

Agreement Regarding County Roads and Drains

between

Flat Rock Wind, LLC

and

Henry County, Indiana

This Agreement Regarding County Roads and Drains ("Agreement"), dated as of December 14, 2016, is by and between Flat Rock Wind, LLC a Delaware limited liability company qualified to do business in Indiana ("Developer") and Henry County, Indiana ("County"), (Developer and the County being referred to herein, collectively, as the "Parties" and, individually, as a "Party").

Background

A. Developer desires to pursue the construction of a wind power project (the "Project"), consisting of wind turbines and related facilities, including, but not limited to, power collection and communication systems, site roads, pad-mount transformers, meteorological towers, an operation and maintenance building, electric substations, overhead transmission lines, switchyard, staging areas, and related facilities (collectively, the "Project Facilities") for an approximately 180 MW development in the County, that may be constructed in more than one phase.

B. As part of the construction of the Project, Developer will use certain roads, bridges, culverts, and rights-of-way located in the County as shown on Exhibit A attached hereto (collectively, the "Roads").

C. Developer's use of the Roads, including use by its contractors and subcontractors, will include the operation of heavy trucks and other heavy equipment in excess of the weight of vehicles that customarily use the Roads to transport parts, facilities, materials, and equipment and to carry out other related activities during the construction of the Project.

D. The County, pursuant to Indiana law, controls the roads and certain rights-of-way within the unincorporated areas of the County and may place reasonable restrictions on the use of roads and rights-of-way for the public's health, safety and welfare, including but not limited to weight restrictions and the placement of poles or other structures in the right-of-way.

E. In consideration of the benefits provided to the County by the Project, the County agrees to provide Developer (and its assigns) a right to use the Roads as provided herein.

NOW, THEREFORE, in consideration of the forgoing, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Use of Roads.

(a) The County hereby grants Developer and its contractors and subcontractors the right to use, improve, upgrade, construct, and repair the Roads pursuant to the terms of this Agreement in the planning, construction, and operations phases of its planned Project to transport parts, facilities, materials, and equipment and to carry out other related activities (collectively, "Developer Road Operations"). Developer Road Operations may include the operation of extremely heavy trucks and transports on the Roads. Notwithstanding the foregoing, Developer and its contractors and subcontractors, while utilizing vehicles over five (5) tons gross vehicle weight, shall not use any other roads or rights-of-way within the County for Developer Road Operations other than the Roads, or State Highways, except in the case of an emergency where the prohibition on use will put the safety of persons or the property of citizens of the County at risk.

(b) Not later than ninety (90) days prior to the commencement of Developer Road Operations with respect to the Project, the Developer and the County shall agree upon the Roads to be used by the Developer and amend Exhibit A to this Agreement to set forth the Roads to be used by the Developer. If the Project includes more than one phase, then not later than ninety (90) days prior to the commencement of Developer Road Operations with respect to each subsequent phase of the Project, the Developer and the County shall agree upon the Roads to be used by the Developer and amend Exhibit A to this Agreement to set forth the Roads to be used by Developer with respect to such phase.

(c) Using such records and maps of County regulated and private open and tile drains, including lateral drains connecting directly thereto, as may be timely provided to Developer by the County, Developer shall, at Developer's expense, (i) determine which such regulated and private drains, which are known to the Developer or the County, lie under, or within one hundred feet (100') of, any point at which the Developer may conduct any Project construction activity or operate a motor vehicle or other equipment weighing more than five (5) tons (the "Affected Drains") and (ii) prepare one or more maps depicting all known Affected Drains and all points of intersection with such construction activity (collectively, the "Drain Location Map"). No later than ninety (90) days prior to the commencement of work on the Project, Developer shall deliver the Drain Location Map to the Henry County Drainage Board ("Drainage Board"). The Drainage Board shall have thirty (30) days after such delivery to review the Drain Location Map and, if the Drainage Board determines that the Drain Location Map is not a complete and accurate depiction of the location of all known Affected Drains, to provide Developer with written objection to the Drain Location Map detailing such determination, whereupon Developer may revise the Drain Location Map or provide reasonable further documentation of the location of and effects of Project construction upon Affected Drains. As the Drain Location Map is based on records and maps initially provided by the County, Developer shall not be responsible for any inaccuracies or incomplete information contained in these records and/or maps and shall not be fined by the County for any damage caused by the Developer to drains not appearing on the Drainage Location Map; provided, however, the Affected Drains under this Agreement shall include any regulated and private open and tile drains, including lateral drains connecting directly thereto, which are damaged in connection with the completion of the Project, whether or not such drains were known to

the County and the Developer and included in the Drain Location Map. If Developer disagrees with the Drainage Board's determination, the Parties shall promptly meet to confer and attempt to reach agreement. If the Drainage Board does not give written notice of any objection to the completeness and accuracy of the Drain Location Map within such thirty (30) days, the Drain Location Map shall be deemed accepted by the Drainage Board. The Drain Location Map shall be added to Exhibit A of this Agreement, and amended through the above process if the Project is completed in multiple phases or as otherwise necessary. No provision of the Agreement shall be interpreted as imposing on the County the duty to fix any private or regulated drain damaged as a result of the Project or any liability with respect to the repair of any private or regulated drain damaged by the Developer.

(d) The County hereby grants Developer the right to use the Roads for the purposes of the erection of transmission poles (with above ground transmission lines) and the installation of below ground electric transmission lines within the public right-of-way in accordance with all local ordinances, regulations and conditions of any approval or permit. All poles and below ground electric transmission lines shall be placed as close to the edge of the right-of-way and as far from the road surface as possible, except upon written approval of the Board of Commissioners, the County Engineer, or the County Highway Superintendent. Prior to the erection of any such poles or the installation of below ground electric transmission lines within the public right-of-way, the Developer shall provide to the County Engineer or the County Highway Superintendent for his information a master plan that shows the location of all proposed transmission poles and below ground electric transmission lines associated with the Project that are to be located in the right-of-way to insure compliance with this Agreement and all local ordinances, regulations and conditions. Such locations of the proposed transmission poles and below ground transmission lines shall be subject to the approval of the County Highway Superintendent and the County Engineer, which approval may not be unreasonably withheld, delayed or conditioned.

(e) The County agrees that the right to use of the Roads for transmission poles and transmission lines shall be irrevocable, except in the event (i) the transmission lines supported by the transmission poles and underground transmission lines fail to transmit electricity for any purpose other than avoiding the loss of the rights provided by this Agreement for a period of eighteen (18) consecutive months after initial operations, (ii) Developer defaults in its obligations to maintain such transmission poles and underground transmission lines in a safe condition; provided, however, that Developer shall have the opportunity to cure any default within a reasonable time after receipt of written notice from County, except in the event that such default relates to an emergency situation, in which case Developer shall immediately cure such default, and (iii) the Developer fails to perform its obligations under or otherwise comply with the terms of this Agreement after notice and a reasonable cure period. If, from time to time, County should determine, in its sole discretion, that it will widen a road, upon notice from County, Developer shall, at Developer's sole cost, as soon as reasonably possible, relocate any of the transmission poles or underground transmission lines installed pursuant to the Agreement to allow the widening. If the transmission lines supported by the transmission poles or the underground transmission lines fail to transmit electricity for any purpose other than

avoiding the loss of the rights provided by this Agreement for a period of eighteen (18) consecutive months after initial operations, or if Developer defaults and fails to cure its obligations to maintain such transmission poles or underground transmission lines in a safe condition, then Developer shall promptly remove such poles or lines. The cost of the removal of such poles or lines may be included in the amount of any security posted by Developer for the decommissioning of the Project as required by the Decommissioning Agreement to be entered into between Developer and County.

(f) Not later than ninety (90) days prior to the commencement of Developer Road Operations with respect to the Project, Developer shall provide the County with a site layout plan (the "Plan") for the Project that shows the proposed turbine sites, the access road entrances, the overhead and underground collection system, and the power transformer site as attached to this Agreement as Exhibit B. If the Project includes more than one phase, then not later than ninety (90) days prior to the commencement of Developer Road Operations with respect to each subsequent phase of the Project, the Developer shall provide the County with the Plan with respect to such phase of the Project. The Plan may be further amended from time to time; however, any changes shall not extend beyond the boundaries of the Project area served by the Roads, as shown on Exhibit A. Such amendments shall be at the request of Developer and, if such amendments affect the Developer's use of the Roads, shall be subject to the approval of the County or its designee, which approval will not be unreasonably withheld, delayed or conditioned. All amendments shall be in writing.

(g) The Parties agree that initially this Agreement shall apply only to those Roads listed on Exhibit A; provided, however such Exhibit shall be amended by the written agreement of the Parties at any time during the period that this Agreement is effective in order to include any other township and/or county roads which Developer desires to use in the construction, operation, maintenance, and repowering or decommissioning of the Project and the related private or regulated drains affected by such activities. Such amendments shall be at the request of Developer and subject to the approval of the County Highway Superintendent and the County Engineer (or Board of Commissioners if indicated by the County Highway Superintendent and the County Engineer), which approval will not be unreasonably withheld, delayed, or conditioned. The Parties agree that this Agreement shall apply to Affected Drains listed in the Drain Location Map set forth on Exhibit A and any other Affected Drain, which includes any private or regulated open and tile drains, including lateral drains connecting directly thereto, which are damaged in connection with the completion of the Project, whether or not such drains are included in the Drain Location Map set forth in Exhibit A. The Parties shall amend the Drain Location Map set forth in Exhibit A to include any additional Affected Drains not contained therein.

Section 2. *Health, Safety, Security, and Environment.*

(a) Vehicles driven by Developer's employees, contractors and subcontractors will abide by local, state, and federal speed limit guidelines.

(b) In compliance with the then-current Indiana Manual on Uniform Traffic Control Devices, certain safety signs (as determined by the County Highway Superintendent in his reasonable discretion) ("Safety Signs") will be put up by Developer at all times within a reasonable distance of current construction activities when Developer's crews are working on the Roads.

(c) Upon finalization and prior to any use of the Roads by the Developer, the Exhibits attached hereto that include the locations of the turbine access roads will be provided to the Henry County Zoning Administrator, South Henry School Corporation, the Henry County Sheriff's Office, Henry County Emergency Management Director, the County Highway Superintendent, the County Engineer, the County Surveyor, and the Board of Commissioners (collectively, the "Notified Parties").

(d) County acknowledges that track mounted equipment will be used on the Roads and for crossing the Roads.

Section 3. *Communication and Local Traffic Coordination.* Developer will appoint a designated person to coordinate the following functions during construction of the Project Facilities (the "Transportation Coordinator"):

(a) In order to facilitate communication between the Developer, and its contractors and subcontractors, and the County, the Transportation Coordinator shall meet, at least once weekly, with the County Highway Superintendent, the County Engineer, and the County Surveyor to discuss planned work for the upcoming week ahead, as well as any issues regarding work done during the previous week. This meeting shall primarily be for information sharing purposes and to facilitate the fulfillment of the requirements in Section 3(c) and (d) below. Should weekly meetings not be mutually desired by the County Highway Superintendent, the County Engineer, the County Surveyor, and the Transportation Coordinator, they may arrange a mutually agreeable alternative method of sharing information related to the Project. Transportation Coordinator shall provide information and updates as necessary to the Notified Parties.

(b) If there is a road closure or limited access to a Road, Transportation Coordinator shall notify the Notified Parties by fax, email or telephone (in increasing order of preference) at least three (3) business days prior to the road closure or limited access event. In the event it is necessary for Developer to perform an emergency road closure, Transportation Coordinator shall notify the Notified Parties as soon as such a need is identified, and Developer shall accommodate any reasonable conditions to such a road closure. Developer shall use its best efforts to make the road closure or limited access event as short as possible in duration. Any road closure or limited access to a Road shall be approved in advance by the County Highway Superintendent, which approval shall not be unreasonably withheld, with the understanding that road closures will be likely and that the Developer shall be responsible for providing timely notice thereof as provided for in this paragraph.

(c) Developer and its contractors and subcontractors shall monitor the Developer's use of the Road in the construction of the Project Facilities and address any road safety

issues, road or drain damage during construction that need immediate repairs, safety signs needing replacement, or other activity requiring actions to alleviate transportation restrictions on county roads. While the County shall have no obligation to monitor the Developer's use of the Roads, if identified by the County Highway Superintendent or the County Engineer, the County Highway Superintendent and the County Engineer will communicate to the Transportation Coordinator any road safety issues, damages during construction that need immediate repairs, safety signs needing replacement, or other activity that needs to be resolved by Developer, its contractors and subcontractors and follow-up activities will be monitored by Developer.

(d) County Highway Superintendent and County Surveyor will communicate any necessary issues associated with this Agreement with the Transportation Coordinator. To reach agreement on how to cure issues in a timely manner, Transportation Coordinator will work with the County Highway Superintendent with respect to Roads and the County Surveyor with respect to drains.

Section 4. Establishing Roads and Drainage Improvements Pre-Construction Condition. Prior to the start of construction of Project Facilities, at the expense of Developer, Developer shall create a detailed video visual record and summary textual narrative of the pre-existing condition of all Roads covered under this Agreement ("Road Condition Report") that is reasonably acceptable to the County Highway Superintendent and the County Engineer. The reasonable and necessary cost of the Road Condition Report shall be paid by the Developer. Such Road Condition Report should reflect the existing regulated and private drainage system, including open ditches, bridges, small structures and culvert pipes (the "Drainage Improvements"), and the direction of current flow of storm water drainage, all as acceptable to the County Surveyor. Developer shall consult with the County Highway Superintendent, the County Engineer, and the County Surveyor regarding the means and methods to be used to create the Road Condition Report prior to commencing such work. If the County Highway Superintendent, the County Engineer, or the County Surveyor does not give written notice of any objection to the completeness and accuracy of the Road Condition Report within twenty-one (21) business days after receipt, the Road Condition Report shall be deemed accepted by the County Highway Superintendent, the County Engineer, and the County Surveyor.

Section 5. Transportation Permits. No over-weight or over-size permits will be required from the County for use of the Roads identified on Exhibit A by Developer or its contractors or subcontractors.

Section 6. Driveways. Developer may install driveways or entrances from certain Roads as shown on Exhibit C (attached hereto) and when finalized, shall list such driveway and road entrances on Exhibit C, subject to the following:

(a) Developer and the County shall agree on diagrams depicting a "typical" driveway after construction is complete, and when available attach such diagrams as Exhibit C hereto.

(b) All expenses for the construction of driveways or road entrances will be the responsibility of Developer.

(c) A single aggregate master permit ("Combined Driveways Permit") shall be required for all driveways or road entrances prior to issuance of Project Improvement Location/Building Permits. The Combined Driveways Permit shall include GPS locations of all proposed driveways and road entrances, and shall be accompanied by a map and table of driveway entrances in lieu of the information required on the Henry County form Driveway Permit. Upon submission of the Combined Driveway Permit, the table of driveway entrances shall be attached hereto as Exhibit C.

(d) Each driveway entrance from a Road will have a coordinate that will be transmitted in an electronic GIS format (ESRI shape file or equivalent) to the County Highway Superintendent, Area Plan Commission Director, County Surveyor, the County Engineer, and the County GIS Coordinator.

(e) Each driveway shall be constructed as may be necessary to maintain proper drainage of the Roads, the right-of-way, and other adjoining property located outside the right-of-ways, including the installation of a culvert pipe upon request of the County Engineer or the County Highway Superintendent.

Section 7. Road Improvements and Improvements in Right of Way. Developer shall improve designated areas of certain Roads and improve designated intersections of certain Roads, and upgrade the base thickness and surface of the Roads as required to ensure stability throughout the construction phase, subject to the following:

(a) Prior to commencement of construction, and utilizing information obtained in accordance with Section 4 above and any other necessary information, Developer shall prepare, subject to the approval of the County Highway Superintendent, the County Engineer, and the County Surveyor, a Road and Drain Upgrade and Restoration Schedule, which shall include (i) the planned road upgrade (if any) for each length of the Roads from intersection to intersection required prior to the commencement of construction (including the proposed upgraded width and aggregate to be added), (ii) the preparation, stabilization, and restoration plan for each of the Roads (including final surface type, final surface width, and shoulder taper), (iii) the preparation, stabilization, and restoration plan for each of the Drainage Improvements, and (iv) the estimated cost of performing all repair work. The Road and Drain Upgrade & Restoration Schedule shall be attached hereto as Exhibit D.

(b) Drawings of "typical" improved corners of existing intersections are attached as Exhibit E hereto (when available) (the "Corner Specifications"). All work shall be done in accordance with the Corner Specifications or as otherwise required by County regulations and ordinances.

(c) Road improvements required to provide material deliveries to turbine foundations will be finished ahead of material deliveries in the area prior to construction of the turbine pads. The road improvements will be scheduled as a part of the Developer's daily plan for construction of the Project.

(d) Upon completion of construction of the Project Facilities, road improvements referenced in (a) and (c) above shall remain unless the County Highway Superintendent specifically requests, in writing, that such improvements be removed; provided, however, that any improvements located outside the permanent right-of-way owned by the County shall be removed unless otherwise requested by the County.

(e) Separate permits or agreements from the County for wide-outs and improved corners of existing intersections are not required.

(f) Each of the access drives will be constructed with a minimum approach width as approved by the County Highway Superintendent and the County Engineer. Culverts across roads, in the right-of-way, and under driveways, that existed in the Project area prior to the Project and are removed during the Project activities, will be available to the County for salvage. Proper drainage shall be maintained at all times.

(g) After construction of the Project is complete, Developer shall, unless permitted otherwise, in writing, by the County Highway Superintendent, the County Engineer, and the County Surveyor, return drainage located within the public right-of-way to its existing condition as of the start of construction by repairing or replacing, as necessary, any field tiles, culverts, pipes or other drainage facilities damaged in the public right-of-way and the reconstruction of any open ditches as required to provide proper drainage. The parties acknowledge that the Developer shall address crop damage with landowners pursuant to the terms of the applicable lease.

(h) After the installation of the poles and the underground transmission lines is complete, Developer shall back-fill any trenches or holes (including as may be subsequently required to address any effects of settling), remove excess dirt, materials, and debris, and reseed disturbed areas.

(i) Nothing in this Agreement shall be construed as requiring County to exercise the power of eminent domain to acquire any right-of-way that Developer may need or desire.

Section 8. Road Crossings.

(a) Underground Crossings. Developer may install cables and wires under, across, or along the Roads and Drainage Improvements (as may be illustrated on Exhibit B when available, and as amended), subject to the following:

(i) Developer may cut an "open trench" across gravel and unimproved roads, and the trench will be backfilled two (2) feet beyond each shoulder with compacted number fifty-three (No. 53) stone per the permit specifications. No open trench shall be cut in a paved road, unless approved by the County Highway Engineer and the County Highway Superintendent.

(ii) Developer will bore under paved roads and may bore under certain Drainage Improvements, and all boring pits and ditch excavation will be backfilled, compacted and raked to return it to conditions substantially similar to

those prior to commencement of work. Any such boring by Developer must be at a minimum depth of 48" below the cross-section of the Road or associated Drainage Improvements at the selected crossing location.

(iii) Each boring or cut across a county road or Drainage Improvement will be identified by general location and also by centerline coordinate, and upon the completion of construction, Developer will provide an as-built location.

(iv) The County will accept a single permit form applying to all of the individual underground bore and "open trench" underground crossing locations listed on Exhibit F attached hereto. The permit forms will only be used as an official record for documenting the location of the underground crossings. The Road underground crossings are approved based on this Agreement and do not require further review or bonding when the permit form is submitted.

(b) Overhead Crossings. If the Developer and the County Highway Superintendent and the County Engineer mutually agree (and the County Surveyor if Drainage Improvements are being crossed) that underground crossings under Section 8(a) are not practicable, as determined by the County Highway Superintendent, in his or her discretion reasonably exercised, Developer may install overhead transmission lines across certain Roads as shown on Exhibit B, subject to the following:

(i) Overhead crossing transmission lines will be designed in accordance with National Electric Safety Code ("NESC") governing the clearance requirements above the roadway.

(ii) The County will accept a single permit form with a table attached listing all of the individual transmission line poles to be located in the County Road right-of-way. The permit forms will only be used as an official record for documenting the location of the poles and overhead crossings. The proposed overhead crossings are approved based on this Agreement and do not require further review or bonding when the permit form is submitted.

(c) Transmission Line Poles and Lines Within County Road Rights of Way (Longitudinal Occupation). As set out in Section 1, Developer may install overhead transmission poles and underground transmission lines within the right of way of certain Roads as shown on Exhibit B attached hereto (when available), subject to the following:

(i) Overhead transmission lines will be designed in accordance with NESC governing the clearance requirements above the roadway; provided, however, that such clearance shall, at a minimum, meet the requirements of Section 8(b) above.

(ii) A single County permit form will be required with a table attached listing each individual transmission line pole and underground transmission line to be located in the County Road right-of-way. The permit forms will only be used as an official record for documenting the location of the poles and lines. The proposed longitudinal occupations are approved based on this Agreement and do not require further review or bonding when the permit form is submitted.

(iii) Overhead transmission line poles will be situated on the "back side of the side ditch" away from the roadway and as close to the edge of the Road right-of-way as is practicable in accordance with County ordinances. Wires suspended from such poles may occupy the airspace near or above the roadway surface.

(iv) If transmission line poles are already situated within a County Road right-of-way where Developer intends to locate its poles, Developer may arrange with the owner of the transmission line for co-location.

Section 9. *Repairing Road, Drainage Improvements, and Sign Damage During Construction.*

(a) During construction of the Project Facilities, Developer is responsible at its expense for maintaining and repairing Roads and Drainage Improvement, and Safety Signs as necessary to ensure the continued safe passage of the public and Developer vehicles and proper drainage of areas served by the Drainage Improvements while construction is ongoing. Repairs are not required to be to the Roads' pre-construction condition. With respect to damage that does not impose a danger to the safety of the public or traffic, if contacted by the County Highway Superintendent (or the County Surveyor with respect to damage to Drainage Improvements), Developer, its contractors, or subcontractors will commence the repairs required under this Section within seven (7) days of notification from the County Highway Superintendent (or the County Surveyor with respect to damage to Drainage Improvements) to the Transportation Coordinator, and complete such repairs as soon as reasonably possible. At the end of each day, the Developer shall check for damage to the Roads that were used that day and related Drainage Improvements. In the event that the damage imposes a danger to the safety of the public or traffic (i.e. damaged or removed Safety Signs), the repair and appropriate safety measures will commence immediately and be completed as soon as possible upon notice from the Highway Superintendent. The County Highway Superintendent may repair or replace any damaged Safety Signs, and Developer shall reimburse the Highway Superintendent or County Engineer for the cost of such repair or replacement.

(b) During construction of the Project Facilities, Developer is responsible at its expense for dust control on gravel roads using commercially reasonable measures such as a dust palliative. The County Highway Superintendent may request that dust control be applied, in which instance the measure shall be applied within five (5) days. Upon expiration of the five (5) day cure period, the County may, without additional notice to Developer, apply the dust control at Developer's expense.

(c) If the necessary repair is not promptly undertaken by Developer within the timeframe required by this Agreement, the County may initiate the necessary repair under the terms of Sections 9, 10, and 12 of this Agreement. A fine in the amount of Five Hundred Dollars (\$500) per repair that County completes as a result of the Developer's failure to timely complete such repair shall be paid by Developer to County in addition to the amounts payable under Sections 10, 11 and 12 of this Agreement for the costs incurred by the County for completing the repair.

(d) Upon request of County Highway Superintendent, Developer, within 48 hours, shall post necessary signs (in addition to Safety Signs) indicating unsafe conditions.

(c) All fines hereunder will be paid by the Developer within thirty (30) days of notice of a violation and request for payment from the County.

Section 10. Repair of Road and Drainage Damage after Construction Completion.

Upon completion of construction of the Project Facilities, Developer will repair or pay for the repair of all damage to the Roads and Drainage Improvements resulting from Developer's use of the Roads (but not other causes) during the construction of the Project Facilities, based on the Road and Drain Upgrade and Restoration Schedule, set forth as Exhibit D. Such repairs shall include the removal prior to the start of construction, the reinstallation after the completion of construction, and the replacement of any damaged section corner markers. Developer shall repair the Roads, with specifications to be developed in conjunction with the preparation of the Road and Drain Upgrade and Restoration Schedule, which shall provide for the reconstruction or repair of all of the Roads as set forth in Exhibit D. Drawings and other specifications of "typical" reconstructed roads are attached as Exhibit C hereto (when available). The Road and Drain Upgrade and Restoration Schedule shall also provide for the Developer's repair of the Roads to a width not less than their pre-construction width. For purposes of this Agreement, damage to any Drainage Improvements may also include damages occurring within the County's seventy-five (75) foot maintenance right-of-way under I.C. §36-9-27-33, if such damage either denies, impedes, or affects the County's ability to exercise drain maintenance within its right-of-way, and damages to Roads or Drainage Improvements shall include any damage to adjoining property that resulted from the use or repair of the Roads or Drainage Improvements.

The County Highway Superintendent, the County Engineer and Transportation Coordinator shall determine the start date for the repair based on the site conditions, and Developer shall make such repairs or cause them to be made within ninety (90) days after the completion of the Project Facilities (or with respect to repairs the start date of which is determined to be between September and the following February, then by the following May 1); provided however, the period for completion may be extended by the difference between the number of days during which weather would not permit construction during such period and the number of days during which weather normally would not permit construction during such period. If the Developer fails to timely complete the repairs, after fourteen (14) days (weather permitting) notice from the County, the County may make the required repairs, and Developer will reimburse the County for the County's cost of such repairs within ninety (90) days after receipt of an invoice and reasonable supporting documentation from the County. In addition to the cost of materials, the County's cost of completing such repairs includes the costs of contractors retained by the County to complete the repairs, as well as the direct internal labor costs and reimbursement for usage of powered equipment, based on commercially reasonable rates, and any related reasonable documented engineering, legal fees or other professional fees. If Developer fails to reimburse the County for such costs as required, the County may draw on the Financial Assurance, provided for in Section 12 below, to pay the cost of such repairs.

Section 11. County Inspector.

(a) The County may retain an inspector ("County Inspector") during construction of the Project as a result of the process set out in (b) below. The County Inspector shall inspect Developer's upgrades and repairs to the Roads and Drainage Improvements and provide written acknowledgement that such upgrades and repairs appear to have been made in accordance with this Agreement, where such is the case or, where such is not the case, so inform Developer and the County Highway Superintendent (with respect to Roads) and the Drainage Board (with respect to Drainage Improvements) and act as liaison between Developer and the County Highway Superintendent and Drainage Board in order to see that such repairs are brought into compliance with this Agreement. The County Inspector shall inform Developer of any damage noted by the County Inspector in the performance of the County Inspector's duties.

(b) Prior to the initiation of construction of the Project, the Developer shall provide the Highway Engineer a construction schedule based upon which the parties shall mutually agree upon the estimated number of hours that will be required of the County Inspector. County agrees to not unreasonably withhold approval of the budgeted hours. County agrees that the person or persons retained by it shall not charge the Developer more than \$100 per hour. Upon agreement as to a budget for the County Inspector, Developer shall pay in advance the estimated amount of the expenses that the Developer will incur with respect to the retention of the County Inspector to perform such duties (the "Budgeted Amount"). The County agrees to deposit the Budgeted Amount in a separate account for the sole purpose of paying the fee of the County Inspector. The County shall promptly refund a portion of the advance payment to the Developer to the extent that the actual expenses incurred by the County are less than such advance payment, and the Developer shall pay to the County such an additional amount as is necessary to pay all expenses, to the extent that the actual amount of the expenses is more than the advance payment; provided, however, that such additional amount shall not exceed the Budgeted Amount by more than ten percent (10%), unless the additional cost is caused by the Developer.

(c) Developer shall notify in writing the County Inspector, when Developer believes that improvements to all of the Roads and Drainage Improvements have been completed. Not later than fifteen (15) day after receipt of such notice from Developer, the County Inspector shall inspect Roads and Drainage Improvements described in the notice from the Developer and provide written notice to Developer and the County of the County Inspector's determination that the improvements to the Roads and Drainage Improvements have or have not been completed. A notice of the County Inspector's determination that the required improvements to the Roads and Drainage Improvements have not been completed shall specify the additional work that still needs to be completed. Developer may appeal this determination with respect to Roads to the County Highway Superintendent and the County Engineer and with respect to Drainage Improvements to the County Surveyor.

The date on which the County Inspector provides notice to the County and Developer that all improvements to the Roads or Drainage Improvements have been completed pursuant to this Agreement shall constitute the "Completion Date" for the improvements to the Roads or Drainage for purposes of this Agreement.

Section 12. *Financial Assurance.*

(a) At or prior to the start of construction of the Project Facilities, Developer will put in place two performance bonds, one constituting a first demand bond issued by a financial institution (the "Demand Bond"); the other constituting a performance bond in the amount calculated to be one and one-half times the cost for work under the Road and Drain Upgrade and Restoration Schedule contemplated on Exhibit D, issued by a financial institution (the "Performance Guarantee"). The Demand Bond and Performance Guarantee collectively shall be referred to as the "Financial Assurance," which shall be in place for a term of not less than four (4) years following the completion of the final repairs to the Roads and Drainage Improvements. The purpose of the Demand Bond is to provide a readily available source of funds that the County can use for emergency repairs, if after notice and reasonable opportunity to cure Developer fails to make the repair. Developer shall cause the Demand Bond to be replenished if properly drawn upon. The purpose of the Performance Guarantee shall be to insure the completion and to serve as a warranty of the quality of construction regarding the obligations of Developer under this Agreement. At least thirty (30) days prior to the delivery of the Financial Assurance to the County, the Developer shall submit to the County the name of the provider of the Financial Assurance and the documents governing the issuance of the Financial Assurance, both of which shall be subject to the approval of the County, such approval not be unreasonably withheld. The County shall be named as a beneficiary of the Financial Assurance. The forms of the Demand Bond and the Performance Guarantee are attached hereto as Exhibit G. Notwithstanding the above, upon preparation of Exhibit D, the parties shall work together in good faith to determine the appropriate amounts for the Demand Bond and the Performance Guarantee.

(b) To the extent Developer has not repaired damage to the Roads or the Drainage Improvements upon completion of construction of the Project Facilities pursuant to Section 10, or during construction of the Project Facilities pursuant to Section 9, the County may draw upon the Financial Assurance and use such funds to repair damage to the Roads or the Drainage Improvements caused by Developer during construction of the Project Facilities to the condition required by Section 9 or 10 of this Agreement. If the County repairs any Roads or the Drainage Improvements, in addition to the cost of materials, the County's cost of completing such repairs includes the costs of contractors retained by the County to complete the repairs, as well as the direct internal labor costs and reimbursement for usage of powered equipment, based on commercially reasonable rates. Prior to undertaking such repairs itself and drawing on the Financial Assurance, the County shall provide Developer at least thirty (30) days prior written notice and an opportunity to cure such failure to repair. If Developer disputes whether it is responsible for any particular item of damage, Developer and the County shall within such thirty (30) day period use reasonable efforts to agree on the responsibility for such repairs prior to the County undertaking such repairs and drawing on the Financial Assurance.

(c) If Developer puts in place the Financial Assurance but does not commence construction, the County shall return the Financial Assurance to Developer upon the earlier to occur of (i) Developer's building permit(s) expiring, (ii) Developer's return of the County building permits, or (iii) if no permits have been obtained, upon written notice of Developer to County confirming termination of the Project.

(d) If Developer commences but does not complete construction of the Project Facilities, Developer shall repair the damage, if any, caused by Developer's construction

activities. If such damage is not repaired by Developer within one hundred eighty (180) days after commencement of the construction activities causing the damage to the Road or Drainage Improvements, then after ten (10) days notice from the County to Developer and opportunity to cure, the County may draw upon the Financial Assurance and use such funds to repair damage to the Roads and Drainage Improvements caused by Developer during construction of the Project Facilities to the condition required by Section 10 of this Agreement. Any amount of the Financial Assurance remaining after completion of such repairs will be promptly returned to Developer upon completion of such repairs but in no event later than ninety (90) days from the date of the final draw down of funds from the Financial Assurance for such repairs.

(e) Within two (2) years after the Completion Date (as defined in Section 11(c) of this Agreement) of all repairs to the Roads and the Drainage Improvements as required in this Agreement, or in the event no repairs are required in connection with the Project that require use of the Financial Assurance and the County has been provided written notice of substantial completion of the Project, the County shall return the Financial Assurance (or, to the extent the County has drawn on the Financial Assurance to pay for repairs, the remaining portion thereof) to Developer.

(f) If the County draws upon the Financial Assurance, it shall provide to Developer a full accounting of the amount of the draw and the repair on the Roads or Drainage Improvements made for each draw down within sixty (60) days following completion of each repair on account of which such draw down was made.

(g) Upon the completion of the construction of the Road upgrades as provided on Exhibit D, the Performance Guarantee shall be reduced to an amount calculated to be 1.2 times the estimated cost of post-construction restoration of Roads and Drainage Improvements as provided on Exhibit D. On the Completion Date (as defined in Section 11(c) of this Agreement), the Performance Guarantee shall be reduced to an amount calculated to be 0.2 times the cost of post-construction work to be completed on the Roads and Drainage Improvements as provided on Exhibit D. On the date which is two (2) years after the Completion Date, the Performance Guarantee shall be reduced to an amount calculated to be 0.2 times the cost of post-construction work to be completed on the Drainage Improvements as provided on Exhibit D.

(h) The existence of this Agreement, and in particular, the Financial Assurance, shall in no instance be deemed as imposing a duty, responsibility or liability upon the County, including, but not limited to, its Commissioners, for any actions or inaction taken by Developer and/or its subcontractors under the scope of this Agreement. The Financial Assurance is intended to provide the County with assurance that it will be paid by Developer for its obligations under this Agreement, but shall not in any way limit the amount of Developer's obligations or liability under this Agreement.

(i) If the Project is completed in multiple phases, the Developer may provide separate Financial Assurance with respect to each phase, or increase the amount of the Financial Assurance to cover the amounts required by this Agreement for such phase.

Section 13. Warranty. Developer warrants that all materials supplied and workmanship performed by Developer to satisfy its obligation to make improvements and repair damage to the Roads and the Drainage Improvements resulting from their use by Developer

during the construction of the Project Facilities pursuant to Sections 7, 8, 9, and 10 of this Agreement will be free from defects for a period of: (a) two (2) years after the Completion Date (as defined in Section 11(c) of this Agreement) with respect to Roads, and (b) four (4) years after the Completion Date (as defined in Section 11(c) of this Agreement) with respect to Drainage Improvements. THE WARRANTY SET FORTH IN THIS SECTION 13 IS EXCLUSIVE AND IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CUSTOM, USAGE OR OTHERWISE. EXCEPT AS SET FORTH IN THIS SECTION 13, THERE ARE NO OTHER WARRANTIES, AGREEMENTS OR UNDERSTANDINGS WITH RESPECT TO THE REPAIR OF THE ROADS AND NO OTHER WARRANTY, ORAL OR WRITTEN, WHICH MIGHT HAVE BEEN GIVEN BY AN EMPLOYEE, AGENT, OR REPRESENTATIVE OF DEVELOPER IS AUTHORIZED BY DEVELOPER. DEVELOPER IS NOT AND SHALL NOT BE HELD LIABLE FOR ANY ALLEGED BREACH OF THE WARRANTY GIVEN IN THIS SECTION 13 CAUSED BY OR ARISING OUT OF ORDINARY WEAR AND TEAR. Notwithstanding anything in this Agreement to the contrary, Developer shall be responsible for any damage that it or its employees, contractors, or subcontractors cause to the Roads or Drainage Improvements that occur after completion of construction of the Project Facilities. Prior to making a claim under the warranty provided by this Section 13, the County shall provide Developer at least thirty (30) days prior written notice and an opportunity to repair the defect or damage subject to such warranty. If Developer disputes whether it is responsible under the warranty of this Section 13 such damage or defect, Developer and the County shall with such thirty (30) day period use reasonable efforts to agree on whether or not such damage or defect is subject to the warranty of this Section 13.

Section 14. Imposition of Fines.

(a) Upon written notice to Developer (given by fax and by e-mail directed to the fax number and e-mail address provided by Developer for such purpose) of Developer's default regarding the provisions of this Agreement as set out in (b) below and Developer's failure or refusal to abate, correct, or otherwise remedy such default, the County may impose a fine upon Developer, as indicated in paragraph (b) below. Fines are imposed for each day of the same incident of default after expiration of the applicable notice/cure period as set forth below. Developer shall pay all fines to the County within thirty (30) days of receipt from the County of proper notice of and request for payment of a fine. Any issuance to the Developer of a notice of and request for the payment of a fine shall be approved in advance by the Board of Commissioners of the County.

(b) The provisions to which the default shall subject Developer to fines, the amount of such fines, applicable notice/cure requirements, and other relevant conditions shall be as follows:

<u>Section</u>	<u>Amount</u>	<u>Notice/Cure Period</u>
2(b) (signage)	\$500	24 hours for non-custom, non-specialty signs; 72 hours for custom or specialty signs. Provided, that to the extent that a permanent sign is not available through the use of reasonable diligence, temporary signs are permissible and effective in

<u>Section</u>	<u>Amount</u>	<u>Notice/Cure Period</u>
		avoidance of any fine that might otherwise be assessed.
1 (unauthorized use of Roads)		Automatic upon notice from County; no cure period
First or second Occurrence	\$500.00	
Third or more Occurrence	\$5,000.00	
9(b) (dust control)	\$500	Five (5) days from request made by Highway Superintendent pursuant to Section 9(b)
9(a) (road or drain repair)	\$500	Reasonable time period under the circumstances, taking into account, among other factors, safety concerns, weather conditions, and nature of the repairs, but in the case of damage that does not impose a danger to the safety of the public or traffic, commencement of such repairs no more than seven (7) days after the notice from the Highway Superintendent or the County Surveyor under Section 9(a) and completion of such repairs related to the Project not more than fifteen (15) days after such notice; if the damage poses danger to the safety of the public, the repair shall be immediate.

Section 15. Miscellaneous. Any material changes in the use of Roads must be approved by the County Engineer and the Highway Superintendent, in their sole discretion, and will be subject to the terms of this Agreement. Any such changes materially affecting Drainage Improvements must also be approved by the County Surveyor and County Commissioners, in their reasonable discretion.

Section 16. Assignment.

(a) This Agreement shall (i) remain in full force and effect until the expiration or termination hereof; and (ii) be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

(b) Except as provided in subsections (c), (d), (e) and (f) below, no Party to this Agreement shall assign, transfer, delegate, or encumber this Agreement or any or all of its rights, interests, or obligations under this Agreement without the prior written consent of the other

Party. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned, or delayed; and (ii) without limiting the foregoing, in the case of the County, the County's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of the Developer pursuant to this Agreement.

(c) Developer may, without the consent of the County, but upon notice to County, assign or transfer this Agreement or any or all of its rights, interests, and obligations under this Agreement to any affiliate or subsidiary, or with the consent of the County (not to be unreasonably withheld), to a company that acquires substantially all the assets of the Developer. Additionally, upon the prior written notice to the County and without consent of the County, Developer may assign this Agreement to a (i) public utility or (ii) a developer, provided in either instance such assignee shall have comparable experience in constructing and operating a wind project in the United States and a net worth of a minimum of \$25,000,000 as confirmed by audited financial statements as of the most immediately prior year end.

(d) Developer will not be required to obtain consent of the County for or in connection with (i) a corporate reorganization of Developer or any of its direct or indirect affiliates, or (ii) a sale or transfer of equity interest of any direct or indirect affiliate of Developer.

(e) Any assignment pursuant to this Section shall be subject to the assignee agreeing in writing to be bound by the terms of this Agreement. Any assignment of this Agreement by Developer to an assignee shall be subject to Developer assigning its rights and obligations under the Decommissioning Agreement dated 12/14, 2016 (the "Decommissioning Agreement") and the Economic Development Agreement dated 12/14, 2016 (the "Economic Development Agreement") to the same assignee. Any notice of assignment required to be delivered by Developer pursuant to this Section shall be in writing, shall set forth the basis for the assignment, including such supporting information as may be necessary to demonstrate compliance with this Section, and shall be delivered to the County not less than forty-five (45) days prior to the effective date of the assignment. The restrictions on the Developer's ability to assign this Agreement set forth in this Section shall expire ten (10) years after the date of the completion of the Project; provide however, following the expiration of such restrictions, the Developer shall provide notice of any assignment of this Agreement to the County not less than forty-five (45) days prior to the effective date of the assignment, the assignee shall still agree in writing to be bound by the terms of this Agreement, and any assignment of this Agreement by Developer to an assignee shall still be subject to Developer assigning its rights and obligations under the Economic Development Agreement and the Decommissioning Agreement to the same assignee.

(f) Developer may, also, without the prior approval of the County, enter into any partnership or contractual arrangement, including but not limited to, a partial or conditional assignment of equitable interest in the Developer or its parent to any person or entity, including but not limited to tax equity investors, or by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Project (any of the foregoing actions, a "Collateral Assignment") and the County

shall agree to execute and deliver any reasonably requested estoppels related to a Collateral Assignment. Promptly after making such encumbrance, Developer shall notify the County in writing of the name, address, and telephone and facsimile numbers of each party in favor of which the Developer's interest under this Agreement has been encumbered (each such party, a "Financing Party" and together, the "Financing Parties"). Such notices shall include the names of the account managers or other representatives of the Financing Parties to whom all written and telephonic communications may be addressed. After giving the County such initial notice regarding either an Assignment or a Collateral Assignment, the Developer shall promptly give the County notice of any change in the information provided in the initial notice or any revised notice. The Developer shall, in the event of any such Collateral Assignment, remain bound to the terms of this Agreement unless otherwise agreed by the County.

Section 17. Notices. All notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, emailed or mailed (registered or certified mail, postage prepaid, return receipt requested) as follows:

If to the County:

Henry County Board of Commissioners
101 S. Main Street
New Castle, IN 47362
ATTN: County Auditor
Email: _____

Henry County, Indiana
Henry County Highway Department
202 West County Road 50 North
New Castle, IN 47362
ATTN: County Engineer/Highway Superintendent
Email: _____

Henry County, Indiana
Henry County Office Building
1201 Race Street, Suite 216
New Castle, IN 47362
ATTN: County Surveyor
Email: _____

With a copy to:

Joel E. Harvey, Esq.
R. Scott Hayes, Esq.
Hayes Copenhaver Crider Harvey, LLP
214 S. Main Street
New Castle, IN 47362
Email: JHarvey@hcclaw.com

Richard J. Hall, Esq
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204
Email: rhall@btlaw.com

If to Developer:

Flat Rock Wind, LLC
c/o Apex Clean Energy, Inc.
310 4th Street NE, Ste. 200
Charlottesville, VA 22902
Attn: President
Email: apex@apexcleanenergy.com

With a copy to:

Flat Rock Wind, LLC
c/o Apex Clean Energy, Inc.
310 4th St. NE, Ste. 200
Charlottesville, VA 22902
Attn: Deputy General Counsel
Email: legal@apexcleanenergy.com

Section 18. *Force Majeure Event.* Whenever performance is required of a Party hereunder, such Party shall use all diligence and take all necessary measures in good faith to perform; provided, however, that if a Party's performance of its obligations under this Agreement is prevented, delayed, or otherwise impaired at any time due to any of the following causes, then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances: acts of God, extreme weather, war, civil commotion, riots, or damage to work in progress by reason of fire or other casualty, strikes, lock outs or other labor disputes; delays in transportation; inability to secure labor or materials in the open market; war, terrorism, sabotage, civil strife or other violence; the effect of any law, proclamation, action, demand or requirement of any government agency; or litigation contesting all or any portion of the right, title and interest of Developer or the County under this Agreement. If either Party experiences, or anticipates that it will experience, an event that, pursuant to this Section 18, shall extend the time of performance by such Party of any obligation under this Agreement, then such Party shall provide prompt written notice to the other Party of the nature and the anticipated length of such delay.

Section 19. *Governing Law and Venue.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana, without regard to the conflict of laws provisions in such state. Any disputes arising under this Agreement between the Parties shall be decided by a court of competent jurisdiction in Henry County, Indiana.

Section 20. *Amendments and Integration.* This Agreement (including Exhibits) shall constitute the complete and entire agreement between the Parties with respect to the subject matter hereof. No prior statement or agreement, oral or written, shall vary or modify the written

terms hereof. Except as set forth in this Agreement, this Agreement may be amended only by a written agreement signed by the Parties.

Section 21. *Exercise of Rights and Waiver.* The failure of a Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by a Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

Section 22. *Independent Contractor, Relation of the Parties.* The status of Developer under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, Developer and its officers, agents, employees, and representatives shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, or representatives of the County.

Section 23. *Severability.* In the event that any clause, provision or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

Section 24. *Headings and Construction.* The section headings in this Agreement are inserted for convenience of reference only and shall in no way effect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement may have been prepared by one of the Parties, the Parties confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting Party shall not apply. All Exhibits referenced in this Agreement are incorporated in and form a part of this Agreement.

Section 25. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 26. *No Third-Party Beneficiary.* No provisions of this Agreement shall in any way inure to the benefit of any person or third party so as to constitute any such person or third party as a third-party beneficiary under this Agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party hereto.

Section 27. *Confidentiality* All data and information acquired by the County from Developer (or its affiliates, representatives, agents or contractors) in connection with the performance by Developer of its obligations hereunder, including information regarding the Project, shall be confidential and will not be disclosed by the County to any third party, and upon request of Developer will be returned thereto, except that the County will not be obligated

to return any such information contained in documents generated by the County that are stored electronically by the County. With respect to any such retained electronically stored confidential information, the County will continue to comply with the obligations of this Section 27. Notwithstanding the foregoing, the Parties acknowledge and agree that such confidential information may be disclosed to third parties as may be necessary for Developer and the County to perform their respective obligations under this Agreement and as may be required by law. This provision will not prevent the County from providing any confidential information if required to do so in response to a request under the Indiana Access to Public Records Act; provided, that if feasible, the County will give prior notice to Developer of such disclosure if required by law. The parties acknowledge that the County will be required to provide copies of this Agreement in response to a request under the Indiana Access to Public Records Act.

Section 28. Extraordinary Events. The Parties acknowledge that during the expected life of the Project, circumstances may arise under which it will be necessary or advisable for Developer to replace major turbine components or make repairs to turbines beyond ordinary maintenance ("Extraordinary Events"), and that transportation of turbine components on overweight or oversize vehicles on or across the Roads may be necessary. The Parties agree that it is impossible to predict the timing, nature, or extent to which the Roads may be damaged beyond the normal amount of wear and tear by such transportation. The Parties agree that at any time during the life of Project, when Developer determines Extraordinary Events reasonably, during any sixty (60) day period, require activities which will involve more than ten (10) movements of overweight or oversize vehicles on the Roads, (e.g., a trip on the Roads to and from a State Road or a U.S. Highway to a turbine site constitutes two movements), Developer will give advance written notice of the intended movements to the County Highway Superintendent for his approval, such approval not to be unreasonably withheld. Upon such approval, Developer agrees to reasonably coordinate such activities and make or pay for all necessary repairs to Roads and Drainage Improvements, in substantially the same manner provided for in this Agreement. Based on the extent of the movements required as a result of Extraordinary Events, the Developer may be required, at the election of the County Highway Superintendent, to provide additional Financial Assurance, in such amount as is reasonably agreed to by the County Highway Superintendent and Developer.

Section 29. Indemnity. Developer shall indemnify, defend, and hold the County harmless for any and all claims, demands, suits, actions, proceedings, or causes of actions brought against County, Board of Commissioners, its other officers, affiliates, and employees and permitted assignees of any of the foregoing for any judgments, liabilities, obligations, fines, penalties, or expenses, including reasonable attorneys' fees and expenditures pertaining to third party personal injury or property damage ("Losses"), but only to the extent that such Losses arise directly from, or the Losses are alleged to be a result of, negligent or improper acts or omissions of Developer in the course of performance by Developer under or in relation to or connection with this Agreement and excluding such Losses caused by the solely negligence of the County.

Section 30. Limitation on Damages. The Parties waive all claims against each other (and against each other's parent company and affiliates and their respective members, shareholders,

officers, directors, and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity (other than the indemnity obligations of Developer as set forth in Section 28 with respect to Losses that arise from personal injury to third persons), contribution, strict liability or any other legal theory.

[Signatures and Exhibits on Following Pages]

IN WITNESS WHEREOF, each party hereto has caused its duly authorized representative to sign this Agreement on its behalf as of the date first set forth above.

"DEVELOPER"

Flat Rock Wind, LLC

By: Apex GCL, LLC

Its: Sole Member

By: Apex Clean Energy Holdings, LLC

Its: Sole Member

By: 

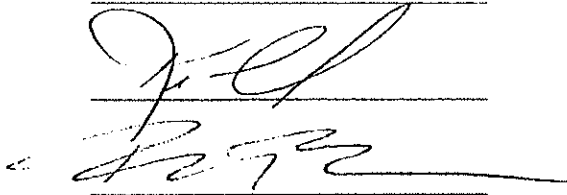
Name: Mark Goodwin

Its: _____

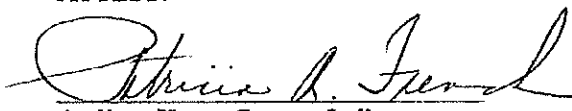
"County"

Henry County, Indiana

By: Its Board of Commissioners



ATTEST:


Auditor, Henry County, Indiana

List of Exhibits – To be agreed to by Developer and the County Highway Superintendent not later than 90 days prior to the anticipated initiation of Project construction (with any amendments per Section 1(f))

Exhibit A – Roads and Affected Drains

Exhibit B – Wind Farm Site Plan (including underground and overhead crossings)

Exhibit C – Typical Reconstructed Roads, Driveways and Road Entrances

Exhibit D – Road and Drain Upgrade and Restoration Schedule

Exhibit E – Typical Improved Corners

Exhibit F – Underground Bore and “Open Trench” Underground Crossing Locations

Exhibit G – Form of Performance Bonds

NOTE: Where appropriate, Exhibits shall be considered by the parties for illustration purposes only, by way of example, turbine locations.

EXHIBIT A

ROADS AND AFFECTED DRAINS

EXHIBIT B

**WIND FARM SITE PLAN
(INCLUDING UNDERGROUND AND OVERHEAD CROSSINGS)**

EXHIBIT C

TYPICAL RECONSTRUCTED ROADS, DRIVEWAYS AND ROAD ENTRANCES

EXHIBIT D

ROAD AND DRAIN UPGRADE AND RESTORATION SCHEDULE ("Schedule")

While the Developer and the County will agree upon the Schedule not later than 90 days prior to the anticipated initiation of Project construction, the Schedule shall provide for the following improvements to the Roads and Drainage Improvements with discretion as to substitutions mutually agreeable by the Parties: Notwithstanding the following, the Parties recognize that the Road Condition Report shall set out the current width and condition of Roads, including chip seal roads. As indicated in Section 4, the Road Condition Report, once accepted by the County Engineer and the County Highway Superintendent, shall be the "baseline" for the Developer to determine what Roads need to be widened and improved pre-construction. Any road widening shall be kept in place post-construction. If the County desires to widen or improve the Roads beyond that deemed necessary by Developer, then the Parties shall work together to determine their appropriate proportional contributions to such work.

(1) Hot Mix or Cold Mix (PUG) roads may be utilized in their existing condition provided they are maintained during construction. At the end of construction all damage will be repaired (full depth through subgrade) and a minimum 1 ½" hot mix surface applied. The contractor may determine it best to stabilize them in the same way as described in item 2 below, then capping with hot mix at the end of the project as stated.

(2) Chip seal roads are to be milled up and stabilized using cement, lime or fly ash. Cement stabilization shall be used when no less than 12" of aggregate is present. Additional aggregate (#53 stone) may be necessary and shall be added to achieve a minimum 12" depth. Lime or fly ash stabilization shall be used when fine grain soils are encountered and meet the requirements of INDOT Section 215 standard specifications, current edition. Aggregate shall not be used in this process. Depth of stabilization shall be no less than 14". Aggregates may need to be removed to use this type of stabilization. The addition of 4" of #53 stone shall be placed, graded and compacted on top of the stabilized subgrade. Compaction inspection shall consist of proof rolling using a fully loaded tri axle dump truck. No noticeable movement of the road bed shall be detected. When construction is completed, a chip seal consisting of a prime, 3 layers of #9 stone and 1 layer of #11 stone shall be placed.

(3) Stabilization will be 2' wider (1' each side) than the existing roadway width, but not less than 18'. Chip and seal will cover entire stabilized area.

(4) Gravel roads may be utilized in their existing condition provided they are maintained including dust control during construction. At the end of construction all damage will be repaired (full depth) and a minimum 2" of 73 stone added on top. The contractor may determine it best to stabilize them in the same way as described in item 2 above.

EXHIBIT E

TYPICAL IMPROVED CORNERS

EXHIBIT F

**UNDERGROUND BORE AND "OPEN TRENCH" UNDERGROUND CROSSING
LOCATIONS**

EXHIBIT G

FORM OF PERFORMANCE BONDS

