

2019-009399

Klamath County, Oregon



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08/16/2019 02:43:54 PM

Fee: \$137.00

Recording Requested by and
When Recorded, Return to:

wpd wind projects Inc.
205 SE Spokane Street, Suite 300
Portland, OR 97202
Attention: Jeffrey Wagner

Space above this line is for Recorder's use.

MEMORANDUM OF WIND ENERGY LEASE

Grantor (Landlord):

**GREEN DIAMOND RESOURCE COMPANY A
WASHINGTON CORPORATION**

Grantee (Tenant):

BRYANT MOUNTAIN MW LLC

Abbreviated Legal Description (lot,
block, and plat name or section,
township range):

**TOWNSHIP 40 SOUTH, RANGE 12 EAST, W.M.,
KLAMATH COUNTY, OREGON**

SECTIONS 10, 11, 13, 14, 22

**TOWNSHIP 40 SOUTH, RANGE 13 EAST, W.M.,
KLAMATH COUNTY, OREGON**

SECTIONS 16, 17, 18, 19, 20, 21, 28, 29, 30, 32, 33, 34

Additional Legal Description is on Exhibit A of document.

Assessor's Property Tax Parcel
Account Number(s):

R-4013-00000-07700-000	R-4013-00000-04500-000
R-4013-00000-07800-000	R-4013-00000-04800-000
R-4013-00000-07900-000	R-4013-03000-00100-000
R-4013-00000-08000-000	R-4013-00000-04900-000
R-4013-00000-08100-000	R-4012-02200-00800-000
R-4013-00000-08600-000	R-4013-00000-05000-000
R-4013-00000-08800-000	R-4013-00000-09000-000
R-4012-00000-03400-000	R-4012-00000-03300-000
R-4012-00000-03500-000	R-4013-00000-03500-000
R-4012-00000-03700-000	R-4013-00000-03800-000
R-4013-00000-04000-000	R-4013-00000-05200-000
R-4013-00000-04100-000	R-4013-00000-09100-000
R-4013-00000-04300-000	
R-4013-00000-04400-000	

Recording Requested by and
When Recorded, Return to:

wpd wind projects Inc.
205 SE Spokane Street, Suite 300
Portland, OR 97202
Attention: Jeffrey Wagner

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MEMORANDUM OF WIND ENERGY LEASE

This MEMORANDUM OF WIND ENERGY LEASE shall evidence that there is in existence a Wind Energy Lease ("**Lease**") as herein described. It is executed by Green Diamond Resource Company, a Washington corporation ("**Landlord**"), and Bryant Mountain MW LLC, a Delaware limited liability company ("**Tenant**") for recording purposes only as to the Lease hereinafter described, and it is not intended and shall not modify, amend, supersede or otherwise affect the terms and provisions of said Lease.

The purpose of this Memorandum of Wind Energy Lease is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed. A copy of the Lease is on file with the Landlord and Tenant at their respective addresses set forth below. In the event of any conflict between the terms hereof under the Lease, the Lease shall control. Capitalized terms used but not defined herein shall have the meaning given to such term in the Lease.

1. **Name of Document:** Wind Energy Lease
2. **Effective Date of Lease:** August 2, 2019
3. **Name and Address of Landlord:** Attention: General Counsel
Green Diamond Resource Company
1301 Fifth Avenue, Suite 2700
Seattle, WA 98101-2613
Phone: 206-224-5815
Fax: 206-224-5809
4. **Name and Address of Tenant:** Bryant Mountain MW LLC
Attn: Jeffrey Wagner
c/o wpd wind projects Inc.
205 SE Spokane Street, Suite 300
Portland, OR 97202
Telephone: (503) 236-4900
Fax: (503) 296-2295
5. **Premises.** Approximately 5,838.25 acres of land, more or less, as more fully described in "**Exhibit A**" (the "**Premises**") attached hereto and incorporated herein. It is possible that the boundaries of fields, private roads or as-built fence lines on the Premises may not precisely match

the boundaries of the Premises, and that these boundaries could create one or more encroachments onto adjacent property which could potentially entitle Landlord to claim the additional property within the boundary lines by adverse possession, thereby affecting the rights of the Landlord, Tenant and the neighboring land owners. Consequently, in the event any such boundary encroachment exists with respect to the Premises, the boundary of the Premises described in the Lease is now and shall always be recognized as that which is subject to the terms and conditions set forth therein, as it pertains to the Project, and for no other purpose. Landlord agrees on behalf of itself, its heirs, successors or assigns that if Landlord were to acquire any property adjacent to the Premises via an adverse possession claim based on physically existing boundary lines, Landlord waives: (a) any claim that any additional compensation is due to Landlord for improvements placed on the acquired property as part of the Project; and (b) any claim that the acquired property is not subject to any Lease or other instruments for the Project executed by the record owner of the acquired property as of the Effective Date of the Lease; provided that the waiver is limited in scope and relates only to the terms and conditions in the Lease, and not for any other purpose.

6. Lease Term. The Term of the Lease shall be forty-five (45) years from the Effective Date of the Lease (or up to sixty-five (65) years upon exercise of the Tenant's Extended Term elections). The Term shall include all renewals or extensions hereof unless the context clearly indicates to the contrary; provided, however, if the Commercial Operations Date of the first Wind Energy Project on the Premises has not occurred on or before four (4) years from the Effective Date and if not extended up to two (2) more years as provided in the Lease, the Lease shall terminate and be of no further force and effect without any further action being necessary on the part of Landlord or Tenant.

If Tenant terminates the Lease as to any portion, Tenant shall promptly record a release showing the portion of Premises no longer subject to the Lease or shall record a termination showing the Lease is terminated in full. If Tenant fails to do so within sixty (60) days of having terminated all or any portion of the Lease, the Landlord shall be authorized on a unilateral basis to record a Notice of Release or Termination in order to clear the lease encumbrance from the Landlord's property.

7. Granting Clause. Landlord leases to Tenant and Tenant leases from Landlord the Premises, reserving unto Landlord the right to use the Premises for any activities which do not unreasonably interfere with Tenant's production of electricity from wind power as set forth in the Lease. Tenant may use the Premises for wind energy conversion, the collection and transmission of electric power, and other activities specifically authorized by the Lease.

8. Wind Energy Project. One or more integrated wind energy generating facilities that may be designed, financed, constructed and operated by Tenant on the Premises or on adjacent or nearby land (the "Wind Energy Project" or "Project(s)"). A Project may be developed, constructed, and operated in phases, both on the Premises and on other adjacent or nearby lands. A Project includes all related Tenant improvements and Project Facilities as defined in the Lease, on, over, or under the Premises.

9. Permitted Use of Premises. Throughout the Lease Term, Tenant shall have the sole and exclusive rights to use the Premises for the conversion of all wind resources into electrical energy and to collect and transmit such electrical energy converted from wind energy as part of the Project.

Without limiting the generality of the foregoing, Tenant's rights hereunder specifically include the right to:

9.1. Extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analysis on the Premises as Tenant deems necessary, useful or appropriate for the construction and maintenance of the Project.

9.2. Construct, install, erect, improve, place, replace, remove, relocate and operate any and all improvements, machinery or equipment that Tenant deems necessary in connection with the uses described above, including, without limitation, the following (collectively, the "**Project Facilities**"): (a) one or more wind turbine generators ("**WTGs**") of at least 1.5 MW nameplate capacity each, with associated towers, related fixtures, equipment and improvements, including the appurtenant support structures, towers, poles, cross-arms, braces, and guy wires constructed on concrete foundations with a horizontal ground area no greater than 100 feet across and with blade end points a minimum height of 50 feet above the adjacent ground; (b) overhead and underground electricity collection and transmission equipment, power conditioning equipment, substations, operations and maintenance buildings interconnection facilities, switching facilities, transformers, SCADA and telecommunications equipment (only as necessary for the operation of the WTGs); and (c) roads, gates, signs, fences, meteorological towers, renewable energy measurement equipment, maintenance yards, permanent laydown areas, machinery, equipment and improvements. Tenant shall be solely responsible for maintenance of any and all roads and associated erosion control facilities, new gates, signs, cattle guards, fences and other Project Facilities constructed by Tenant.

9.3. Construct, install, erect, improve, place, replace, remove, relocate and operate electrical facilities of the Project(s), which include cables to electrically interconnect strings of WTGs that are located underground except in the following circumstances: (1) where rock or other obstructions make such underground placement commercially impractical in the reasonable opinion of Tenant; (2) if reasonably necessary to cross steep terrain or to minimize disturbance to Conservation Reserve Program lands; or (3) along public roads.

9.4. Conduct marketing activities associated with the Project on the Premises including access to and access across the Premises by Tenant's invitees and tours of the Project for publicity, marketing research, or educational purposes associated with the wind development or with Tenant's business.

9.5. Grant access to the Premises by Tenant's transmission provider or electrical contractor for the purpose of constructing, operating, inspecting, and maintaining any meter, transmission line or other electrical device deemed necessary to a Project by the transmission provider and agreed by the transmission provider and Tenant to be installed on the Premises, without regard to whether such devices are owned by transmission provider or Tenant.

9.6. Undertake any other activities that Tenant determines are necessary, helpful, appropriate, convenient, or cost effective in connection with, or incidental to, the valuation, construction, operation, and ultimate decommissioning of one or more Projects including conducting tests, surveys, studies, excavations, and inspections.

9.7. Impact views, have other visual effects on or from the Premises, cast shadows or flickers upon the Premises or adjacent or nearby lands, or cause or emit noise, vibration, air turbulence, wake and/or electronic interference on or from the Premises (collectively "**Interference**"). Landlord hereby waives any claim or cause of action it may have against Tenant regarding any Interference.

9.8. Compliance with Law. Tenant shall at all times and at its sole expense comply in all material respects with all valid laws, ordinances, statutes, permits, orders and regulations of any governmental agency (collectively, "**Laws**") now or hereafter applicable to its use of the Premises, provided that Tenant shall have the right to contest the validity or applicability to the Premises or to the Project Facilities of any Law so long as Landlord is reasonably protected against any adverse impact to its interest in the Premises that could foreseeably result from such contest.

9.9. Quiet Enjoyment. As long as Tenant observes the terms and conditions of the Lease, it shall peaceably hold and enjoy the rights of Tenant hereunder and any and all other rights granted by the Lease for its entire Term without hindrance or interruption by Landlord or any other person or persons.

10. Mechanics Liens. Tenant shall pay when due all claims for Project labor and material furnished to the Premises, and shall not permit any mechanic's, materialmen's, contractor's, or other claims of liens (collectively "**Liens**") arising from any construction, maintenance, repair, or alteration of improvements by Tenant to be enforced against the Premises or any part thereof. Tenant may, however, in good faith and at Tenant's own expense, contest the validity of any asserted Lien, provided that Tenant has, at Tenant's option, bonded against the Lien pursuant to applicable law or provided Landlord with an indemnity against enforcement of the Lien in a form reasonably satisfactory to Landlord. Tenant shall give Landlord at least twenty (20) days, prior written notice of the commencement of any work on the Premises that could be the subject of a Lien, and Landlord shall have the right to record and post notices of non-responsibility for the work.

If Tenant fails to comply with the above paragraph and a Lien is enforced against the Premises as a result, Landlord shall have the right, but not the obligation, upon ten (10) business days' notice to Tenant, to pay or otherwise discharge, stay, or prevent the execution of any such Lien. Tenant shall reimburse Landlord for all sums paid by Landlord under this paragraph, together with interest thereon at the Default Rate and all of Landlord's reasonable attorney fees and costs incurred in connection with the Lien.

11. Landlord's Representations, Warranties and Covenants. Landlord Leases With Entities Other Than Tenant. Landlord reserves the right to enter into livestock, grazing or hunting lease(s) during the Term of and subject to the Lease. Landlord will retain in any leases or rental agreements concerning any portion of the Premises entered into by Landlord during and relating to the Term, the exclusive right to enter into any livestock or hunting lease and further that any such livestock or hunting leases and other such agreements are subject and subordinate to the Lease and Tenant's rights granted to it therein.

12. Taxes and Assessments. Tenant shall pay any increase in the real property taxes levied against the Premises directly attributable to the installation of Project Facilities on the Premises or

by reason of re-characterization of the property which causes an increase in the taxes. Tenant shall not be liable for taxes attributable to facilities installed by Landlord or others on the Premises or to the underlying value of the Premises itself. Landlord and Tenant shall cooperate in an effort to have Tenant separately billed for its share of taxes; however, if such arrangement cannot be made, then Landlord shall submit the real property tax bill to Tenant within ten (10) days after Landlord receives the bill, and Tenant shall pay its share of the taxes to Landlord no later than ten (10) days prior to the date the taxes are due. If Landlord does not timely pay its share of taxes on the Premises, Tenant shall be entitled (but not obligated) to make payments in fulfillment of Landlord's tax obligations and may offset those payments against future payments due Landlord under the Lease. Landlord and Tenant shall reasonably cooperate to minimize the amount of property taxes imposed on each of them.

Tenant shall have the right to contest the legal validity or amount of any taxes payable by Tenant hereunder and may institute such proceedings as it considers necessary, at its own cost. If the contest poses a reasonable risk of loss, forfeiture, or imposition of a penalty on Landlord, then Tenant shall either pay the tax or, at Tenant's option, post a sufficient bond and provide Landlord with reasonable satisfactory indemnity against any risks.

13. Condemnation.

13.1 Complete Taking. If at any time during the Term of the Lease any authority having the power of eminent domain shall condemn all or substantially all of the interest of Tenant hereunder or the Project Facilities for any public use or otherwise, then the interests and obligations of Tenant under the Lease shall cease and terminate upon the earliest of: (a) the date of the condemnation judgment, (b) the date that the condemning authority takes physical possession of the interest of Tenant hereunder or the Project Facilities, and (c) the date that Tenant is, in its sole judgment, no longer able or permitted to operate the Project or the Project Facilities on the Premises in a commercially viable manner. Tenant shall continue to pay all amounts payable hereunder to Landlord until the termination date.

13.2. Partial Taking. If at any time during the Term of the Lease any authority having the power of eminent domain shall condemn less than substantially all of the Project or the interest of Tenant hereunder, then the interests and obligations of Tenant under the Lease as to such portion of the Project or the interest of Tenant hereunder so taken shall cease and terminate upon the earliest of: (a) the date of the condemnation judgment, (b) the date that the condemning authority takes physical possession of what is being condemned, and (c) the date that Tenant is, in its sole judgment, no longer able or permitted to operate the portion of the Project which is being condemned in a commercially viable manner, and, unless the Lease is terminated as hereinafter provided, the Lease shall continue in full force and effect as to the remainder of the Project on the Premises which can still be operated in a commercially reasonable manner. If the remainder of the Project or the interest of Tenant hereunder, in Tenant's sole judgment, is or becomes insufficient or unsuitable for Tenant's purposes hereunder, then Tenant shall have the right to terminate the Lease in its entirety.

13.3. Apportionment; Distribution of Award. On any taking covered by Sections 13.1 or 13.2 above, all sums, including damages and interest, awarded shall be apportioned between the Landlord and Tenant according to their respective interest represented by the determination of the

condemnation award. Tenant shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded to Tenant for any loss of its personal property and removable property as well as the costs of moving and relocating Tenant's business and satisfying any penalties or damages resulting from its inability to perform under any agreement for the sale of any Project output.

14. General Provisions.

14.1 Governing Law. The Lease and this Memorandum of Wind Energy Lease shall be governed by and construed and enforced in accordance with the laws of the State of Oregon, without reference to the choice of law principles of such state or any other state.

14.2. Jurisdiction and Venue. Any action that may be instituted relating to the Lease shall be prosecuted in the Circuit Court of the State of Oregon in and for Multnomah County. Landlord and Tenant each have the right to removal to federal court of any action instituted hereunder in state court.

14.3. Successors and Assigns. The Lease shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14.4. Relationship of Parties. The relationship of the parties hereto is solely that of landlord and tenant, and nothing contained in the Lease shall be construed to create an association, joint venture, trust or partnership between them.

14.5. Tenant's Right to Transfer. So long as there are no defaults in the Lease by Tenant and all payments are current, then Tenant and any Transferee (as defined below) shall have the right throughout the Term to transfer, convey, sublease or assign the Lease or any interest in the Lease or the Project Facilities to any person or entity (a "Transferee") without the consent of Landlord. A Transferee also includes any person or entity acquiring an interest in the Lease or the Project Facilities by foreclosure or a conveyance in lieu of foreclosure, and a Mortgagee as defined in the Lease. Upon receipt of written notice of any transfer under this Section 14.5 that includes contact information for the Transferee, Landlord shall thereafter provide the Transferee with simultaneous copies of any notices of default issued to any person or entity under the Lease.

14.6. Counterparts. This Memorandum of Wind Energy Lease may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.

[signatures on following page]

IN WITNESS WHEREOF, the undersigned have executed this document so that third parties might have notice of the Lease by and between Landlord and Tenant herein.

LANDLORD:

GREEN DIAMOND RESOURCE COMPANY


By: _____

Name: Douglas S. Reed

Title: President

TENANT:

BRYANT MOUNTAIN MW LLC

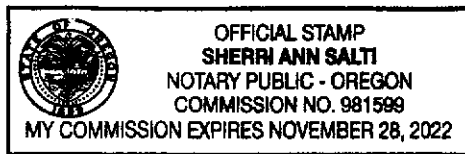
By:  _____

Name: Jeffrey Wagner

Its: President

STATE OF OREGON)
COUNTY OF MULTNOMAH) ss.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

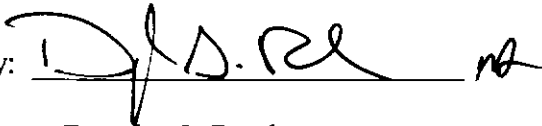


Print Name Shawn Ann Satti

IN WITNESS WHEREOF, the undersigned have executed this document so that third parties might have notice of the Lease by and between Landlord and Tenant herein.

LANDLORD:

GREEN DIAMOND RESOURCE COMPANY

By: 

Name: Douglas S. Reed

Title: President

TENANT:

BRYANT MOUNTAIN MW LLC

By: _____

Name: Jeffrey Wagner

Its: President

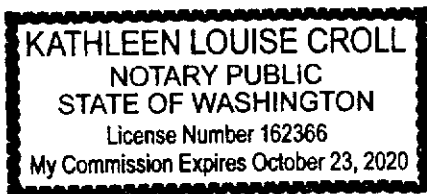
LANDLORD ACKNOWLEDGEMENT

IF SIGNED IN WASHINGTON:

STATE OF WASHINGTON)
COUNTY OF King) ss.

On July 29 2019, before me personally appeared DOUGLAS S. REED, to me known to be the President of GREEN DIAMOND RESOURCE COMPANY, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that DOUGLAS S. REED was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Signature: Kathleen Louise Croll
Name (Print): Kathleen Louise Croll

NOTARY PUBLIC in and for the State
of Washington, residing at Mountain Terrace, WA
My appointment expires: 10-23-2020

**EXHIBIT A
LEGAL DESCRIPTION**

TOWNSHIP 40 SOUTH, RANGE 12 EAST OF THE WILLAMETTE MERIDIAN

Section 10: E1/2 SE1/4; S1/2 NE1/2

Section 11: SW1/4; SE1/4 NW1/4 (Lot 6); S1/2 SE1/4 (Lots 11 and 12); and NE1/4 SE1/4 (Lot 9)

Section 13: Government Lots 2, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15 and 16 (being the SE1/4, N1/2 SW1/4, SE1/4 SW1/4, SW1/4 NW1/4, S1/2 NE1/4, NW1/4 NW1/4, and NW1/4 NE1/4)

Section 14: NE1/4; NE1/4 SE1/4; N1/2 NW1/4

Section 22: SE1/4 SW1/4; SW1/4 SE1/4

TOWNSHIP 40 SOUTH, RANGE 13, EAST OF THE WILLAMETTE MERIDIAN

Section 16: W1/2 SW1/4; SW1/4 NW1/4

Section 17: NE1/4; NE1/4 NW1/4; S1/2 S1/2

Section 18: S1/2

Section 19: N1/2 NE1/4, NE1/4 NW1/4, SW1/4 NE1/4, SE1/4, SE1/4 SW1/4

Section 20: N1/2 N1/2, S1/2 NE1/4, SE1/4 NW1/4, SE1/4, SE1/4 SW1/4, W1/2 SW1/4

Section 21: SW1/4; SW1/4 SE1/4

Section 28: All

Section 29: All

Section 30: N1/2 NE1/4, NE1/4 NW1/4, SW1/4 NE1/4, E1/2 SE1/4, NW1/4 SE1/4

Section 32: N1/2 N1/2, SE1/4 NW1/4, S1/2 NE1/4, NE1/4 SE1/4

Section 33: N1/2, SE1/4, N1/2 SW1/4 and beginning at a point on the Northwest corner of SE 1/4 SW1/4, thence Easterly along the along the North boundary of the SE1/4 SW1/4 to the Northeast corner of SE1/4 SW1/4; thence Southerly to the Southeast corner of SE1/4 SW1/4; thence diagonally Northwesterly to the point of beginning.

Section 34: W1/2 SW1/4