

ORIGINAL

ROAD USE AND REPAIR AGREEMENT

THIS ROAD USE AND REPAIR AGREEMENT ("*Agreement*") is entered into this ____ day of August, 2013 by and between MidAmerican Energy Company, an Iowa corporation, with its principal place of business at 666 Grand Ave., Des Moines, IA 50309 (*MidAm*) and Webster County, Iowa ("*County*"), hereinafter said parties may be jointly referred to as the "*Parties*" and individually as a "*Party*."

RECITALS

- A. WHEREAS, MidAm desires to develop, construct and operate a wind-powered electrical generating project in Webster County, Iowa (the "*Project*") consisting of turbine generators, along with an associated underground collection system, access roads, met towers, and substation.
- B. WHEREAS, in connection with the development, construction, and maintenance of the Project, it will be necessary for MidAm and its contractors, subcontractors, suppliers, designees and representatives (collectively with MidAm, hereinafter referred to as the "*Construction Parties*") to:
- a. transport heavy equipment and materials over the County's public roads;
 - b. make certain modifications and improvements (both temporary and permanent) to such roads in order to allow such equipment and materials to safely pass over them;
 - c. place certain electrical or fiber optic cables for the Project adjacent to, over, across, or beneath certain portions of county road right-of-way for the purposes of carrying electrical current or data from the Project;
- C. WHEREAS, attached hereto as Exhibit A is a map depicting the area of Webster County that will be impacted by the Project (the "*Project Area*"), as well as the public roads within said Project Area.
- D. WHEREAS, the purpose of this Agreement is to ensure the safe and efficient movement of said equipment and materials with the minimum practicable interruption to the traveling public and damage to the county road system, and with the understanding that MidAm will be responsible to repair all damage caused by the Project to said roads and the accompanying right-of-way.

AGREEMENT

1. Affected Roads

1.1 Identification of Affected Roads. No later than thirty (30) days prior to the start of the construction on the Project, MidAm shall identify which of the roads on Exhibit A are expected to be used by the Construction Parties during the development and construction of the Project (the "*Affected Roads*"). MidAm shall provide this information, including the anticipated routes to be used by all vehicles exceeding 80,000 pounds to the County Engineer for review (the "Road Use Plan"), and the County Engineer shall provide his comments to MidAm within ten (10) days of receipt of same. The Parties shall work in good faith to reach agreement on which roads shall be available for use by the Construction Parties, provided, the County Engineer shall have final approval of the Road Use Plan for the Project.

Upon approval of the Road Use Plan by the County Engineer, which approval shall not be unreasonably withheld or delayed, said Road Use Plan shall be attached hereto as Exhibit A-2. The County agrees that, from time to time, MidAm may include additional routes as Affected Roads by first (i) submitting an updated version of Exhibit A-2 to the County that includes such additional roads and (ii) performing an Evaluation (as described below in Section 1.2), on such additional roads. Upon approval of said updated version of Exhibit A-2 by the County Engineer, which approval shall not be unreasonably withheld or delayed, same shall become part of this Agreement without any further action required by either Party.

In addition to identifying the Affected Roads that will be used by the Construction Parties during the development and construction of the Project, Exhibit A-2 shall specifically identify the routes over the Affected Roads that will be used for: (i) transportation and delivery of wind turbine equipment and components and other materials and equipment to be used in connection with the Project; (ii) transportation leaving the Project site following delivery of wind turbine equipment and components and other materials and equipment; (iii) movement of the assembled cranes; (iv) transportation and delivery of locally sourced materials, including concrete and gravel and (v) transportation leaving the Project following delivery of locally sourced material, including concrete and gravel.

Before operating on any roads in Webster County, MidAm shall be required to secure all necessary overweight/oversize permits from the State of Iowa and Webster County.

1.2 Evaluation of Affected Roads. Promptly upon submission of Exhibit A-2, MidAm shall arrange a time with the County Engineer to physically examine the Affected

Roads. MidAm shall video survey the roads and shall provide a copy of this video survey to the County, which survey will then serve as a baseline for purposes of determining its post-construction restoration obligations. Upon completion of said inspection:

- a. The County Engineer shall determine if the Affected Roads have the capacity to carry the anticipated loads generated by the Project.
- b. The County Engineer shall provide MidAm with such conditions on the use of the Affected Roads as the County Engineer deems reasonably necessary to minimize damage thereto.
- c. MidAm shall provide a recommendation as to how the Affected Roads will be made sufficient, based on the County Engineer's comments. All costs associated with making the Affected Roads sufficient to carry the loads generated by the Project shall be paid by MidAm.

1.3 County Representative. The County Board of Supervisors hereby appoints the County Engineer as the County's representative to inspect and approve all Project construction activities that impact the Affected Roads. All reasonable compensation, wages, mileage, and other legitimate expenses for the County Engineer carrying out these inspection activities will be paid by MidAm. Said representative will be responsible for inspecting all construction activities within the county road right-of-way and shall have the authority in his reasonable discretion to suspend construction in the event of imminent risk to persons or property resulting from the Project by verbal order to MidAm at the Project site followed by a telephone call to MidAm within two (2) hours of the verbal order and a Notice (as defined in Section 9.1 below) to MidAm within twenty-four (24) hours of the verbal order specifying details relating to the imminent risk that the construction activity poses as well as a timeline for resuming activities.

2. Obligations of MidAm

2.1 Notice of Construction. MidAm agrees to give the County forty-eight (48) hours Notice of its intention to commence construction on the Project in the Project Area. Said Notice shall be made in writing to the County Engineer. Construction shall not commence until approval of the Project has been given by the County Engineer, which approval will be evidenced by issuance of a Building/Zoning Permit to MidAm and will not be unreasonably delayed or withheld.

2.2 Construction Period Meetings. Beginning with commencement of construction of the Project and before delivery of materials and equipment to the Project site, MidAm and the County Engineer shall meet from time to time upon the reasonable request of the County Engineer to discuss the expected use of the Affected Roads, including the construction schedule.

2.3 Maintenance of Traffic. MidAm shall provide and maintain all traffic control devices required solely as a result of activities on the Project throughout construction of the Project for the safe and efficient movement of the public. Access to public roadways for emergency vehicles must be maintained and special attention will be required for the maintenance of existing planned routes of school buses and mail carriers. Should any road become impassable at any time as a result of activities on the Project, MidAm shall notify the County Engineer and the Webster County Law Enforcement Center immediately and make necessary accommodations for the traveling public and emergency vehicles. Maintenance of traffic control devices shall be in conformance with the Iowa Manual on Uniform Traffic Control Devices ("IA MUTCD"); this includes, but is not limited to, the following:

- a. To advise, warn, and alert the traveling public of construction in advance of the Project and on all roads, streets, and public trails approaching or crossing the Project.
- b. To control and guide traffic through the Project; and if necessary to provide necessary flag persons and pilot vehicles.

MidAm shall be required to respond as soon as practicable but not later than 24 hours after any call from the County Engineer or his authorized designee concerning any request for improving or correcting safety-related traffic control devices. If, at any time, MidAm fails to, in a timely manner, properly furnish, install, maintain or remove any of the required traffic control devices, the County reserves the right to properly correct the deficiency at the expense of MidAm.

3. **Construction & Repair Standards**

3.1 Obligation to Repair Roads. MidAm will be responsible for all costs relating to the maintenance, repair or reconstruction of the Affected Roads, soil and erosion control measures, and related improvements. If the Affected Roads or related appurtenances, including bridges, culverts, traffic control devices, and other road fixtures are damaged by the Construction Parties' use of such Affected Roads, MidAm shall reasonably promptly (having due regard for public safety and the presence of emergency conditions) repair (or cause to be repaired) such damage to pre-development conditions. Following completion of such repair, the County Engineer and MidAm shall jointly inspect the repair to determine that it has been completed satisfactorily. The County understands and agrees that MidAm shall not be responsible for any damage to the Affected Roads not caused by MidAm. If the Affected Roads are maintained in accordance with this Agreement and continues to meet the condition recorded during the initial inspection, there should be no additional repairs required.

3.2 Crawler Crane Crossing. Should construction operations necessitate the crossing of an existing roadway with equipment or loads that would otherwise be prohibited, MidAm shall adhere to the following specifications:

- a. MidAm shall provide the County with a map identifying the total number of crossings along with coordinates for each crossing.

- b. MidAm shall supply a traffic control plan for the crane crossings detailing how the traffic shall be handled during each of the crossings, the time frame for all road closures, and detail how the closure shall be handled with the County Highway Department and County Law Enforcement Center.
 - i. No roadway shall be closed without giving 24 hours Notice to the County Engineer or his authorized designee and the Law Enforcement Center.
- c. MidAm shall provide a detail of how the weight of the crane will be bridged over the road way.
 - i. The material used to bridge the roadway shall be removed immediately after the crane crosses the roadway. The roadway shall be inspected for any damage. If no major damage has occurred, the roadway shall be reopened to the traveling public. If major damage has occurred the County Engineer shall be notified immediately.
 - ii. MidAm shall be liable for all costs to repair all damages to the roadway caused by crane crossings and shall make such repairs as directed by the County Engineer.

3.3 Rough Terrain (RT) Cranes. MidAm shall be permitted to drive no more than five (5) RT Cranes on the Affected Roads within the Project Area under the authority of the County. If MidAm determines that the travel of RT cranes on roads under the authority of the County and outside of the identified Affected Roads is necessary for the construction of the Project, then MidAm shall provide the County a map identifying the RT Crane routes outside of the Affected Roads prior to RT Cranes actually using these roads. Should MidAm or its Construction Parties determine that more than five (5) RT Cranes are necessary for the construction of the Project, MidAm shall submit a request for such additional RT Cranes as necessary for the construction for the County Engineer's approval. Such approval of additional RT Crane shall not be unreasonably withheld by the County Engineer.

3.4 Maintenance of Roads During Construction. MidAm shall maintain all Affected Roads during construction in a condition that is reasonably satisfactory to allow for the safe passage and use by motor vehicles and to the reasonable satisfaction of the County Engineer. Maintenance during construction shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces to the end that all roadways and structures are kept in such reasonably satisfactory condition at all times. For the entire portion of any gravel roadway that is being used for hauling operations, or for accessing and exiting tower sites, MidAm shall provide dust control measures. Gravel road surfaces shall be bladed as needed to provide the safe travel of automobiles. When a roadway is not passable for automobiles in a safe manner due to rutting, potholes or other deformation of the roadway, corrective action shall be taken. The materials, placement, and workmanship shall be in accordance with the Iowa Department of Transportation's Standard Specifications for Highway and Bridge Construction 2009 edition. All costs associated with the maintenance of roads during construction shall be paid by MidAm. If, at any time, MidAm fails to comply with these provisions, the County Engineer will notify MidAm of the deficiencies. If MidAm fails to remedy unsatisfactory maintenance within 24 hours after receipt of verbal or written Notice to do so, the County may immediately proceed to maintain the

roadway at the expense of MidAm. Maintenance may include but is not limited to dust control measures, pavement sweeping, blading of gravel surfaces, aggregate surfacing, and bituminous surfacing. The County may, in its discretion and as staff time permits, make daily inspection of the Affected Roads and to ensure compliance with MidAm's maintenance and safety obligations.

3.5 Conditions Relating to Work within Right-of-Way. MidAm shall comply with the following conditions in connection with any repair, maintenance or other work to be conducted within any public road right-of-way, except minor work activities such as dust control, grading, sweeping, fence repairs and the like:

- a. MidAm shall provide the County with written Notice of intent to work within the right-of-way at least five (5) days before beginning such work.
- b. MidAm shall not begin any work within the right-of-way until it receives written Notice necessary to proceed from the County Engineer, which notice shall be given as soon as can reasonably be issued accounting for safety concerns.
- c. MidAm shall provide the County with written Notice of the identity of any contractor MidAm intends to use to perform the work within the right-of-way. MidAm will accept responsibility as the general contractor for all repair and maintenance of the right-of-way.
- d. Following completion of any repair work by MidAm, the Affected Roads, soil and erosion control measures, and related improvements will be subject to the inspection and reasonable approval of the County Engineer. If any material or repair supplied does not conform to the requirements herein and is reasonably rejected by the County Engineer, as defective or unsuitable, then such rejected material or repair shall be removed and replaced with approved material or repair, to meet the restoration criteria and the reasonable satisfaction and approval of the County Engineer, entirely at the cost and expense of MidAm. The approval of the County Engineer shall not be unreasonably withheld or delayed.

4. **Modifications to Affected Roads**

4.1 Modifications to Affected Roads. The County hereby acknowledges, agrees and consents to modifications by the Construction Parties to the Affected Roads as are reasonably necessary to accommodate the use of the Affected Roads for the Project, including the widening of existing roads, construction of new entrances, modifications to turning radii, the strengthening, lengthening and/or spanning of existing culverts and bridges, and other modifications reasonably necessary to accommodate the development, construction, and operation of the Project. This consent is subject to the following conditions:

- a. A separate entrance permit shall be required for each new permanent entrance off a county road. Such permits shall be issued by the County Engineer pursuant to the existing policy.

- b. Drainage intakes located in the road right of way shall be protected from siltation or relocated with the reasonable approval of the County Engineer.
- c. All traffic control shall be maintained per the IA MUTCD, Deviations without documentation shall not be permitted.
- d. MidAm shall remove and replace all signs within the right-of-way. MidAm will be responsible for installing additional temporary regulatory signs on crash tested portable supports to supplement the permanent signs on intersections that are widened.

4.2 Compliance with Law. MidAm agrees that all modifications made to the Affected Roads shall comply with all applicable laws. The County Engineer shall provide for inspection of signage.

4.3 Collection System. The County hereby acknowledges, agrees and consents that MidAm may desire to route certain underground and overhead wires, cables, conduits and/or lines (and their associated equipment) related to the transmission of electricity or data ("Utility") from the Project at a location adjacent to, over, across, or beneath certain Affected Roads. All road crossings shall be bored at a minimum depth of 48". The minimum cover of utility facilities in the right-of-way shall be: 48 inches for electrical cables, 30 inches for communication cables, and 36 inches for all others. In critical situations where necessary cover cannot be obtained, other protective measures may be approved. The County reserves the right to waive the minimum depth of installation where rocky terrain and/or another circumstance makes it difficult to obtain the desired depth. The County shall determine the minimum depth in these situations. The County Engineer may require additional depth in areas identified as silted or scheduled for future excavation.

5. Completion of Repairs and Restoration, Certificate of Completion

5.1 Preliminary Punchlist. Not more than ninety (90) days and not less than thirty (30) days before the erection of the last turbine on the Project, MidAm shall issue a preliminary punch list of items requiring restoration or repair under this Agreement. The County shall review the preliminary punch list and provide comments to MidAm within twenty-one (21) days of receipt of the preliminary punch list. MidAm will proceed with correcting all punch list items upon which MidAm and the County agree. If there are items upon which MidAm and the County disagree or which the County wishes to have added to the punch list, MidAm and the County shall meet to attempt to reach agreement on all such items. If agreement cannot be reached, MidAm shall engage and pay for an independent engineer acceptable to the County to review the items and this Agreement and determine whether the items in dispute should be part of the punch list. The determination of the independent engineer shall be final. MidAm shall make repairs in accordance with the determination by the independent engineer.

Final Punch List. No later than thirty (30) days after erection of the final turbine, MidAm shall issue a final punch list or items requiring repair or restoration under this Agreement. The County shall review the final punch list and provide comments to MidAm within five (5) days of receipt of the final punch list. MidAm will proceed with correcting all punch list items upon which MidAm and the County agree. If there are items upon which MidAm and the County disagree or which the County wishes to have added to the punch list, MidAm and the County shall meet to attempt to

reach agreement on all such items. If agreement cannot be reached, MidAm shall engage and pay for an independent engineer acceptable to the County to review the items and this Agreement and determine whether the items in dispute should be part of the punch list. The determination of the independent engineer shall be final. MidAm shall make repairs in accordance with the determination by the independent engineer.

5.3 Completion of Punch List. Subject to weather and seasonal conditions, MidAm shall complete all final punch list items no later than thirty (30) days after agreement with the County on the final punch list or, if punch list items have been in dispute, no later than thirty (30) days after a determination by the independent engineer. Should weather or seasonal conditions not allow MidAm to complete all final punch list items within thirty (30) days after agreement with the County, MidAm will endeavor to complete the punch list items as soon as reasonably practical, but in no event shall the completion of the punch list items extend past May 31 of the year after the final wind turbine on the Project is constructed.

5.4 Certificate of Completion. Upon completion of all items on the final punch list by MidAm, the County Engineer shall issue a Certificate of Completion to MidAm certifying the date on which all final punch list items were completed.

5.5 Continuing Obligations of MidAm.

- a. Notwithstanding the issuance of the Certificate of Completion, and acknowledging that certain damage to the Affected Roads caused by the Project may not be discovered or manifest itself until after completion of the Project's construction activities, MidAm hereby agrees that for a period of one (1) year from and after the date of the Certificate of Completion, it shall be responsible to repair any damage to the facilities of the Affected Roads that arise from the Project's construction activities. In the event during said one-year period the County Engineer identifies damage to a Affected Roads that he believes is a result of the Project's construction activities, the County shall notify MidAm of such. If MidAm acknowledges that the damage was the result of the Project, it shall remedy same pursuant to the provisions of this Agreement. If the Parties cannot agree on the cause or extent of the damage, they shall retain an independent licensed engineer acceptable to both to make a determination of whether the damage was a result of the Project's construction activities and the scope of repair necessary to remedy same. The determination of the independent engineer shall be conclusive and binding the Parties.
- b. MidAm shall also be responsible to remedy any damage to the County roads and right-of-ways arising from the post-completion operation, maintenance, or repair of the Project (including the decommissioning of any part thereof) from and after the date of the Certificate of Completion as set forth in this Agreement. This obligation shall be ongoing for so long as the Project remains in operation.
- c. Prior to commencing the decommissioning or removal of any wind turbine, MidAm shall be required to obtain approval from the County Engineer, which

approval may include terms and conditions similar to those set forth in this Agreement., and shall not be unreasonably delayed or withheld.

6. County's Obligations.

6.1 Notice of New Construction. The County shall give MidAm at least sixty (60) days written Notice of any scheduled maintenance repairs or construction of any road, including the Affected Roads that the County believes may impact any of the Project improvements. The County shall also give at least twenty-four (24) hours verbal (via telephone) Notice of emergency maintenance repairs of any road, including the Affected Roads, that the County believes may impact any of the Project improvements. Emergency (24 hour) Notice shall be given by calling MidAm at 800-622-1003 or at such other phone number that MidAm notifies the County.

7. Termination.

MidAm shall have the option, in its sole discretion, to terminate the Project and this Agreement prior to commencing any construction including any site grading and excavation work for installation of the Project. If it elects to terminate this Agreement, MidAm shall submit a Notice to this effect to the County. Such Notice shall be made in accordance with the requirements of Section 9 and shall be received at least five (5) days prior to the effective date of any termination of this Agreement.

8. General Provisions

8.1 No Assignment without Consent. Except as permitted in this Article, neither MidAm nor the County shall have the right nor the power to assign this Agreement without the prior written consent of the other Party, provided that such consent shall not be unreasonably withheld, conditioned or delayed. In evaluating a proposed assignment, the County shall have the right to inquire as to the financial capacity of a proposed assignee to carry out the obligations of MidAm hereunder.

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

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

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

8.5 Authority. MidAm and the County represent and warrant that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and

conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.

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

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

8.8 Required Insurance. Before starting construction, Certificates of Insurance or self insurance acceptable to the County shall be filed by MidAm for itself and for the Construction Parties, with the County Engineer and shall contain a provision that the policies will not be canceled until at least ten (10) days prior written Notice has been given to the County Engineer. All required policy limits can be met by combining current primary and excess or umbrella policy limits. This insurance shall be written for not less than the following limits:

Workers' Compensation	
Contractor's Public Liability and Property Damage	
Bodily injury	\$500,000
Each person	\$500,000
Each Accident	\$5,000,000
Property Damage	
Each Accident Aggregate	\$5,000,000
Automobile	
Public Liability and Property Damage	\$1,500,000
Bodily Injury	\$5,000,000
Each Person	\$1,500,000
Each Accident	\$5,000,000
Property Damage	\$1,500,000
Each Accident Aggregate	\$5,000,000

The County, its elected and appointed officials, its officers, engineers, agents, employees, representatives and volunteers shall be included as additional insured under the Contractors Liability and Auto Liability policies.

8.9 Force Majeure - Delays. Notwithstanding any other provision in this Agreement to the contrary, if performance of any act required to be performed by MidAm under this Agreement is in whole or in part prevented or delayed by reason of any fire, earthquake, flood, tornado, act of God or natural disaster, strike, lock-out, labor disputes or trouble, war, civil strife or other violence, inability to secure materials, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency, or any other cause, event or circumstance not the fault of MidAm, including without limitation the invocation of a force majeure provision by any third party to excuse such third party's performance of any obligations (except for payment obligations) related to the leasehold rights or the development of the Project, then MidAm, upon giving Notice to the County, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or delay.

8.10 No Consequential Damages. In no event will Construction Parties be liable to the County or any of its affiliates (or their respective successors or permitted assigns) for any consequential, incidental, indirect, punitive or special damages (including loss of profits, business or good will) in connection with this Agreement, whether or not liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise, and even if the County advises the Construction Parties of the likelihood of such damages.

9. Notices.

9.1 Written Notice. Any Notice, demand, or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested) or by overnight mail by a national carrier such as FedEx or UPS. A courtesy copy of the Notice may be sent by facsimile transmission or email transmittal.

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

Webster County Engineer
703 Central Ave, Suite 3
Fort Dodge, IA 50501
E-mail: engineer@webstercountyia.org
FAX: 515.576.0415
Attention: Randall J. Will

MidAmerican Energy Company
Attention: Adam Wright, Vice President Wind Generation
and Development
4299 NW Urbandale Drive
Urbandale, IA 50322
E-mail: ALWright@midamerican.com
FAX: 515-242-3084
Attention: Adam Wright

By Notice to the other Party, any Party may at any time designate a different address or person to which such Notice or communication shall be given.

9.3 Notice. Unless otherwise provided in this Agreement, Notice by hand delivery shall be effective upon receipt.

10. **Default and Remedies**

10.1 Remedies. If MidAm fails in any way to perform or observe any material covenant, condition, or obligation contained in this Agreement and such failure continues for a period of thirty (30) days after MidAm is notified by the County of such failure, subject to Section 10.3; or if MidAm voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings; or if insolvency, receivership, reorganization, bankruptcy, or a similar proceeding shall been commenced against MidAm and such proceeding remains undismissed or unstayed for a period of ninety (90) days, MidAm agrees that the County may do any, all, or any combination of the following:

- a. Halt all further approvals regarding improvements or issuance of permits relating to the Project;
- b. Immediately suspend MidAm's authority under this Agreement to use the Affected Roads identified in this Road Use and Repair Agreement for purposes relating to the Project by providing written Notice in the manner provided in Section 9 of this Agreement;
- c. Complete any work to be done under this Agreement, including, without limitation, the inspection, repair or replacement of any road, or the remediation of any nuisance caused by MidAm's failure to complete any of its obligations under this Agreement. The County shall invoice MidAm for the reasonable cost of such repairs and MidAm shall pay such invoice within thirty (30) days of receipt of such invoice;
- d. Seek injunctive relief;
- e. Suspend any work or improvement relating to the Project by issuing a stop work order; and/or
- c. Take any other action at law or in equity which may be available to the County.

10.2 Events of Default and Notice. Unless otherwise provided for in this Agreement, if MidAm fails to perform one or more of its material obligations under this Agreement, the County shall give MidAm formal Notice of the default and MidAm shall have thirty (30) days to cure the default. Notwithstanding the foregoing, if MidAm fails to comply with any of the road maintenance, repair and public safety obligations of this Agreement, or if MidAm undertakes or permits work or other activity in violation of the restrictions set forth in the Agreement and the County reasonably determines that expedited action by MidAm is required, the County shall give MidAm formal Notice of the default and MidAm shall have forty-eight (48) hours to cure the default. Unless written Notice of a change of address or responsible individual is provided to the

County, the County's Notices shall be sufficient if personally delivered or sent by certified U.S. mail, postage prepaid or by overnight mail by a national carrier such as FedEx or UPS to the name and address provided in Section 9 of this Agreement.

10.3 Failure to Cure Default. If MidAm does not cure the default within the required period or such longer period as may be necessary if the default may not reasonably be cured within the required period, provided MidAm pursues the cure with reasonable diligence, then the County may avail itself of any remedy afforded it by law and any of the above cumulative, nonexclusive remedies. Provided, however, that if MidAm fails to comply with any obligation of the Agreement and the County Engineer reasonably determines that such failure has caused or is causing an immediate danger to public health and safety, the County may, in its reasonable discretion, immediately and without further Notice to MidAm avail itself of any remedy afforded it by law and any of the above cumulative, non-exclusive remedies. The County will make reasonable efforts to notify MidAm prior to drawing on a letter of credit or other security, but the failure to provide such Notice shall not invalidate the County's actions.

10.4 No Additional Waiver Implied by One Waiver. If any condition, obligation or agreement contained in this Agreement is breached by either Party and thereafter waived in writing by the opposite Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breaches hereunder. All waivers must be in writing to be effective.

10.5 No Remedy Exclusive. No remedy herein conferred upon or reserved to the County shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

10.6 Miscellaneous. MidAm shall be responsible to make certain all of its contractors, subcontractors, agents, employees and representatives comply with all terms of this Agreement.

10.7 Land Rights. MidAm agrees to obtain any other easements or other property rights needed for the construction of the Project in addition to the rights granted under this Agreement.

11. Indemnity

Anything to the contrary herein notwithstanding, the County and its elected and appointed officials, their officers, agents, employees, representatives and volunteers shall not be liable or responsible in any manner to MidAm, its contractors or subcontractors, materialmen, laborers, or to any other person or persons whomsoever, for any claims, demands, damages, actions, or causes of action of any kind or character whatsoever arising out of, and any and all work which is MidAm's obligation to perform pursuant to this Agreement; the failure by MidAm to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement; the failure by MidAm to pay contractors, subcontractors, laborers, or materialmen; the failure by MidAm to pay for materials or; the failure by MidAm to obtain necessary permits and authorization to construct the work described in this Agreement to the extent that such claims,


demands, damages, actions or causes of action were not contributed to or caused by any of the County, its elected or appointed officials, its officers, engineers, agents, employees, representatives or volunteers. MidAm further agrees to indemnify, defend, and hold the County, its elected and appointed officials, its officers, engineers, agents, employees representatives and volunteers harmless from all such claims, demands, damages, actions, or causes of action, and all costs, disbursements, and expenses resulting from such claims, including reasonable attorneys' fees to the extent that such claims, demands, damages, actions or causes of action were not contributed to or caused by any of the County, its elected or appointed officials, its officers, engineers, agents, employees, representatives or volunteers.

12. Entire Agreement

This Agreement, together with all exhibits hereto, constitutes the entire agreement between MidAm and the County with respect to the subject matter of this Agreement. This Agreement is specifically intended for the development, construction, and operation of the Project and supersedes all prior agreements with respect to the subject matter hereof whether written or oral.

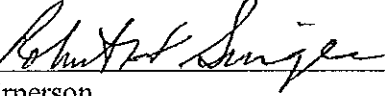
IN TESTIMONY WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

MIDAMERICAN ENERGY COMPANY

By: 
Adam L. Wright
Vice President, Wind Generation and
Development

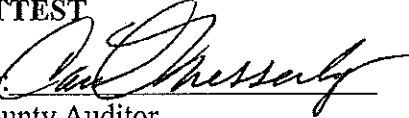
Date: 08/26/13

COUNTY OF WEBSTER

By: 
Chairperson

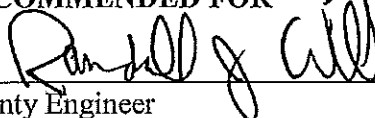
Date: 9/10/13

ATTEST

By: 
County Auditor

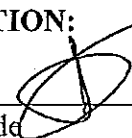
Date: 9/10/2013

RECOMMENDED FOR

By: 
County Engineer

Date: 9/10/13

**APPROVAL AS TO FORM AND
EXECUTION:**

By: 
Eric J. Eide
County Attorney

ROAD USE AND REPAIR AGREEMENT

EXHIBIT A

A MAP OF AFFECTED ROADS

SEE ATTACHED MAP

ROAD USE AND REPAIR AGREEMENT

EXHIBIT A-2

ROAD USE PLAN SHOWING ANTICIPATED HAUL ROUTES