

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (“**Agreement**”), dated this 14th day of DECEMBER, 2018, is entered into by and between Henry County, Indiana (“**County**”), and Big Blue River Wind Farm, LLC, a Delaware limited liability company (“**Company**”).

WITNESSETH:

WHEREAS, Company is applying for a Commission Approved Use (“CAU”) in connection with a proposed wind power project (the “Project”) under Henry County Ordinance Nos. 2018 - (04) -08-22 and 2018 - (03)-08-22 (collectively, the “Ordinance”); and

WHEREAS, in connection with such application, Section 9.6(A)(4) of the Ordinance requires that an escrow account (“Escrow Account”) be established by the Company; and

WHEREAS, Company has arranged with [_____] (“Escrow Agent”) to establish the Escrow Account, as evidenced by Exhibit A hereto; and

WHEREAS, the parties intend to implement the use of the Escrow Account with this Agreement pursuant to the terms of the Ordinance;

NOW THEREFORE, in consideration of the premises and the mutual obligations and covenants set forth herein, the parties agree as follows:

1. **Establishment of Escrow.**

(a) The Escrow Account has been opened with Escrow Agent and County agrees that Escrow Agent shall serve as the escrow agent under, and administer Escrow Account in accordance with, the applicable terms the Ordinance and this Agreement.

(b) Upon County’s execution of this Agreement, Company shall deposit with Escrow Agent an initial deposit of \$75,000 (the “**Escrow Funds**”) to be held and distributed pursuant to the Ordinance and this Agreement.

(c) If the amount in the Escrow Account falls below \$75,000 and County wishes Company to deposit additional funds to bring the amount back to \$75,000, then County shall notify Company in writing and Company shall deposit the shortfall within 14 days following the date County has sent the written notification and explanation of any withdrawals by County.

2. **Escrow Fund Administration, Disbursements, Repayment.** Upon execution, Company shall make any necessary arrangements with respect to the Escrow Account in coordination with Escrow Agent to allow County to use the funds therein in accordance with the Ordinance and this Agreement, solely in the name of the County, to be managed by the County Treasurer (or designee of the County Treasurer not affiliated with Company). Company's

application fee for CAU under the Ordinance will be paid directly to the Henry County Planning Commission separately from, and in addition to, the Escrow Funds. The Escrow Account shall be administered according to the conditions set forth in Section 9.6(A)(4) (a) through (c) of the Ordinance, which are incorporated herein by reference.

3. **Termination; Disputes.** Any amounts of the Escrow Funds remaining upon final decommissioning of the Project or earlier termination of the Project under Section 9.6(a)(4)(c) of the Ordinance, as applicable (“Funds”) shall be distributed as required in the Ordinance. In the event of any dispute(s) concerning such distribution, said Funds shall be held by Escrow Agent until it has received either (i) joint written instructions from the parties regarding disbursement; or (ii) an order or judgment from a court of competent jurisdiction in Henry County, Indiana, directing the disbursement of the funds.

4. **Escrow Agent Fees and Expenses.** Administrative fees or expenses in connection with the Escrow Account shall be paid directly by Company when due, or from the Escrow Funds.

5. **Account Statements.** At all times relevant hereto, Company shall be entitled to complete copies of all statements of account and all other written correspondence between County and Escrow Agent concerning the Escrow Account, promptly upon written request for same by Company.

6. **Hold Harmless.** Company and County shall jointly and severally hold and save harmless Escrow Agent from and against all loss, cost, claim, liability, damage and expense, including reasonable attorneys' fees and disbursements incurred in connection with the Escrow Account and the performance of Escrow Agent's duties, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith, in willful disregard of this Escrow Agreement, or involving gross negligence on the part of Escrow Agent.

7. **Notices.** Any notice, request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given (a) when received if given in person or by courier or a courier service, (b) on the date of transmission if sent by facsimile or (c) three (3) business days after being deposited in the mail, certified or registered, postage prepaid:

If to the County:

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

With a copy to:

Joel E. Harvey, Esq.
Hayes Copenhaver Crider Harvey, LLP

214 S. Main Street
New Castle, IN 47362
Email: JHarvey@hcclaw.com

If to Developer:

Big Blue River Wind Farm, LLC
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Attn: Chief Legal Officer

With a copy to:

Big Blue River Wind Farm, LLC
4160 Dublin Boulevard, Ste. 100
Dublin, California 94568
Attn: Assistant General Counsel

If to Escrow Agent:

[_____]
Reference _____

Or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

8. **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), and (e) 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 Company pursuant to this Agreement.

(c) Company 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 Company. Additionally, upon the prior written notice to the County and without consent of the County, Company may assign this

Agreement to (i) a public utility, (ii) a developer, or (iii) a pension fund, infrastructure fund or similar investment holding company, provided that such assignee shall have comparable experience in constructing and/or 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) 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 Company to an assignee shall be subject to Company assigning its rights and obligations under the Transportation Plan and Agreement Regarding County Roads and Drains dated the date hereof (the "Road Use Agreement"), and the Economic Development Agreement (the "Economic Development Agreement"), if any, executed by Company to the same assignee. Any notice of assignment required to be delivered by Company 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 Company's ability to assign this Agreement set forth in this Section shall expire ten (10) years after the date of the completion of the Wind Farm; provided however, that following the expiration of such restrictions, the Company shall still 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 Company to an assignee shall still be subject to Company assigning its rights and obligations under the Road Use Agreement and the Economic Development Agreement, if any, to the same assignee.

(e) Company 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 Company 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 Wind Farm (any of the foregoing actions, a "Collateral Assignment"), and County shall agree to execute and deliver any reasonably requested estoppels related to a Collateral Assignment. Promptly after making such encumbrance, Company shall notify the County in writing of the name, address, and telephone and facsimile numbers of each party in favor of which Company'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, Company shall promptly give the County notice of any change in the information provided in the initial notice or any revised

notice. The Company shall, in the event of any such Collateral Assignment, remain bound to the terms of this Agreement unless otherwise agreed by the County.

9. **Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Indiana.

10. **Entire Understanding.** This Agreement sets forth the entire agreement and understanding of County and Company in respect to the transactions contemplated hereby and supersedes any and all prior agreements, arrangements and understanding between County and Company relating to the subject matter hereof.

11. **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 instrument.

12. **Severability.** If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

13. **Recitals.** The parties agree that the foregoing recitals in the preamble of this Agreement are true and correct and are incorporated in this Agreement by this reference.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the date first above written.


"Company"

Big Blue River Wind Farm, LLC


By: _____
Name: _____
Its: _____

"County"

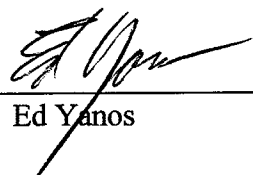
Henry County Commissioners

By: 

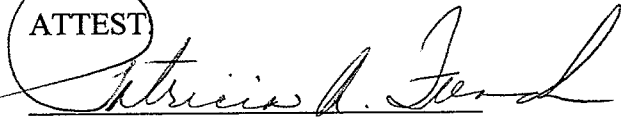
Bruce Baker

By: 

Kim L. Cronk

By: 

Ed Yanos

ATTEST


Patricia A French
Auditor, Henry County, Indiana

ESCROW AGENT ACKNOWLEDGEMENT

The foregoing Agreement is acknowledged by [_____].

“Escrow Agent”

[_____]

Date: _____

By: _____

Name: _____

Its: _____

Exhibit A

ESCROW AGENT'S FORM OF AGREEMENT
RE: ESCROW ACCOUNT