

ROAD USE AGREEMENT

THIS ROAD USE AGREEMENT, made this 4th day of October, 2007, among Sheldon Energy LLC, a Delaware limited liability company with its place of business located at One South Wacker Drive, Suite 2020, Chicago, Illinois 60606 (the "**Company**"); and Wyoming County, a New York municipal corporation with offices at 4328 Route 19, Rock Glen, New York (the "**County**"). Sheldon Energy and the County may sometimes be referred to herein individually as a "Party" or collectively as "Parties."

WHEREAS, the Town of Sheldon has granted Sheldon Energy the right to construct and operate Wind Energy Conversion Systems, as defined in Section 2 of Local Law No. 1 of 2003, of the Town of Sheldon, Wyoming County, and related infrastructure, including access roads, electrical transmission lines and substations (the "**Project**"); and

WHEREAS, in connection with the Project, Sheldon Energy will use certain Roadways and Public Right-of-Ways within the County; and

WHEREAS, the underlying private landowners of property adjacent to and underneath Public Right-of-Ways have granted easements to Sheldon Energy to the extent necessary to use the Public Right-of-Way for constructing, installing, maintaining and operating the Project; and

WHEREAS, the County has agreed to allow Sheldon Energy to inspect and reinforce the roads and related structures such as bridges or culverts as needed, to adequately support the load necessary for such transportation activities; and

WHEREAS, following the completion of construction, Sheldon Energy has agreed to repair and reconstruct the Roadways to at least the condition that existed prior to the commencement of the Project; and

WHEREAS, the County represents and warrants that it has authority to grant Sheldon Energy the license and other rights conveyed herein; and

WHEREAS, the County desires to allow Sheldon Energy to use the Roadways and Public Right of Ways, subject to the terms and conditions set forth here.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

1. **DEFINITIONS**

As used herein, the following terms shall have the following meanings:

- a. "**Agreement**" means this Road Use Agreement and any and all amendments, exhibits, or schedules attached hereto.
- b. "**Certificate of Completion**" shall have the meaning ascribed to it in Section 7.

- c. **“Event of Default”** shall have the meaning set forth in Section 12.2.
- d. **“Host Community Agreement”** means the agreement to be entered into by Sheldon Energy and the Town of Sheldon.
- e. **“Person”** means corporations, companies, associations, joint stock companies or associations, firms, partnerships, individuals, limited liability companies and their lessors, trustees and receivers.
- f. **“Pre-Construction Inspection Report”** shall have the meaning ascribed to it in Section 4.
- g. **“Project Commencement”** shall have the meaning ascribed to it in Section 4.
- h. **“Public Right-of-Way”** or **“County Right-of-Way”** or **“Right-of-Way”** means the surface, the air space in, on, under, through or above the surface and the area in, on, under, through, below or next to the surface of the Roadways. The Right-of-Ways that are expected to be used are specified in Schedule 1.
- i. **“Reassessment Report”** shall have the meaning ascribed to it in Section 7.
- j. **“Reinforcement”** shall have the meaning ascribed to it in Section 4.
- k. **“Remediation”** shall have the meaning ascribed to it in Section 7.
- l. **“Roadway(s)”** shall mean the highways, roads, streets, alleys, sidewalks, public ways, utility easements, public easements, as the same may exist now or hereafter. The Roadways that are expected to be used are specified in Schedule 1.
- m. **“Term”** shall have the meaning ascribed to it in Section 14.
- n. **“County Engineer”** shall mean a County employee or County-designated consultant with sufficient training and experience to conduct the tasks set forth in this Agreement.

2. PERMIT

The County hereby permits Sheldon Energy, and its employees, agents, and contractors, to enter upon the Roadways and the Public Right-of Way for the purposes of:

- a. During pre-construction, construction and remediation: (i) transporting personnel, equipment and materials over the Roadways to support the Project; (ii) making investigations and inspections thereon, including, without limitation, investigations related to the load-bearing characteristics of the Roadways, (ii) reinforcing the Roadways as Sheldon Energy deems necessary for the Project, and (iii) repairing and reconstructing the Roadways to a condition at least as good as existed prior to the commencement of the Project.

- b. During operation of the Project: (i) transporting personnel, equipment and materials over the Roadways to support the Project; (ii) use of Public Right-of-Ways for the ownership, operation, leasing, maintenance, location, upgrade, repair, movement, protection, reconstruction, relocation, removal, and replacement of the Project; provided that such installation, operation, leasing, maintenance, location, upgrade, repair, move, protection, reconstruction, relocation, removal or replacement does not obstruct access to, travel upon, or other use of the specified Public Right-of-Way or rights by a public or private party. This Section 2(b) of this Agreement constitutes the permission necessary for overhead or underground crossing of a County highway pursuant to New York State Highway Law § 149.
- c. During decommissioning of the Project: (i) transporting personnel, equipment and materials over the Roadways to support decommissioning of the Project; (ii) complying with the requirements of the Decommissioning Plan as set forth in the Host Community Agreement.

3. GRANT OF LICENSE

- 3.1. Grant of License. The County hereby grants to Sheldon Energy, subject to the terms and conditions of this Agreement, the non-exclusive right, privilege, and authority to use the public streets, alleys, and other Public Right-of-Way of the County, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the County, or in such territory as may be hereafter added to, consolidated or annexed to the County. No use or rights herein granted in this Section 3.1 shall create or vest in Sheldon Energy any easement or any other ownership or property rights of any nature whatsoever in the County's streets, alleys or Public Right-of-Way.
- 3.2. Compliance with Laws. Sheldon Energy agrees to comply with any ordinance or local law that is properly and lawfully enacted by the County during the term of this Agreement, and nothing in this Agreement shall be deemed to waive the requirements of any applicable codes and ordinances and local laws of the County, including but not limited to permit requirements.
- 3.3. No Representation by County. By consequence of the grant of this license, or subsequent approvals authorized by this license, the County makes no representation, express or implied, as to the condition of the Public Right-of-Way.

4. INSPECTION AND REINFORCEMENT

- 4.1. Pre-Construction Inspection. Sheldon Energy shall notify the County of its intent to begin mobilization of project components and commencement of Project-related construction activities ("**Project Commencement**"). Sheldon Energy shall inspect the Roadways and the Public Right-of-Ways identified as potentially impacted by Sheldon Energy prior to Project Commencement to determine the condition of such Roadways and Public Right-of-Ways to determine whether the Roadways and Public Right-of-Ways are in a condition sufficient to support the wear and tear and load characteristics of such construction activities. Prior to the start of construction, the key results of the Roadway

and the Public Right-of-Way inspections shall be reduced to a written report that shall be submitted to either the County Engineer or County highway superintendent for approval, which approval shall not be unreasonably withheld (the "**Pre-Construction Inspection Report**"). Photographs will be taken at a maximum interval of 200 feet, and at substantially lesser intervals in the vicinity of all access road intersections, to document the condition of all roadways and road shoulder area that may be impacted by construction traffic. The Pre-Construction Inspection Report shall include photographs taken with rulers or similar measurement techniques that will document the depth of ruts, if any, existing in the Roadways prior to Project Commencement.

- 4.2. **Reinforcement.** In the event such Pre-Construction Inspection Report reveals deficiencies in the quality of the Roadways necessary to support the Project-related construction activities, Sheldon Energy shall undertake construction to reinforce the Roadways as necessary to correct such deficiencies (the "**Reinforcement**").

5. **CONDITIONS ON USE OF ROADWAYS**

Sheldon Energy hereby agrees that over-sized vehicles related to the Project shall be restricted to travel the Roadways during the hours of 6:00 AM and 8:00 PM local time, and the haul route for such over-sized vehicles shall be selected to accommodate those vehicles. Sheldon Energy's transportation and construction activities on the Roadways shall be conducted in such a manner as to minimize the effects on local transportation and to minimize redundancy in road construction. Sheldon Energy agrees to actively coordinate scheduling of road use, including any activities that could result in temporary road closure, with the local school district bus schedules and with local public safety agencies. Sheldon Energy shall publish in the East Aurora and Arcade Pennysaver newspapers notices of significant road closures, if any, that are known in advance of publishing deadlines to be caused by the Project.

6. **CONDITIONS ON USE OF THE PUBLIC RIGHT-OF-WAY**

- 6.1. **Use Subordinate.** Sheldon Energy's use of the Public Right-of-Way is subordinate, and non-exclusive, to the prior and continuing right of (i) the County; and (ii) non-exclusive to the use of other persons authorized to use the specified Public Right-of-Way. Sheldon Energy shall not be required to bear any of the costs of rearranging or transferring the Project if such a rearrangement or transfer is required as a result of the use by any party, other than the County, of the Public Right-of-Way, unless any prior existing license, franchise, or easement granted by the County so requires.
- 6.2. **No Adverse Impact.** Except as permitted by applicable law or as set forth herein, Sheldon Energy shall not endanger persons or property or unreasonably obstruct access to, travel upon or other use of the specified Public Right-of-Way, nor shall Sheldon Energy damage or materially impair any other facilities therein, including without limitation, streets, sidewalks, sanitary sewers, storm drains, water mains, gas mains, poles, overhead or underground wires or conduits without the prior written approval of the County.

- 6.3. No Expense to County. Upon approval of this Agreement, the use of the Public Right-of-Way shall be accomplished without cost or expense to the County and shall be in accordance with all applicable laws, rules and regulations and such other standards as the County may from time-to-time lawfully apply generally to private users of the Public Right-of-Way and shall be accomplished in such manner as not to endanger persons or property or unreasonably obstruct access to, travel upon or other use of the specified Public Right-of-Way.

7. REPAIR AND REMEDIATION

- 7.1. Reassessment after Construction. Sheldon Energy hereby agrees that it shall during construction, until a Certificate of Completion has been issued; repair any damage to Roadways or Public Right-of-Ways that creates an unsafe condition, which is caused by Sheldon Energy, its employees, agents or contractors. Following the completion of construction, Sheldon Energy and the County Engineer will conduct a reassessment of the conditions of the Roadways and the Public Right-of-Ways to determine whether, as a result of Sheldon Energy's activities, the condition has degraded below the condition of the Roadways and the Public Right-of-Ways that existed prior to the Pre-Construction Inspection Report (the "**Reassessment Report**"). The Reassessment Report shall use the condition of the Roadways and the Public Right-of-Ways set forth in the Pre-Construction Inspection Report, as a benchmark to determine whether degradation has occurred.
- 7.2. Remediation. If the Reassessment Report reveals such degradation, Sheldon Energy hereby agrees to resurface or repair the Roadways and Public Right-of-Ways to at least the condition of such Roadways and Public Right-of-Ways as of the Pre-Construction Inspection Report. However, if, in the opinion of the County Engineer, which opinion shall be based solely upon reference to the Pre-Construction Inspection Report and the Reassessment Report, damage has been caused to the Roadways or Public Right-of-Ways, or to the shoulder base or asphalt structure, which has destabilized the Roadways, reduced their durability or otherwise caused substantial damage that cannot be corrected by resurfacing to a condition at least equal to that which existed as of the Pre-Construction Inspection Report, then Sheldon Energy will be required to remediate such Roadways, Public Right-of-Way or section of Roadway or Public Right-of-Way. The remediation activities, including any required resurfacing, undertaken pursuant to this Section 7.2 shall be referred to as the "**Remediation.**" The Parties hereby acknowledge and agree that the Remediation may include the replacing of existing culverts, except to the extent the County Engineer determines any of the culverts are operational at the time of Sheldon Energy undertaking such Remediation. The parties further agree that any underground cable may be abandoned in place and no further remediation is required.
- 7.3. Certificate of Completion. Sheldon Energy will notify the County when the Remediation is completed. The County Engineer will promptly inspect the Remediation. Upon inspection by the County Engineer, Sheldon Energy's Remediation shall be deemed complete. The County Engineer will within five (5) days of such inspection issue a "**Certificate of Completion**" to verify completion of all Remediation contemplated by this Agreement.

8. **CONTRACTORS**

Sheldon Energy may contract with third party contractors in connection with Sheldon Energy's rights or obligations hereunder.

9. **FINANCIAL OBLIGATIONS OF THE COMPANY**

- 9.1. **County Engineer.** Sheldon Energy agrees to reimburse the County for all costs, fees and reasonable expenses, of a qualified consultant to advise the County Engineer, or his or her designee, on road inspection, assessment of Road and Right-of-Way condition and determination of remediation up to a total of Ten Thousand Dollars (\$10,000.00), in the aggregate, during the course of this Agreement. The County agrees that Stantec Consulting shall be hired as a consultant and shall serve as County Engineer. Stantec Consulting may be replaced by the County upon Sheldon Energy's written consent.
- 9.2. **Construction Security.** Sheldon Energy hereby agrees, in order to assure performance of any of its obligations pursuant to this Agreement to post security for its obligation in the form of a bond in the amount of Sheldon Energy's actual construction contract price for Remediation (the "**Construction Security**"). Upon completion of Remediation the Construction Security shall be released to Sheldon Energy.

10. **ADDITIONAL ROADWAYS AND PUBLIC RIGHT-OF-WAYS**

The Parties acknowledge and agree that by mutual consent additional roads and public right-of-ways may be added in the future to the Roadways and Public Right-of-Ways covered by this Agreement.

11. **INDEMNIFICATION AND INSURANCE**

- 11.1. Sheldon Energy shall indemnify and hold harmless the County, its officers, employees and agents from and against all losses and claims, demands, payments, suits, actions, recoveries and judgments of every nature and description (including reasonable attorney, accountant, and expert fees) resulting from bodily injury, property damage or personal injury, brought or recovered by any act or omission of Sheldon Energy, its agents or employees, in the use of the Roadways or Public Right-of-Ways within the County or any portions thereof, or of any failure to comply with this Agreement, except to the extent caused by the negligence of the County. Conduct by employees, consultants, officials, or agents employed or otherwise retained by the County shall not be construed to be conduct of Sheldon Energy or its agents. The provisions of this paragraph shall survive the termination of this Agreement.
- 11.2. The County shall indemnify and hold harmless Sheldon Energy, its officers, employees and agents from and against all losses and claims, demands, payments, suits, actions, recoveries and judgments of every nature and description (including reasonable attorney, accountant, and expert fees) resulting from bodily injury, property damage or personal injury, brought or recovered by any act or omission of the County, its agents or

employees, in the use of the Roadways or Public Right-of-Ways within the County or any portions thereof, or of any failure to comply with this Agreement, except to the extent caused by the negligence of Sheldon Energy. Conduct by employees, consultants, officials, or agents employed or otherwise retained by Sheldon Energy shall not be construed to be conduct of the County or its agents. The provisions of this paragraph shall survive the termination of this Agreement.

12. DEFAULT AND EVENTS OF DEFAULT

- 12.1. Except as set forth in Section 12.2, the failure of either party to perform or observe any material covenant of this Agreement shall constitute a default, if such default is not cured within sixty (60) days of receipt of notice of such default to the defaulting party (or such longer period as is necessary provided such cure is begun within such 60 day period and is thereafter diligently pursued).
- 12.2. Each of the following events shall constitute an Event of Default, if such Event of Default is not cured within sixty (60) days of receipt of written notice of such event of default to the defaulting party (or such longer period as is necessary provided such cure is begun within such 60 day period and is thereafter diligently pursued): (i) the failure of Sheldon Energy to make any payment hereunder within thirty (30) days after Sheldon Energy's receipt of written Notice from the County; and (ii) the failure of Sheldon Energy to maintain Construction Security as required by Section 9.2 hereof.

13. REMEDIES

- 13.1. Upon the occurrence and during the continuance of any Event of Default by Sheldon Energy, the County may, at its option, in addition to any other remedies the County may have, access the Construction Security to cure Sheldon Energy's default. No remedy is intended to be exclusive, but each is cumulative.
- 13.2. Notwithstanding any other provision of this Agreement, in no event shall either party be liable for special, consequential, exemplary or punitive damages as a result of the performance or non-performance of its obligations under this Agreement.

14. TERM

The Term of this Agreement shall be as of the date first executed through the completion of Remediation of the County roads as provided for in this Agreement.

15. TERMINATION

This Agreement may be terminated by the County upon thirty (30) days written Notice to Sheldon Energy upon the occurrence of any of the following events:

- a. The filing of a petition in bankruptcy by Sheldon Energy or by creditors of Sheldon Energy or the appointment of a receiver of all or substantially all of the assets of Sheldon Energy;

- b. Sheldon Energy no longer conducts business in the County; and
- c. Pursuant to Section 13.1.

16. NOTICES

All Notices permitted or required hereunder shall be in writing and shall be transmitted via certified United States Mail, return receipt requested, or by private same day or overnight delivery service and shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

Notices to the County:

Wyoming County Highway Department
Attention: Superintendent
4328 Route 19
Rock Glen, New York 14550

Notices to Sheldon Energy:

Sheldon Energy LLC
c/o Invenergy Wind North America LLC
Attention: General Counsel
One South Wacker Drive, Suite 2020
Chicago, Illinois 60606

17. ASSIGNABILITY

Should Sheldon Energy transfer any of its interests in the ownership or operation of the Project in accordance with the terms of the Host Community Agreement, this Agreement shall be freely assignable to such transferee, including the obligations related to the Security. In the event of such assignment, Sheldon Energy shall have no further obligations hereunder.

18. MISCELLANEAOUS

- 18.1. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 18.2. This Agreement shall be construed in accordance with the laws of the State of New York without regard to the conflict at laws principles thereof.

- 18.3. The article headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.
- 18.4. Nothing in this Agreement shall be construed to make the parties hereto partners or joint ventures or render either of said parties liable for the debts or obligations of the other.
- 18.5. To the extent set forth herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
- 18.6. This Agreement may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by the parties hereto.
- 18.7. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.
- 18.8. The Agreement may be recorded in the appropriate real property records. Sheldon Energy shall be responsible for all recording fees associated therewith.
- 18.9. Any failure, of a party to perform its obligations under this Agreement shall not be a breach of this Agreement to the extent such failure results from Acts of God (including fires, hurricanes, earthquakes, tornadoes, flooding, snow storms, severe thunderstorms or similar natural occurrences), war, riots and civil insurrection, outbreaks of hostilities, states of emergency, governmental action, delay or inaction that did not result from wrongdoing by the party involved in such governmental action, supply shortages (including power, gasoline and other fuel shortages), omissions of third parties when such omissions did not occur due to action or inaction of the third party failing to perform, labor disputes, shortages, strikes or walkouts or transportation delays, or similar occurrences beyond the party's reasonable control.
- 18.10. The parties each agree to execute and deliver such additional instruments and documents, not creating any obligations or imposing any expenses additional to those otherwise created or imposed by this Agreement, as either party may reasonably request from time to time at or after the execution of this Agreement in furtherance of the express provisions of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the County has caused its corporate seal to be affixed hereto and these presents to be signed by A. Douglas Berwanger, Chairman of the Board of Supervisors, duly authorized so to do, and to be attested to by Cheryl Ketchum, Clerk to the Board, and Sheldon Energy has caused these presents to be signed by its duly authorized representative as of the day and year first above written

(seal of Wyoming County)

WYOMING COUNTY

Attest:

Cheryl W. Ketchum
Cheryl Ketchum
Clerk to the Board

A. Douglas Berwanger
A. Douglas Berwanger
Chairman of the Board of Supervisors

STATE OF NEW YORK)
COUNTY OF WYOMING) ss.:

On the 4th day of Oct, in the year 2007, before me, the undersigned, personally appeared A. Douglas Berwanger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

MARJORIE E. DOWNS
Notary Public, State of New York
No. 01DO5047564
Qualified in Wyoming County
Commission Expires August 7, 2009

Marjorie E. Downs
Notary Public

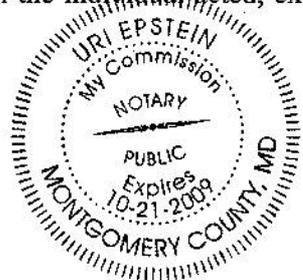
SHELDON ENERGY LLC,
a Delaware limited liability company

By: [Signature]
Name: Enio Ricci
Its: Vice President

STATE OF MARYLAND)
COUNTY OF MONTGOMERY) ss:

On the 17th day of September, in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Enio Ricci, Vice President, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public



SCHEDULE 1

Description of Roads and Rights of Ways

Expected County Roads to be used for Hauling Materials and Wind Turbine Components

	Road Name	Route	Estimated WTG Traffic**	Approximate Length of Roadway
1.	Centerline Road	From the intersection with NY Route 77 west to the western boundary of Gary Daniel's property where it borders the property of Ray Kirsch	8 WTG	1.0 miles
2.	Perry Road	From the intersection with NY Route 77 east to the intersection with Humbert Road.	2 WTG*	0.7 miles
3.	French Road	From the intersection with NY Route 20A north to the planned project access road located approximately 2000 ft from Route 20A.	3 WTG	0.4 miles
			TOTAL MILES	2.1 miles

*Includes 1 WTG to be accessed from Humbert Road, plus the WTG to be accessed from Perry Road.

**Preliminary, non-binding estimates.

Expected County Right-of-Ways for Cable Crossings

	Road Name	Approximate Location
1	Perry Road	Just east of Humbert Road
2	Centerline Road	Approximately 0.5 miles west of Route 20A
3	Centerline Road	At the Gary Daniel Farm, approximately 0.8 miles west of Route 20A

Expected County Right-of-Ways for Intersection Widening

	Intersection	Corner(s)
1	French Road and NYS Route 20A	NE
2	Perry Road and Humbert Road	SW