

THOMAS COUNTY, KANSAS

RESOLUTION NO. 2018 - 13

Approved September 17, 2018

**A RESOLUTION APPROVING THE PROJECT DEVELOPMENT PLAN FOR PHASE I OF THE WIND ENERGY CONVERSION SYSTEM PROJECT PREVIOUSLY APPROVED BY THOMAS COUNTY, KANSAS WITH SAID PHASE I TO BE DEVELOPED BY SOLOMON FORKS WIND PROJECT, LLC AND KNOWN AS SOLOMON FORKS WIND PROJECT**

WHEREAS, Solomon Forks Wind Farm, LLC (“SFWF”) and the Board of County Commissioners of Thomas County, Kansas (the “County”) entered into a Development Agreement dated October 29th, 2010 (the “Development Agreement”), attached hereto as Exhibit A, to authorize and govern the development, construction, operation, maintenance, repair, replacement, and decommissioning, in one or more phases, of a Wind Energy Conversion System of up to 500 megawatts (the “Project”); and

WHEREAS, in July 2016, Infinity Renewables Group, LLC acquired SFWF and the Project and changed the name of the project sponsor to Solomon Forks Wind Project, LLC; and

WHEREAS, On December 22, 2016, the County adopted Conditional Use Permit Resolution No. 2016-25 (“CUPR”) approving a conditional use permit for the entire Project and so that the Project and all phases thereof can qualify for the lifetime property tax exemption under K.S.A. 79-201 *Eleventh* and retain the corresponding payments in lieu of taxes to the County under the Development Agreement; and

WHEREAS, on February 20th, 2018, Solomon Forks Wind Project, LLC and the Project were acquired by ENGIE IR Holdings, LLC (“ENGIE”); and

WHEREAS, the Solomon Forks Wind Project, LLC submitted to the County a project development plan dated March 19, 2018 (the “Combined Plan”) identifying two distinct phases for development of the entire Project; and

WHEREAS, on April 2, 2018, the County approved the Combined Plan; and

WHEREAS, for purposes of clarity and to reflect actual development activity, ENGIE has divided the approved Combined Plan into separate documents for each of the approved phases; and

WHEREAS, Solomon Forks Wind Project, LLC is developing Phase I of the Project to be known as the Solomon Forks Wind Project; and

WHEREAS, East Fork Wind Project, LLC is developing Phase II of the Project to be known as the East Fork Wind Project; and

WHEREAS, as contemplated by the Development Agreement, Solomon Forks Wind Project, LLC and East Fork Wind Project, LLC have agreed to enter into an Assignment and Assumption Agreement, a copy of which is attached hereto as Exhibit B, (the “Assignment Agreement”) whereby Solomon Forks Wind Project, LLC has agreed to assign all of its right, title and interest in and to the Development Agreement to East Fork Wind Project, LLC only as such rights and obligations apply specifically to the East Fork Wind Project (the “Assigned Rights and Obligations”) and Solomon Forks Wind Project, LLC has agreed to retain all of its rights, title and interests in and obligations, under the Development

Agreement only as such rights and obligations apply specifically to the Solomon Forks Wind Project (the “Retained Rights and Obligations”); and

WHEREAS, as contemplated by the Development Agreement and the CUPR, the Solomon Forks Wind Project, LLC has prepared a Project Development Plan, attached hereto as Exhibit C, for Phase I of the approved Project, the Solomon Forks Wind Project, which was submitted to the County on September 10, 2018; and

WHEREAS, a separate project development plan will be submitted to the County for Phase II of the approved Project, the East Fork Wind Project, that will likewise be subject to the terms of the Development Agreement and the CUPR and all other County permits and resolutions authorizing the Project; and

WHEREAS, the County reviewed the Phase I Project Development Plan and held a meeting to receive comments from the public on the September 17, 2018; and

WHEREAS, the County is vested with the authority under K.S.A. 19-101a et seq. to exercise the power of Home Rule to determine the local affairs of the County and to perform all powers of local legislation and administration as it deems appropriate to protect and preserve the interests of the citizens of the County; and

WHEREAS, the County, after due and careful consideration and review of the Phase I Project Development Plan and all comments received from the public, deems that the Phase I Project Development Plan includes all information required by Section V of the Development Agreement and finds it to reasonably comply with the terms of the Development Agreement; and

WHEREAS, as a result of these findings the County deems the Solomon Forks Wind Project, as described in the Phase I Project Development Plan, to be in the best interests of the health, safety and welfare of the citizens of the County and hereby approves the Phase I Project Development Plan.

NOW, THEREFORE, be is resolved by the Board of the Thomas County Commissioners, pursuant to its home rule powers, as follows:

SECTION 1: That the above recitals are incorporated herein by reference.

SECTION 2: That the County does hereby confirm that the County previously approved development activities for the Solomon Forks Wind Project and the East Fork Wind Project when it approved the Combined Plan.

SECTION 3: That the County does hereby approve the Phase I Project Development Plan and shall be bound by the terms of the Development Agreement and the CUPR with respect to the Solomon Forks Wind Project as described in the Phase I Project Development Plan.

SECTION 4: That the County does hereby acknowledge, consent and agree to the Assignment Agreement in substantially the form as attached hereto in Exhibit B.

SECTION 5: This Resolution shall be effective upon publication in the official county newspaper.

[Remainder of this page is intentionally blank – Resolution continues on following page]



ADOPTED this 17th day of September, 2018.

AYES: 3


NAYS: 0

ABSENT: 0

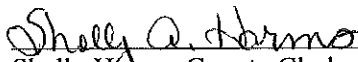
**THOMAS COUNTY, KANSAS  
BY: BOARD OF COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
Mike Baugh, Chair

  
\_\_\_\_\_  
Byron Sowers, Commissioner

  
\_\_\_\_\_  
Francis Britton, Commissioner

ATTEST:

  
\_\_\_\_\_  
Shelly Hams, County Clerk



APPROVED AS TO FORM:

  
\_\_\_\_\_  
Rachel Lamm, County Attorney

**EXHIBIT A**  
**[Development Agreement]**

**EXHIBIT B**  
**[Form of Assignment and Assumption Agreement]**

**EXHIBIT C**  
**[Phase I Project Development Plan]**

## Partial Assignment and Assumption Agreement

This Assignment and Assumption Agreement (the "**Agreement**"), effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2018 (the "**Effective Date**"), is entered into by and between Solomon Forks Wind Project, LLC, a Delaware limited liability company ("**Assignor**"), and East Fork Wind Project, LLC, a Delaware limited liability company ("**Assignee**"). Each of Assignor and Assignee may be referred to in this Agreement individually as a "**Party**" and, collectively, as the "**Parties**".

**WHEREAS**, Assignor (formerly known as Solomon Forks Wind Farm, LLC, "**SFWF**"), entered into a Development Agreement (the "**Development Agreement**") with the Board of County Commissioners of Thomas County, Kansas (the "**County**") dated October 29, 2010, to authorize and govern the development, construction, operation, maintenance, repair, replacement, and decommissioning, in one or more phases, of a Wind Energy Conversion System of up to 500 megawatts (the "**Project**").

**WHEREAS**, Section XIV.D of the Development Agreement provides that Assignor may freely assign its rights and obligations under the Development Agreement in their entirety and only in their entirety with respect to any phase of the Project without the County's consent.

**WHEREAS**, Assignor is developing Phase I of the Project in portions of Thomas County, Kansas with an expected nameplate capacity of 276 MW (the "**Solomon Forks Wind Project**").

**WHEREAS**, Assignee is developing Phase II of the Project, also located in Thomas County, Kansas with an expected nameplate capacity of 198 MW (the "**East Fork Wind Project**").

**WHEREAS**, Assignor has agreed to assign all of its rights, title and interests in, and Assignee has agreed to assume all of Assignor's duties and obligations under the Development Agreement, only as such rights and obligations apply specifically to the East Fork Wind Project.

**WHEREAS**, Assignor will retain all of its rights, title and interests in and duties and obligations, under the Development Agreement with respect to the development, construction, operation, maintenance, repair, replacement, and decommissioning of the Solomon Forks Wind Project and will be released from any rights, title and interests in and duties and obligations with respect to the East Fork Wind Project.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption. Assignor hereby assigns, grants, conveys and transfers to Assignee all of Assignor's right, title and interest in and to the Development Agreement only as such rights and obligations apply specifically to the East Fork Wind Project, including the development, construction, operation, maintenance, repair, replacement and decommissioning thereof (the "**Assigned Rights and Obligations**"). Assignee hereby accepts



such assignment. Notwithstanding anything herein to the contrary, Assignor retains all of its rights, title and interests in and to the Development Agreement only as such rights and obligations apply specifically to the development, construction, operation, maintenance, repair, replacement and decommissioning of the Solomon Forks Wind Project.

2. Retained Development Agreement. The Parties acknowledge and agree that Assignor retains all right, title and interest, and remains obligated for all duties, responsibilities, liabilities and obligations, of Assignor in, to and under the Development Agreement, other than with respect to the Assigned Rights and Obligations. Assignee does not assume or become obligated on duties, responsibilities, liabilities and obligations of Assignor under the Development Agreement other than in connection with the Assumed Rights and Obligations by virtue of this Agreement.

3. No Cross Default. The Parties agree that the respective rights and obligations of each Party with regards to the Development Agreement shall be entirely independent, and a breach or default by one Party under the Development Agreement shall not constitute a breach or default by the other Party under the Development Agreement, and the Development Agreement shall continue in full force and effect as to the rights and obligations of the non-breaching or non-defaulting Party.

4. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Kansas.

5. Heirs, Successors, and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

6. Amendments and Modifications. This Agreement may not be modified or amended in any manner other than by a written agreement signed by the party to be charged.

7. Absolute Conveyance. The conveyance of the rights and obligations of the Development Agreement only as specifically applicable to the East Fork Wind Project hereunder is an absolute transfer to Assignee, free and clear of all liens and restrictions.

8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

9. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

*[Remainder of this page is intentionally left blank. Signatures follow on next page.]*

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

**ASSIGNOR:**

Solomon Forks Wind Project, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:**

East Fork Wind Project, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_