. Concrete batch plants shall be restricted to on-site use and shall be removed when construction is complete.

5.9 County Right-of-Way. Approval of a franchise for any facilities to be located within County owned right-of-way (including overhead electric power lines) is required.

5.10 Construction Buildout period. Applicant shall be allowed to construct the Project such that Substantial Completion is achieved no later than 5 years from the date that all permits necessary to construct the Project are obtained, but in no event later than 6 years from the Effective Date of this Agreement (the "Construction Build-out Period"); provided however, that such construction is not delayed by a Force Majeure Event. Nothing shall prohibit the Applicant from seeking an extension of the buildout period for good cause shown, approval of which shallot be unreasonably withheld.

5.11 Turbine Setbacks from Structures. A minimum set back of one-half mile shall be maintained between Project Turbines and existing structures located outside the Project boundaries illustrated in Exhibit B; provided however, that the Applicant shall be permitted to place a Turbine within one-half mile of an existing residence if written agreement between the Applicant and the landowner is executed and recorded with the Kittitas County Auditor.

5.12 Safety Setbacks. Notwithstanding any provision herein to the contrary, a minimum safety setback of 1-1/2 times the height of the tower to the tip of the blade will be maintained between Project Turbines and all structures and Project Area boundaries.

6. Decommissioning.

6.1 Decommissioning Plan. Prior to commencing construction of the first turbine foundation pursuant to a duly issued building permit, Applicant shall provide to the County for its approval, a Project decommissioning and site restoration plan ("**Decommissioning Plan**"), prepared in sufficient detail to identify, evaluate, and resolve all major environmental, and public health and safety issues reasonably anticipated by the Parties on the date hereof. The Plan shall describe the process used to evaluate the options and select the measures that will be taken to restore or preserve the Project site or otherwise protect the public against risks or danger resulting from the Project. The Plan shall be prepared in detail commensurate with the time until decommissioning is to begin.

6.2 Decommissioning Scope and Timing. Applicant or any Transferee, as the case may be, shall decommission the Project within twelve (12) months following the earlier of either: (a) the date of termination of this Agreement, in accordance with Section 1.2 above unless the Applicant has applied to the County for a new Development Agreement authorizing repowering and/or continued operation of the Project at least twelve (12) months prior to the expiration of this Agreement; or (b) after any twelve (12) month period in which the Project fails to generate power, at the written request of the County, 'Failure to generate power' is not intended to trigger decommissioning when non-generation is due to Force Majeure Events, including extended low wind periods, or by the need for repair, restoration or improvements to integral parts of the Project provided that the Applicant can demonstrate to the County, in writing if so requested, that such repair, restoration or improvements are being diligently pursued.

6.3 Scope of Decommissioning. The twelve (12) month period to perform the decommissioning may be extended if there is a delay caused by events beyond the control of the Applicant including but not limited to inclement weather conditions, equipment failure, wildlife considerations or the availability of cranes or equipment to support decommissioning. The County shall be granted reasonable access to the Project site during decommissioning of the Project for purposes of inspecting any decommissioning work or to perform decommissioning evaluations. County personnel on the Project site shall observe all worker safety requirements enforced and observed by the Applicant and its contractors. If requested by the County, Applicant will provide monthly status reports until this decommissioning work is completed. Decommissioning the Project shall involve removal of the Turbines; removal of foundations to a depth of 3 feet below grade; regrading the areas around the Project Facilities; removal of Project access roads and overhead cables (except for any roads and/or power cables that Project Area landowners wish to retain); and final reseeding of disturbed lands (all of which shall comprise "Decommissioning"). Decommissioning shall occur in the order of removing the Turbines as the first priority and performing the remaining elements immediately thereafter.

6.4 Decommissioning Funding and Surety. Applicant or any Transferee, as the case may be, shall post funds or security prior to the end of year twenty-five of operations in an amount sufficient for Decommissioning to ensure the availability of said funds (the

"Decommissioning Funds") to Kittitas County in the event the Applicant or Transferee fails to timely or adequately perform its decommissioning duties herein. The decommissioning funds and surety shall in the form of a guarantee or performance bond or other security device deemed satisfactory to and enforceable by the County that provides for alternative means of securing the decommissioning of the Project, including without limit and by way of illustration, credit to the County, up to the amount of actual decommissioning costs, from the sale of the metal and other Project facilities following decommissioning. Such funds shall remain in place as provided below until decommissioning is completed; provided, however, if a new Development Agreement is entered into between the Applicant and the County prior to the expiration of this Agreement, then the decommissioning provisions of any such new Agreement shall prevail.

6.5 Financial Security and Utility Project Ownership. If, at the time the duty to provide Decommissioning security arises under Section 6.3 above, the owner of the Project is an investor-owned electric utility regulated by the Federal Energy Regulatory Commission (FERC) and the Washington Utilities and Transportation Commission (WUTC), Applicant or any Transferee, as the case may be, shall not be required to obtain and provide proof of financial security for the performance of its Decommissioning obligations arising hereunder, since the obligation to fully decommission the Project when due shall be a general obligation of the investor-owned electric utility owner.

7. Consistency with Local Regulations.

The County hereby acknowledges that if the Project is developed consistent with this Agreement and any Amendments thereto, then all of the following will be deemed true and accurate statements: (1) the public health, safety, and welfare will be adequately protected within the bounds of the law; (2) the Project will be considered essential and desirable to the public convenience; (3) the Project will not be detrimental or injurious to the public health, peace, or safety, or to the character of the surrounding neighborhood; (4) the Project will not be detrimental to the economic welfare of the County; and (5) the Project will not create excessive public cost for public facilities and services.

The Project tax parcels and adjacent tax parcels are zoned as Forest and Range. Unless otherwise agreed to by the applicable landowner pursuant to Section 5.12 above, all Turbines are located more than one-half mile from existing residences owned by non-participating landowners. Due to Project and equipment design, as well as the remoteness of the Project from residential or other development, the Project poses no potential risks to residents from ice throw, blade throw or tower collapse. Other potential impacts such as shadow flicker and noise impacts are also insignificant due to the distance of the Turbines from potential receptors. The Project will deliver commercially distributed energy from a renewable resource and, as such, is essential and desirable to the public convenience. The Project will contribute tax revenues to the County in excess of the limited public service costs the Project will introduce.

8. Amendments and Revisions.

This Development Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and signed by Applicant and the County and is approved by the BOCC (an "Amendment") following applicable public notice and hearing requirements, if any.

The following sections specify what Project actions and revisions can be undertaken without the need for amendment of the Development Agreement and what revisions require Amendment to the Agreement.

8.1 Project Facility Repair, Maintenance and Replacement. Applicant shall be permitted, without any further approval from the County or amendment to this Agreement, to repair, maintain and replace Project Facilities consistent with the terms of this Agreement.

8.2 Turbine Repair, Maintenance and Replacement. Applicant shall be permitted to repair and maintain the Turbines without any further approval from the County or amendment to this Agreement and to: (i) replace any Turbine with the same make and model Turbine used in the Project ("Replacement Turbine") so long as the Replacement Turbine meets the Development Standards contained in this Agreement, or (ii) replace any Turbine with a Comparable Turbine in the event Applicant cannot or it is impracticable for it to obtain a Replacement Turbine. "Comparable Turbine" means any wind turbine with physical dimensions not more than twenty percent larger than those originally installed at the Project as indicated in greater detail in Exhibit F; with the same general configuration defined in the Project Description in Exhibit A; in the same location as the Turbine being replaced; and which otherwise meets the Development Standards contained in this Agreement.

9. Termination.

Applicant shall have the option, in its sole discretion, to terminate this Agreement prior to commencing any construction including any site grading and excavation work for installation of the Project or its support facilities. If it elects to terminate this Agreement, Applicant shall submit a Notice to this effect to Kittitas County.

10. General Provisions.

10.1 Assignment. Applicant shall have the right to assign or transfer all or any portion of its interest in the Project at any time, including rights, obligations and responsibilities arising hereunder; including financial assurance for decommissioning as set forth in Section 6 above, to third parties acquiring all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant (each such third party, a "Transferee"), provided such assignments or transfers are made in accordance with the following:

10.1.1 Assignments or Transfers Requiring the Consent of the County. Applicant may at any time enter into a written agreement with a Transferee other than those described in Sections 10.1.2 and 10.1.3 to transfer all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant, including rights, obligations and responsibilities arising hereunder (such agreement, a Transfer Agreement); provided that Applicant obtains the prior written consent of the County as described in this section:

(a) Such Transfer Agreement shall not take effect unless and until the County has consented in writing to such transfer or assignment, which consent shall not be unreasonably withheld, conditioned, or delayed. Written notice of the proposed Transfer Agreement shall be mailed, first-class, to the County at least sixty (60) days in advance of the proposed date of transfer or assignment. Failure

by the County to respond within sixty (60) days after receipt of a request made by Applicant for such consent shall be deemed to be the County's approval of the Transfer Agreement. The County may refuse to give its consent to a Transfer Agreement only if there is a demonstrated material reason for such refusal, including without limitation, (i) the Transferee's failure to perform material obligations under a similar Development Agreement, or (ii) a failure to demonstrate adequate financial capability, including financial assurance for decommissioning as set forth in Section 6 above, to perform the obligations proposed to be assumed by such Transferee. Applicant shall be responsible for reimbursing the County for all time, fees and expenses reasonably incurred by the County in reviewing and processing any proposed transfer requiring County consent.

(b) Any Transfer Agreement shall be binding on the Applicant, the County and the Transferee. Upon approval of a Transfer Agreement by the County, the Applicant shall be released from those obligations and responsibilities assumed by the Transferee therein.

(c) Applicant shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a Transferee pursuant to an approved Transfer Agreement. No breach or default hereunder by any person that assumes any portion of Applicant's obligations under this Agreement pursuant to an approved transfer shall be attributed to Applicant, nor shall any of Applicant's remaining rights hereunder be cancelled or diminished in any way by any such breach or default.

(d) No breach or default hereunder by Applicant shall be attributed to any person succeeding to any portion of Applicant's rights or obligations under this Agreement, nor shall such Transferee's rights be cancelled or diminished in any way by any such breach or default.

(e) Upon any transfer made in accordance with this Section 10.1.1 to which the County has consented, the Transferee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and Applicant shall be automatically released of all liabilities and obligations under this Agreement as to that portion of its interest so transferred or assigned.

10.1.2 Collateral Assignments, without the Consent of the County. Notwithstanding anything herein to the contrary, Applicant or any Transferee shall be permitted to collaterally assign its interest in the Project to a lender providing financing for the Project without the consent of the County, provided that Applicant or any Transferee delivers written notice to the County at least thirty (30) days prior to the date of such collateral assignment and identifies such lender, and maintains financial assurances for decommissioning as required by Section 6 above.

10.1.3 Assignments or Transfers without the Consent of the County. Applicant may transfer or assign all or any portion of its interest in the Project at any time, including rights, obligations and responsibilities arising hereunder, to affiliates of the Applicant, or to third parties

acquiring all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant without the consent of the County provided that:

(a) Any non-affiliated third party Transferee is (a) an investor-owned electric utility regulated by the Federal Regulatory Energy Commission ("FERC") and the Washington Utilities and Transportation Commission ("WUTC") or a wholly owned subsidiary of such an investor-owned electric utility, or (b) an entity having, at the time of transfer or assignment, a senior unsecured long term debt rating ("Credit Rating") of (1) if such entity has a Credit Rating from Standard and Poor's but not from Moody's, BBB- or better from Standard and Poor's or (2) if such entity has a Credit Rating from Moody's but not from Standard and Poor's, Baa3 or better from Moody's or (3) if such entity has a Credit Rating from both Standard and Poor's and Moody's, BBB- or better from Standard and Poor's and Baa3 or better from Moody's; or (c) Transferee is an affiliate of the Applicant; and

(b) Such non-affiliated third party Transferee agrees to be bound by the rights, obligations and responsibilities of Applicant hereunder, including financial assurance for decommissioning as set forth in Section 6 above, on and after the date of such transfer or assignment. In the event that Applicant transfers or assigns all or any portion of its interest in and to the Project in accordance with this provision, Applicant shall be released from all obligations or liabilities under this Agreement on and after the date of such transfer or assignment as to that portion of Applicant's interest so transferred or assigned.

10.2 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Area, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.

10.3 Washington Law. This Agreement is entered into under the laws of the State of Washington, and the parties hereto intend that Washington law shall apply to the interpretation hereof.

10.4 Severability. If any provisions of this Agreement are determined to be unenforceable or invalid, this Agreement shall thereafter be modified, to implement the intent of the Parties to the maximum extent allowable under law and the remainder of this Agreement shall remain unaffected and in full force and effect.

10.5 Authority. Each Party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement

10.6 No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

10.7 Duty to Act Reasonably and in Good Faith. Unless otherwise expressly provided, each party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement. The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each party agrees to work cooperatively and in good faith toward resolution of any such issues.

10.8 Time of Essence. Time is of the essence in the performance of each and every obligation to be performed by the Parties hereto.

10.9 Staffing Agreement for County Project Costs. The Applicant will pay for County costs, including third party consultant costs, if necessary, incurred to support plan review and inspection of the Project during construction, in accordance with K C.C. 14.04 et al, under a County Staffing Agreement. The Staffing Agreement shall be approved by the Applicant prior to construction, and such approval shall not be unreasonably withheld.

11. Notices.

11.1 Written Notice. Any notice, demand, or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). A courtesy copy of the Notice may be sent by facsimile transmission.

11.2 Addresses. Notices shall be given to the Parties at their addresses set forth below.

If to the County: Kittitas County Community Development Services
411 North Ruby Street, Suite 2
Ellensburg, Washington 98926
Attn: Planning Official

CC: Kittitas County Prosecuting Attorney's Office
205 West Fifth, Room 213
Ellensburg, Washington 98926
Attn: Neil Caulkins

If to Applicant: Swauk Wind, LLC
5005 3rd Ave. S.
Seattle, WA 98134

Attn: Dean Allen

11.3 Notice by hand delivery shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered forty-eight (48) hours after deposited. Any party at any time by Notice to the other party may designate a different address or person to which such notice or communication shall be given.

12. Default and Remedies.

No party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure of the alleged default.

12.1 Dispute Resolution Process.

12.1.1 In the event of any dispute relating to this Agreement, each Party, upon the request of the other Party, shall meet within seven (7) calendar days to confer and seek to resolve the dispute ("Conference"). The Conference shall be attended by the following parties: (a) the County shall send department director(s) and County employees and contractors with information relating to the dispute, and (b) Applicant shall send an Applicant's representative and any Applicant's consultant with technical information or expertise related to the dispute. The parties shall, in good faith, endeavor to resolve their disputes through the Conference.

12.1.2 Mediation. If this Conference process does not resolve the dispute within the 7 day Conference period, the Parties shall in good faith submit the matter to mediation. The Parties shall send the same types of representatives to mediation as specified for the "Conference" process. Additionally the Parties shall have representatives present at the mediation with full authority to make a settlement within the range of terms being discussed, should settlement be deemed prudent. The mediation shall take place within 45 days of the parties submitting the dispute to mediation.

In order to expedite the mediation, during the Conference process the Parties shall select the mediator. The mediator must be a neutral professional full time mediator with time available to meet with the parties within the 45 day mediation period following the 7 day Conference period.

To prepare for mediation, during the 7 day Conference period, the County will select three qualified mediators, as specified above, who are available in the following 45 days. At the end of the 7 day Conference period, if the matter has not been resolved, the Project Owner shall, within the 24 hours of being given the three names select one of the three. The parties will in good faith attempt to resolve the dispute in the 45 day mediation period."

If the dispute is not able to be resolved through the mediation process in the 45 day period, the parties may pursue their legal remedies in accordance with Washington law.

13. Indemnity.

The Project owners shall indemnify and hold harmless the County and its elected officials and employees from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever ("Claims") to the extent they are caused by or result from the negligent act or omission of Applicant's employees, officers, or agents in the operation of the Project; provided, however, that indemnification for any the total and cumulative obligation hereunder for all such Claims is limited to and shall not exceed two hundred and fifty thousand dollars ($250,000). In the event of concurrent negligence, Applicant shall indemnify and hold harmless the County only to the extent of Applicant's negligence, subject to the foregoing limitation for any and all Claims.

14. Entire Agreement.

This Agreement, together with all exhibits hereto, constitutes the entire agree between the Parties With respect to the subject matter of this Agreement. Agreement is specifically intended by the Parties to supersede all prior agreements whether written or oral.

APPROVED this ____ day of _____, 20___.

BOARD OF COUNTY COMMISSIONERS
Kittitas County, Washington

_____	_____
Chairman,	Vice Chairman,
_____	_____
Clerk of the Board, Julie Kjorsvik	Commissioner

Approved as to form:

_____
Gregory L. Zempel,
Prosecuting Attorney
WSBA #19125

SWAUK WIND, LLC

By:_____

Name:_____

Its:_____