

STATE OF ILLINOIS )  
 )  
COUNTY OF LIVINGSTON )  
 )  
VILLAGE OF CULLOM )

**APPROVAL OF COMMUNITY BENEFIT AGREEMENT**

**RESOLUTION NUMBER 2022-B**

A RESOLUTION approving the Community Benefit Agreement attached as Exhibit A to this Resolution (the “CBA”) and authorizing the President of the Village of Cullom to execute the CBA or a Community Benefit Agreement in substantially similar form.

WHEREAS, the Village is a duly organized and existing body politic and corporate governed by the provisions of the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq., and its own duly adopted Municipal Code, located in the Township of Sullivan and the County of Livingston;

WHEREAS, the Village has determined that entering into the CBA will improve the public health, safety, morals, and general welfare of the residents of the Village;

WHEREAS, the Village is authorized and empowered under the Illinois Municipal Code, the Livingston County Code of Ordinances, and the Village Code of Ordinances to approve the CBA and to authorize the Village President to execute a CBA in substantially similar form as the CBA attached as Exhibit A;

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE OF CULLOM AS FOLLOWS:**

Section 1. The Village of Cullom hereby approves the CBA and authorizes the President of the Village of Cullom to execute the CBA or a Community Benefit Agreement in substantially similar form.

Section 2: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Resolution or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Resolution, or any part thereof. The Village Board of Trustees hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

Passed this 7<sup>th</sup> day of February, 2022.

Ayes: 5

Nays: 0

Absent: 1

Abstain: 0

Approved this 7<sup>th</sup> day of February, 2022.

Signed:   
Village President

Attest:   
Village Clerk

**EXHIBIT A TO RESOLUTION**

**COMMUNITY BENEFIT AGREEMENT**

This Community Benefit Agreement (“**Agreement**”) is entered into by and between the Village of Cullom (“**Village**”), an Illinois municipal corporation, and Livingston Wind Project, LLC (“**LWP**”), a Delaware limited liability company. The signatories to this Agreement may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.” The effective date of the Agreement is the last date of execution as between the Parties (the “**Effective Date**”).

**RECITALS**

WHEREAS, LWP intends to construct, own, and operate a wind energy conversion system project (the “**Project**”) in Livingston County pursuant to Chapter 56 of the Livingston County Zoning Ordinance, which will generate significant private investment, job creation, and future tax revenue for various regional taxing districts located in Livingston County. -

WHEREAS, the Village is a municipality in Livingston County, IL that will support the overall development of the Project and may directly host many of the contractors and suppliers that form crucial parts of the development effort. This support is anticipated to be ongoing during the operation phase of the Project.

WHEREAS, LWP anticipates that one or more wind energy conversion system towers (“**WECS towers**”) will be constructed within a one-and-a-half (1 ½)-mile radius of the corporate limits of the Village.

WHEREAS, the Village has adopted Resolution 2022-A expressly approving and supporting development and operation of the Project by LWP, including without limitation, construction of WECS towers within the one-and-a-half (1 ½)-mile radius of the Village corporate limits pursuant to Livingston County Code of Ordinances Part II, Chapter 56, Article VIII, § 56-618(h)(4), subject to certain limitations set forth in Resolution 2022-A.

WHEREAS, the Village acknowledges and agrees that LWP has adequately consulted with the Village and accommodated the Village with respect to all aspects of the Project and expressly acknowledges, covenants and confirms that this Agreement serves as its consent, approval and support of the Project.

WHEREAS, the Village acknowledges the many benefits of the Project, including renewable energy, payments to participating property owners in the community, tax revenues to schools and other taxing districts that support the community, job growth, and direct and indirect economic benefits of a significant financial investment in the area by the Project.

WHEREAS, in addition to the benefits noted above, and in recognition of the Village’s existing and ongoing support for Project development efforts, and to further offset potential costs to the Village incurred in the development or operation of the Project, LWP desires to

additionally contribute to the welfare and betterment of the Village community by donating funds to the Village for the purpose of supporting community development in the Village.

WHEREAS, pursuant to Article VII, Section 10 of the Constitution of the State of Illinois units of local government, such as the Village, may contract with private entities, such as LWP, for any purpose not prohibited by law or ordinance.

NOW THEREFORE, it is agreed by and between the Parties as follows.

## AGREEMENT

1. **Recitals.** The recitals stated above are hereby incorporated into the body of this Agreement.

2. **Community Donation.** Contingent upon (a) the occurrence of the commencement date for commercial operation of electricity production for sale by the Project to a third-party power purchaser, offtaker, merchant buyer, spot market buyer, or other third-party purchaser (and excluding the production of any "test" energy) (such date the "**Commercial Operation Date**" or "**COD**") and (b) the placement of a minimum of one (1) WECS tower within one and a half (1 ½) miles of the Village corporate limits as such limits exist as of the Commercial Operation Date, LWP shall donate to the Village the amount of ten thousand dollars and no cents (\$10,000.00) annually (the "**Annual Donation**"), with the first payment due thirty (30) days after COD and each subsequent payment due each year on the anniversary of the initial Annual Donation for the Term of this Agreement.

3. **Term.** LWP shall pay the Annual Donation initially after COD and then each year thereafter as set forth in Paragraph 1 for thirty-nine (39) additional years (resulting in forty (40) payments total) (the "**Term**"), unless either of the following events takes place prior to the expiration of the Term, in which case the Term shall be amended to expire as follows:

- a. If all WECS towers are decommissioned within one and a half (1 ½) miles of the Village corporate limits, as such limits exist at the time of such decommissioning, then LWP shall pay the Annual Donation each year until such decommissioning commences, at which time LWP's obligation to pay the Annual Donation shall cease. LWP shall provide notice in writing to the Village of commencement of decommissioning resulting in an expiration of the Term.
- b. If the Village corporate limits change at any time during the Term such that there are no longer any WECS towers within one and a half (1 ½) miles of the Village corporate limits, then LWP shall pay the Annual Donation each year until the Village corporate limits are so changed, at which time LWP's obligation to pay the Annual Donation shall cease.
- c. If the Commercial Operation Date has not occurred prior to the seventh (7<sup>th</sup>) anniversary of the Effective Date, this Agreement shall automatically terminate.

4. **No Guarantee of Project.** The decision to proceed with or terminate the development of the Project rests solely with LWP. By entering into this Agreement, LWP in no way guarantees that Project development will proceed or that the Project will achieve a COD.

5. **Village Covenants.** The Village shall continue to provide reasonable support for LWP's Project development efforts in Livingston County including without limitation providing documentation reasonably requested by LWP for interested parties, including but not limited to Livingston County, other governmental entities, and investors and lenders in the Project, confirming the ongoing validity of the approvals identified in Resolution 2022-A.

6. **Supervening Law.** Any provisions of law that invalidate, or otherwise are inconsistent with, the terms of this Agreement or that would cause one or all of the Parties to be in violation of law, shall be deemed to have superseded the terms of this Agreement; provided, however, that the Parties shall exercise their best efforts to accommodate terms and intent of this Agreement to the greatest extent possible consistent with the requirements of law.

7. **Negation of Partnership and Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be or to create a partnership or joint venture between the Parties. Each party hereto shall be solely responsible for carrying out the responsibilities assumed by it under this Agreement and no party shall be liable for the acts or omissions of the others in performing its responsibilities.

8. **Events of Default.** Each of the following shall constitute an "Event of Default," which shall permit the non-defaulting Party, at its discretion, to terminate this Agreement and/or pursue such other remedies as are available to it at law or in equity:

- (a) any failure by LWP to pay the Annual Donation when due if the failure to pay continues for thirty (30) days after the Village delivers Notice of such failure to LWP; and
- (b) any other material breach of this Agreement by either Party which continues for thirty (30) days after (i) written notice of default from the non-defaulting Party or, (ii) if the cure will take longer than thirty (30) days, the length of time necessary to effect such cure so long as the defaulting Party commences to cure within the thirty (30) day period and continuously and diligently pursues the cure to completion.

9. **Specific Performance Available in Event of Default.** Upon occurrence of an Event of Default, the non-defaulting party shall have the right to seek an order from a court of competent jurisdiction enforcing specific performance of this Agreement. The Parties further agree that the election of this remedy does not waive any other remedies available in equity or under law, including but not limited to injunctive relief or monetary damages.

10. **Refund of Annual Donations in Event of Default.** Upon occurrence of an Event of Default caused by the Village, then, in addition to any other remedies available to LWP in equity or under law, the Village shall, within ten (10) business days of Notice of such

Event of Default from LWP, refund to LWP all Annual Donation payments made pursuant to this Agreement.

11. **Waiver.** Waiver by any Party hereto of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any of the Parties.

12. **Notices.** Any notice (“Notice”) required or permitted to be given under the terms of this Agreement shall be reduced to writing and shall be regarded as given when personally delivered or when placed in the United States mail with first class and certified mail return receipt requested postage fully prepaid and addressed to the parties at the following respective addresses:

If to LWP, as follows:

Livingston Wind Project, LLC  
c/o EDF Renewable, Inc.  
15445 Innovation Drive  
San Diego, CA 92128  
Attn: Asset Optimization

With a copy to:

Livingston Wind Project, LLC  
c/o EDF Renewable, Inc.  
15445 Innovation Drive  
San Diego, CA 92128  
Attn: Legal

If to Village of Cullom, as follows:

Village of Cullom  
c/o Village Clerk  
119 North Oak Street  
Cullom, Illinois 60929

13. **Headings.** The headings of the several paragraphs hereof are for convenience in reference only and shall not be construed to be a part of this Agreement.

14. **Amendment and Binding Effect.** This Agreement shall not be modified or amended except in writing signed by the Parties hereto.

15. **Severability.** Any provision of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

16. **Jurisdiction.** This Agreement shall be deemed to have been entered into in the State of Illinois, and all questions concerning the validity, interpretation, or performance of any of its terms or provisions or of any rights or obligation of the parties hereto, shall be governed by and resolved in accordance with the laws of the State of Illinois. Any lawsuit arising from this Agreement shall be filed in the Circuit Court for the Eleventh Judicial Circuit in Livingston County, Illinois or in the United States District Court for the Central District of Illinois.

17. **Assignment.** LWP shall have the right at any time, without need for the Village's consent or approval, to assign or convey all or any portion of this Agreement to an assignee or assignees, on an exclusive or nonexclusive basis. Upon such assignment, LWP shall be released from its obligations under this Agreement, which obligations shall thereafter be the obligation of the assignee. LWP shall have the right at any time, without need for the Village's consent or approval, to mortgage or collaterally assign all or any part of its interest in the Agreement and its rights under the Agreement to any entity (a "Lender") without the consent or approval of the Village; provided, however, that LWP shall provide Notice of its mortgage or collateral assignment to Village with contact information for the Lender. Any Lender will have no obligations under this Agreement until such time as it exercises its rights to acquire LWP's interest subject to the lien of Lender's mortgage by foreclosure or otherwise or assumes the obligations of LWP under this Agreement. So long as any mortgage with a Lender remains in effect, this Agreement shall not be modified, and the Village shall not accept a termination or release of this Agreement, without the prior consent of all Lenders. The Village, upon providing LWP any notice of default under this Agreement, shall at the same time provide a copy of such notice to each Lender. The Village shall accept any performance by or at the instigation of any such Lender as if the same had been done by LWP (but no Lender shall have any obligation to remedy or cause the remedy of any default). All the terms, conditions, covenants and other provisions contained in this Agreement, including benefits and burdens, shall be binding upon the Village so long as the Village remains an incorporated municipality in the State of Illinois and shall inure to the benefit of and be enforceable by the Village and LWP, and their respective heirs, successors and assigns.

18. **Opportunity for Legal Counsel and No Drafting Presumption.** Each Party acknowledges having (a) had the opportunity to obtain its own independent legal advice with respect to this Agreement and the transactions contemplated hereby, and (b) sought such legal advice to the fullest extent deemed necessary by each Party prior to its execution and delivery. There will be no presumption of resolution of any ambiguity in this Agreement in favor of either of the Parties. The execution, delivery and performance by the Parties of this Agreement has been duly authorized by all necessary action and there are no approvals, authorizations, consents, or other actions necessary to authorize either Party's execution and delivery of this Agreement.

19. **Counterparts; Facsimile and PDF Delivery.** This Agreement may be executed in one or more counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. This Agreement may be delivered by facsimile or by PDF file and upon such delivery the facsimile or PDF signature shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the parties hereto, acting by and through their duly authorized officers under authority duly granted by their respective governing bodies, have caused this

Agreement to be executed, which will be effective and binding upon the parties only as of the date that both parties have executed this Agreement.

**LIVINGSTON WIND PROJECT, LLC**

By: Kathryn Ottaur 03/08/22  
Print: Kathryn Ottaur Date  
Title: Vice President - Development

**VILLAGE OF CULLOM**

By: Barbara Hahn 2-07-2022  
Barbara Hahn, Village President Date