



CHAMPAIGN COUNTY BOARD
ENVIRONMENT and LAND USE COMMITTEE (ELUC) ADDENDUM
County of Champaign, Urbana, Illinois
Thursday, March 6, 2014 - 6:30 p.m.

Lyle Shields Meeting Room
Brookens Administrative Center
1776 E. Washington St., Urbana

IX. **Items to be Approved by ELUC Committee for Recommendation to the County Board**

- D. Proposed Financial Institution for the California Ridge Wind Farm Reclamation Agreement Escrow Account to be U.S. Bank National Association
- E. Proposed Escrow Agreement for the California Ridge Wind Farm

Champaign County
Department of

**PLANNING &
ZONING**

Brookens Administrative
Center
1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708
zoningdept@co.champaign.il.us
www.co.champaign.il.us/zoning

To: **Environment and Land Use Committee**
From: **John Hall, Director & Zoning Administrator**
Date: **March 4, 2014**
RE: **California Ridge Wind Farm
(Special Use Permit Case 696-S-11)**

Request: **Approve the following:**

- **Approve U.S. Bank National Association as the financial institution for the proposed Escrow Agreement for the California Ridge Wind Farm (Special Use Permit Case 696-S-11); and**
- **Approve the proposed Escrow Agreement**

BACKGROUND

Paragraph 6.1.4 P.4.(e) of the Zoning Ordinance requires a wind farm owner to gradually pay down the value of the irrevocable letter of credit (the financial assurance for a wind farm) by placing cash deposits in an escrow account over the first 13 years of wind farm operation and subparagraph 6.1.4 P.4(e)(1) of the Zoning Ordinance also requires the wind farm owner and the County Board to agree on a mutually acceptable financial institution at which the escrow account shall be established.

The California Ridge Wind Farm received a Zoning Compliance Certificate on November 20, 2012, and the first year of operation ended on or about November 20, 2013.

Proposed Financial Institution

U.S. Bank National Association with offices at 4701 22nd Avenue, Moline, Illinois 61265 is the proposed financial institution. As reported on Wikipedia on 12/27/13, U.S. Bank National Association is the fifth largest bank in the United States based on deposits. U.S. Bank National Association is a subsidiary of U.S. Bancorp.

Draft Escrow Agreement

The attached Draft Escrow Agreement has undergone a process of review and revision since December 2013. All of the changes requested by the State's Attorney have been made and the Agreement is now ready for approval by the County Board.

I apologize for this being added as an Addendum but everyone involved has done their utmost to get this Draft Agreement in front of the Committee at this time.

ATTACHMENTS

A Draft Escrow Agreement received March 4, 2014

ESCROW AGREEMENT

Pursuant to this escrow agreement dated **[December 2, 2013]** (the “Escrow Agreement”), the undersigned escrow parties (the “Parties”) hereby establish escrow account number [] (the “Account”) with U.S. Bank National Association, a national banking association which conducts business in Moline, Illinois (the “Agent”), to be maintained and administered for the purposes described in Schedule I attached hereto in accordance with the following terms and conditions:

The funds and/or property described on Schedule I attached hereto and incorporated herein (the “Assets”) will be deposited in the Account upon delivery thereof to the Agent, in the manner and at the time(s) specified in the said Schedule I. The Agent is hereby authorized and directed by each of the Parties, as their escrow agent, to hold, deal with and dispose of the Assets as provided in the instructions set forth in Schedule II attached hereto and incorporated herein. In the event of a conflict between this Escrow Agreement and Schedules I and II, the terms and conditions of Schedules I and II shall control.

1. Agent’s Duties. Agent’s duties and responsibilities shall be limited to those expressly set forth in this Escrow Agreement, and Agent shall not be subject to, or obligated to recognize, any other agreement between any or all of the Parties or any other persons even though reference thereto may be made herein; provided, however, this Escrow Agreement may be amended at any time or times by an instrument in writing signed by all the Parties hereto. Agent shall not be subject to or obligated to recognize any notice, direction, or instruction of any or all of the Parties hereto or of any other person, except as expressly provided for and authorized in Schedule II and in performing any duties under this Escrow Agreement, Agent shall not be liable to any Party for consequential damages, (including, without limitation lost profits) losses, or expenses, except for gross negligence or willful misconduct on the part of the Agent.

2. Court Orders or Process. If any controversy arises between the Parties to this Escrow Agreement, or with any other Party, concerning the subject matter of this Escrow Agreement, its terms or conditions, Agent will not be required to determine the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Agent’s discretion, Agent may require, so long as such action is consistent with the instructions set forth in Schedule II. In such event, Agent will not be liable for interest or damage except to the extent adjudicated by such court. Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Account, the Assets, or this Escrow Agreement, without determination by the Agent of such court’s jurisdiction in the matter. If any Assets are at any time attached, garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance, or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment, or decree shall be made or entered by any court affecting such property or any part thereof, then in any such events Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment, or decree which it is advised by legal counsel of its own choosing is binding upon it; and if Agent complies with any such order, writ, judgment, or decree, it shall not be liable to any of the

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Parties or to any person, firm, or corporation by reason of such compliance even though such order, writ, judgment, or decree may be subsequently reversed, modified, annulled, set aside, or vacated.

3. Agent's Actions and Reliance. Agent shall not be personally liable for any act taken or omitted by it hereunder if reasonably taken or omitted by it and in the exercise of its own reasonable judgment. Agent shall also be fully protected in relying upon any written notice, instruction, direction, certificate, or document which it reasonably believes to be genuine. The foregoing exclusions of liability shall not apply to the negligence or intentional misconduct of Agent.

4. Collections. Unless otherwise specifically indicated in Schedule II, Agent shall proceed as soon as practicable to collect any checks, interest due, matured principal, or other collection items with respect to Assets at any time deposited in the Account. All such collections shall be subject to the usual collection procedures regarding items received by Agent for deposit or collection. Agent shall not be responsible for any collection with respect to Account Assets if Agent is not registered as record owner thereof or otherwise is not entitled to request or receive payment thereof as a matter of legal or contractual right. All collection payments shall be deposited to the Account, except as otherwise provided in Schedule II. Agent shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument, security, or obligation deposited in the Account, nor to take any legal action to enforce payment of any check, instrument, or other security deposited in the Account. The Account is a safekeeping escrow account, and no interest shall be paid by Agent on any money deposited or held therein, except as provided in Section 6 hereof.

5. Agent Responsibility. Agent undertakes to perform such duties as are specifically set forth in this Agreement and shall have no duty under any other agreement or document, and no implied covenants or obligations shall be read into this Agreement against the Agent. The Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Agreement. Agent shall not be responsible or liable for the sufficiency or accuracy of the form, execution, validity, or genuineness of documents, instruments, or securities now or hereafter deposited in the Account, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein. Registered ownership of or other legal title to Assets deposited in the Account shall be maintained in the name of Agent, or its nominee, only if expressly provided in Schedule II. Agent may maintain qualifying Assets in a Federal Reserve Bank or in any registered clearing agency (including without limitation, the Depository Trust Company) as Agent may select, and may register such deposited Assets in the name of Agent or its agent or nominee on the records of such Federal Reserve Bank or such registered clearing agency or a nominee of either. Agent shall not be responsible or liable in any respect on account of the identity, authority, or right of the persons executing or delivering or purporting to execute or deliver any such document, security, or endorsement or this Escrow Agreement. The foregoing exclusions of responsibilities and liabilities shall not apply to the negligence or intentional misconduct of Agent.

6. Investments. All monies held in the Account shall be invested by Agent in its name or its nominee's name, in such instruments or securities and at the written direction of such

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Party or other person, as expressly authorized in Schedule II. Such Party shall furnish the Agent with written instructions to sell securities (including shares or units in any money market mutual funds) to make any payments from the Account as provided hereunder. If no such instructions are received, Agent is authorized to sell any such securities held in the Account as necessary pursuant to the purpose set forth on Schedule I. All accrued interest shall become part of the Assets. Agent shall not be responsible for the selection, quality, or maturity of such investments, or for the timely reinvestment of interest or maturity proceeds thereof except as provided in the immediately following paragraph.

In the absence of duly authorized and complete directions regarding investment of cash held in the Account, Agent shall automatically invest and reinvest the same in units of the money market mutual funds identified on Schedule III attached hereto and incorporated herein, which funds may be managed by an affiliate of the Agent.

The Parties acknowledge and agree that the Agent is authorized to invest from or through its trust department or U.S. Bank National Association or any other bank affiliated with Agent through common control by U.S. Bancorp.

7. Notices/Directions to Agent. Notices and directions to Agent from the Parties, or from other persons authorized to give such notice or directions as expressly set forth in Schedule II, shall be in writing and signed by an authorized representative as identified pursuant to Schedule II, and shall not be deemed to be given until actually received by Agent's employee or officer who administers the Account. Agent shall not be responsible or liable for the authenticity or accuracy of notices or directions properly given hereunder if the written form and execution thereof on its face purports to satisfy the requirements applicable thereto as set forth in Schedule II, as determined by Agent reasonably without additional confirmation or investigation. The foregoing exclusions of responsibilities and liabilities shall not apply to the negligence or intentional misconduct of Agent.

8. Books and Records. Agent shall maintain books and records regarding its administration of the Account, and the deposit, investment, collections, and disbursement or transfer of Assets, shall retain copies of all written notices and directions sent or received by it in the performance of its duties hereunder, and shall afford each Party reasonable access, during regular business hours, to review and make photocopies (at the Party's cost) of the same.

9. Disputes among Parties and/or Third Parties. In the event Agent is notified of any dispute, disagreement, or legal action between or among any of the Parties, and/or any third parties, relating to or arising in connection with the Account, the Assets, or the performance the Agent's duties under this Escrow Agreement, the Agent shall be authorized and entitled, subject to Section 2 hereof, to suspend further performance hereunder, to retain and hold the Assets then in the Account and take no further action with respect thereto (so long as such failure to act is consistent with Schedule II) until the matter has been fully resolved, as evidenced by written notification signed by all Parties and any other parties to such dispute, disagreement, or legal action.

10. Notice by Agent. Any notices which Agent is required or desires to give hereunder to any of the Parties shall be in writing and may be given by mailing the same to the

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address indicated below for such Party (or to such other address as said Party may have theretofore substituted therefore by written notification to Agent), by United States certified or registered mail, postage prepaid. For all purposes hereof any notice so mailed shall be as effectual as though served upon the person of the Party to whom it was mailed at the time it is deposited in the United States mail by Agent whether or not such undersigned thereafter actually receives such notice. Whenever under the terms hereof the time for Agent's giving a notice or performing an act falls upon a Saturday, Sunday, or holiday, such time shall be extended to the next business day.

11. Legal Counsel. If Agent becomes involved in litigation on account of being escrow agent hereunder or on account of having received property subject hereto, then its out-of-pocket costs, expenses, and reasonable attorney's fees shall be paid by the party that does not prevail in the litigation. The foregoing shall not apply to the extent Agent is found to be negligent or have acted with intentional misconduct.

12. Agent Compensation. Agent shall be paid a fee for its services by the Developer as set forth on Schedule IV attached hereto and incorporated herein. If Agent's fees, or reasonable out-of-pocket costs or expense, provided for herein, are not promptly paid, Agent shall have the right to sell such portion of the Assets held in the Account as necessary and reimburse itself therefor from the proceeds of such sale or from the cash held in the Account. In the event that the conditions of this Escrow Agreement are not promptly fulfilled, or if Agent, upon request of the Parties, renders any service not provided for in this Escrow Agreement, or if the Parties request a substantial modification of its terms, or if any controversy arises that is not caused by Agent, or if Agent is made a party to, or intervenes in any litigation pertaining to this escrow or its subject matter and the litigation is not related to the Agent's actions, Agent shall be reasonably compensated for such reasonable and extraordinary services and reimbursed for all reasonable out-of-pocket costs, attorney's fees, and expenses occasioned by such default, delay, controversy, or litigation and Agent shall have the right to retain all documents and/or other things of value at any time held by Agent in this escrow until such compensation, fees, costs, and expenses are paid, which payment may be made from the Assets if not paid within forty-five (45) days after billing. The Parties and their respective successors and assigns agree jointly and severally to indemnify and hold Agent harmless against any and all reasonable out-of-pocket losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees, and disbursements that may be imposed on Agent or incurred by Agent in connection with the performance of his/her duties under this Escrow Agreement, including but not limited to any litigation arising from this Escrow Agreement or involving its subject matter to the extent that Agent was not negligent or acted with intentional misconduct. Agent shall have a first lien on the Assets and papers held under this Escrow Agreement for such compensation and expenses.

13. Agent Resignation. It is understood that Agent reserves the right to resign at any time by giving written notice of its resignation, specifying the effective date thereof (not to be less than thirty (30) days), to the Parties. Within thirty (30) days after receiving the aforesaid notice, the Parties agree to appoint a successor escrow agent to which Agent may transfer the Assets then held in the Account, less its unpaid fees, costs, and expenses. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of thirty-day (30 day) period, Agent may apply to a court of competent jurisdiction for the appointment of a

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successor escrow agent, and the reasonable out-of-pocket costs, expense, and reasonable attorney's fees which Agent incurs in connection with such a proceeding shall be paid from the Assets if not paid within forty-five (45) days after billing.

14. Escrow Termination. If, as provided in Schedule II, the Escrow Agreement shall not have previously terminated, then it shall terminate upon completion of all decommissioning and reclamation requirements of the Wind Farm Reclamation Agreement, unless further extended by written modification to this Escrow Agreement by the Parties, at which time the Assets then held in the Account including interest, if any, less Agent's unpaid fees, costs, and expenses shall be distributed to: California Ridge Wind Energy LLC, a Delaware limited liability company with its offices at 1 South Wacker Drive, Suite 1900, Chicago, IL 60606 or its successors in interest.

15. Governing Law. This Escrow Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Illinois.

16. Automatic Succession. Any company into which the Agent may be merged or with which it may be consolidated, or any company to whom Agent may transfer a substantial amount of its escrow business shall be the successor to the Agent without the execution or filing of any paper or any further act of the Parties, save notice by the Agent, anything herein to the contrary notwithstanding.

17. Tax Reporting. The Agent shall have no responsibility for the tax consequences of the Escrow Agreement. The Agent hereby advises each party to this escrow to consult with independent legal counsel concerning the tax ramifications of this transaction. The foregoing exclusions of responsibilities and liabilities shall not apply to the negligence or intentional misconduct of Agent.

18. Facsimile. The Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed to be one and the same instrument. The exchange of copies of this Escrow Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Escrow Agreement as to the parties and may be used in lieu of the original Escrow Agreement for all purposes. Signature of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

19. Patriot Act. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity Agent will ask for documentation to verify its formation and existence as a legal entity. Agent may also ask to see financial statements, licenses, identification, and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

20. Security Advice Waiver Language. The Parties hereto acknowledge that, in accordance with regulation of the Comptroller of the Currency, they have the right to receive brokerage confirmations of security transactions as they occur. The Parties hereto specifically waive such notification to the extent permitted by law and acknowledge that California Ridge

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Wind Energy LLC will receive periodic cash transactions statements, which will detail all investment transactions.

21. Security Interest in Escrow Agreement. The Parties agree that Champaign County shall have security interest in the Escrow Account and the funds deposited therein. California Ridge Wind Energy, LLC, acknowledges value is given in the form of reduction in the amount of a letter of credit necessary for it to post to comply with the terms of its Reclamation Agreement with Champaign County. The Parties agree that the Agent will comply with instruction originated by Champaign County directing disposition of funds in the deposit account without further consent from California Ridge Wind Energy, LLC, subject to the conditions set forth herein. The Parties agree the Agent will take possession of the collateral for the benefit of Champaign County. Nothing in the paragraph shall create in California Ridge Wind Energy, LLC, a right to the funds in escrow which does not otherwise exist.

22. Other Terms.

California Ridge Wind Energy, LLC and Agent warrant that:

- A. There are no other agreements relating to this account.
- B. This Escrow Account was established solely for purposes of meeting the obligations of California Ridge Wind Energy, LLC, under the Reclamation Agreement entered between it and Champaign County in Champaign County Zoning Case 696-S-11.
- C. Except as expressly stated herein, the funds in the Escrow Account will only be used for the purposes described in (B).

The Parties agree the Agent shall provide to Champaign County:

- A. Notice of all deposits into the Escrow Account, within thirty (30) days of each deposit;
- B. Debits against funds in the Escrow Account by the Agent, within thirty (30) days of each debit;
- C. Immediate notice of any and all agreements in place relating to the Escrow Account other than this one, together with a copy of said agreements.
- D. Immediate notice of any non-payment or other breach of the Escrow Agreement by California Ridge Wind Energy, LLC, and an opportunity to cure said breach.

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IN WITNESS WHEREOF, the undersigned Escrow Parties have affixed their signatures and hereby adopt as part of this instrument Schedules I, II, III, and IV which are incorporated by reference.

ESCROW PARTIES

The County of Champaign:

Agent:

U.S. Bank National Association:

By:

By: _____

Georgina Thomas, Assistant Vice
President

The Company:

California Ridge Wind Energy LLC

_____, its Vice President

SCHEDULE I

Purpose of the Account: The Account is being set up to hold funds as collateral for the obligations of California Ridge Wind Energy LLC, a Delaware limited liability company pursuant to that certain Reclamation Agreement (the “Reclamation Agreement”) dated March 12, 2012 by and among Champaign County (the “County”) and California Ridge Wind Energy LLC (the “Developer”).

Assets: One hundred fifty-seven thousand two hundred ninety-nine dollars (\$157,299.00) deposited with the Agent by California Ridge Wind Energy LLC, a Delaware limited liability company (“California Ridge Wind Energy”). As set forth in the Reclamation Agreement, California Ridge Wind Energy shall continue to make additional deposits annually by an amount specified in the Reclamation Agreement, a copy of which has been provided to the Agent. Additional deposits to the account shall be sent to the Agent’s wiring instructions as set forth in Schedule II and Agent shall be notified when such deposit is sent.

SCHEDULE II

The funds shall be paid into the Account by California Ridge Wind Energy LLC to the Agent according to the wiring instructions below:

U.S. Bank, N.A.

ABA# 091000022

Acct# 180121167365

Ref: Champaign County/California Ridge Escrow 2013

Attn: Georgina Thomas/Maria Bui

Draw Requests: Champaign County may submit a draw request in the form attached hereto as Exhibit A to Schedule II on the Assets to Agent for a portion of the Assets, which request shall be simultaneously delivered to California Ridge Wind Energy LLC at the address provided herein (the "Draw Request"). Agent need not inquire into or verify such draw request.

Notice Addresses

If to County of Champaign:

Brookens Administrative Center

1776 East Washington Street

Urbana, Illinois 61802

ATTN: John Hall

Telephone: (217)384-3708

Facsimile: (217)819-4021

E-mail: jhall@co.champaign.il.us

If to California Ridge Wind Energy LLC:

1 South Wacker Drive, Suite 1900

Chicago, Illinois 60606

ATTN: General Counsel

Telephone: []

Facsimile: []

E-mail: []

If to the Agent:

U.S. Bank National Association

633 W. 5th Street, 24th floor

Los Angeles, CA 90071

ATTN: Georgina Thomas

Telephone: (213)615-6001

Facsimile: (213)615-6199

Email: georgina.thomas@usbank.com

Attachment A

Exhibit A to Schedule II

Form of Draw Request

Attn: Georgina Thomas
US Bank, National Association
633 W. 5th St., 24th Floor
Los Angeles, CA 90071

California Ridge Wind Energy LLC
c/o Invenergy LLC
1 S Wacker Dr., Suite 1900
Chicago, IL 60606

Ladies and Gentlemen:

I/We hereby certify the following statements in this letter and hereby submit a request for a draw on the funds (the "Assets") held in that certain Escrow Agreement dated **[December 2, 2013]** with U.S. Bank National Association (the "Escrow Agreement") in the amount of U.S. \$ ● ("this Disbursement") pursuant to my/our rights set forth in that certain Reclamation Agreement dated March 12, 2012 (the "Reclamation Agreement") by and among Champaign County (the "County") and California Ridge Wind Energy LLC (the "Developer"). Any capitalized term used but not defined herein shall have the meaning given to such term in the Reclamation Agreement.

In connection with this Disbursement, by signing below, I/we hereby certify, represent and warrant that:

The conditions set forth in Paragraph 9(a) of the Reclamation Agreement between Champaign County and California Ridge Wind Energy, LLC, for the Zoning Administrator to draw upon the Financial Assurance have been met.

THE ABOVE IS ATTESTED TO BY ME/US AS OF THIS ____ DAY OF _____, 20[__].

Signature of Champaign County

SCHEDULE III

**U.S. BANK NATIONAL ASSOCIATION
MONEY MARKET ACCOUNT AUTHORIZATION FORM
DESCRIPTION AND TERMS**

The U.S. Bank Money Market account is a U.S. Bank National Association (“U.S. Bank”) interest-bearing money market deposit account designed to meet the needs of U.S. Bank’s Corporate Trust Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank’s discretion, and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank as Agent for its trust customers. U.S. Bank’s trust department performs all account deposits and withdrawals. Deposit accounts are FDIC Insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

AUTOMATIC AUTHORIZATION

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account. The U.S. Bank Money Market Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of alternate instructions

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Schedule IV
Escrow Agent Fees

Acceptance Fee	\$1000
Annual Administration Fee	\$1200

Agent's fees are payable by the Developer upon execution of the Escrow Agreement and receipt of the amount to be deposited in escrow.