

BIG BLUE RIVER WIND FARM, LLC

Draft Agreements for Consideration by
Henry County Commissioners
November 14, 2018

Tab No.	Document
1	Agreement for Reimbursement of Attorney's Fees
2	Transportation Plan and Agreement Regarding County Roads and Drains
3	Henry County Decommissioning Plan and Agreement
4	Escrow Agreement
5	Indemnification Agreement
6	Letter Agreement for Emergency Training

**AGREEMENT FOR REIMBURSEMENT OF ATTORNEY'S
FEES**

This Agreement for Reimbursement of Attorney's Fees (this "Agreement") is entered into as of _____, 2018, by and between Big Blue River Wind Farm, LLC (the "Company"), a Delaware limited liability company, and Henry County, Indiana (the "County").

RECITALS

WHEREAS, the Company is exploring the feasibility of developing and constructing Big Blue River Wind Farm, a utility- scale wind energy project to be located in the County (the "Project");

WHEREAS, development of the Project is subject to evaluation and review, in part, by the County and/or the Henry County Board of Commissioners (the "Board");

WHEREAS, in contemplation of the Project, the Company has submitted, or will submit, for review and negotiation the following draft agreements: (i) a Road Use Agreement pursuant to which the Company may use certain County roads in excess of standard weight and load parameters and install lines across such County Roads in connection with the Project (the "Road Use Agreement"); (ii) a Decommissioning Agreement pursuant to which the Company is obligated to provide financial assurance regarding timely decommissioning of the Project (the "Decommissioning Agreement"); and (iii) such additional agreements between the County and the Company concerning the Project as the parties may negotiate (collectively, all of the foregoing are referred to as the "Negotiated Agreements").

WHEREAS, the Board is protecting the best interests of the citizens of the County; and

WHEREAS, the Board has respectively engaged the law firms of Hayes Copenhaver Crider Harvey, LLP and/or Barnes & Thornburg LLP (collectively, the "Law Firms") to represent the County in the review, negotiation and execution of the Negotiated Agreements; and

WHEREAS, the Board requests and the Company agrees to be responsible for payment of the County's documented and reasonable legal expenses invoiced respectively by the Law Firms and incurred in good faith as a direct result of the negotiation and execution of the Negotiated Agreements on the terms and conditions contained herein;

WHEREAS, during the life of the Project, legal fees may be drawn occasionally by the County from the escrow account ("Escrow Account") established by Company pursuant to Section 9.6(A)(4) of Ordinance No. 2018-(04)-08-22 (the "Ordinance").

THEREFORE, in consideration of the mutual covenants and contracts contained herein, the Company and the County agree as follows:

1. The Company shall be responsible for payment of the County's documented and reasonable legal expenses invoiced respectively by the Law Firms and incurred in good faith as a direct result of the negotiation and execution of the Negotiated Agreements, and for other purposes as defined in Section 9(A)(4) of the Ordinance, in an amount not to exceed Twenty Five Thousand and 00/100 Dollars (\$25,000) in the aggregate ("Reasonable Invoices").
2. Process:
 - a. The County will require the Law Firms to each submit duplicate copies of any Reasonable Invoices to the County and to the Company at the notice addresses listed below.
 - b. The Company will pay all such invoices directly to each of the Law Firms within thirty (30) days of receipt, or will replenish such amount in the Escrow Account as required by the Ordinance, subject to the terms hereof, unless the Company provides notice to the County and to the Law Firm that it objects to such invoice.
3. Each of the Law Firms, in their individual and respective capacity, represents and has fiduciary obligations solely to the County and payment of invoices by the Company shall in no way change such attorney-client relationship nor entitle Company to any information from the Law Firms except as provided in Reasonable Invoices.
4. The County and the Company acknowledge and agree that the County and the Board reserve any and all independent analysis, review, negotiation and agreement in connection with or related to the Project and/or the Negotiated Agreements and is in no way obligated to issue or agree to any of the above unless the Board, on behalf of the County, agrees in its sole discretion that such actions are in compliance with all applicable laws, regulations and its obligations to the citizens of the County.
5. Company is responsible to pay the Reasonable Invoices regardless of whether or not the Project and Negotiated Agreements are ultimately implemented by and/or between the County and the Company.
6. The County is responsible to disclose, as necessary in its sole discretion, the fact or existence of this Agreement in compliance with all laws, regulations or applicable codes of conduct.
7. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, all of which together shall be deemed to be one and the same instrument. Facsimile or PDF transmission of any signed original document, and retransmission of any facsimile or PDF transmission, will be the same as delivery of any original document.

8. The terms hereof shall govern all County withdrawals for reimbursement of legal fees from the Escrow Account.
9. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

[Signatures follow on next page]

IN WITNESS WHEREOF, the Company and the County have executed this Agreement as of the date and year first written above:

BIG BLUE RIVER WIND FARM, LLC:

By: _____
Signature

Print Name

Title

HENRY COUNTY, INDIANA:

By: _____
Signature

Print Name

Title

Address for Company:

Big Blue River Wind Farm, LLC
c/o Calpine Corporation
717 Texas Avenue, Ste. 1000
Houston, TX 77002
Attn: Chief Legal Counsel

Transportation Plan and
Agreement Regarding County Roads and Drains

between

Big Blue River Wind Farm, LLC

and

Henry County, Indiana

This Transportation Plan and Agreement Regarding County Roads and Drains (“Agreement”), dated as of _____, 2018, is by and between Big Blue River Wind Farm, LLC a Delaware limited liability company admitted 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”) featuring approximately [] turbines sites in Henry 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, and rights-of way located in the County.

C. Developer's use of the roads, bridges and rights-of-way 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 such roads, bridges and rights-of-way 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 certain of the roads, bridges and rights-of-way as provided herein.

F. Henry County has amended its wind energy conversion ordinance via Ordinance No. 2014-(04)-08-22 (as amended, the “Ordinance”) which affects the terms hereof.

G. Under § 9.10(B) of the Ordinance, Developer must submit to the County a proposed transportation plan no later than the date Developer applied for an improvement location permit for the Project.

H. This Agreement is agreed by all Parties to constitute the transportation plan required by the Ordinance.

I. Simultaneously with the County's execution of this Agreement, the County is also executing that certain Henry County Decommissioning Plan and Agreement, by and between the County and the Developer (the "Decommissioning Plan").

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. Roads.

(a) The County hereby grants Developer and its contractors and subcontractors the right to use, improve, upgrade, construct, and repair the roads, bridges and rights-of-way listed on Exhibit A attached hereto (the routes described on Exhibit A are collectively, the "Roads") pursuant to the terms of this Agreement in the planning, construction, and operation phases of its planned Project (including in connection with the staging, construction, maintenance, and to the extent permitted by the Decommissioning Plan, decommissioning, 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, or in cases when the Developer has received specific permission from the County.

(b) Not later than ninety (90) days prior to the commencement of Developer Road Operations with respect to the Project, the Developer, the County Commissioners and the County Engineer (or a licensed public engineer retained by Henry County for the relevant purposes described herein) ("County Engineer") shall agree in writing upon the Roads to be used by the Developer, which agreement shall not be unreasonably withheld, delayed, or conditioned, including, but not limited to, Roads used for construction workers, maintenance workers, staging, construction, maintenance and decommissioning purposes, and Roads that will be used by vehicles over five (5) gross tons in weight and show the same upon Exhibit A to this Agreement to set forth the agreed upon Roads subject to this Agreement. 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 with respect to such phase and amend Exhibit A to this Agreement to document the new agreement to set forth such Roads.

(c) Prior to the start of construction of Project Facilities, 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”) in coordination with 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. If the County Engineer 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 Engineer.

Section 2. *Drains*

(a) Based upon 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 or private drains 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 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 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 by 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, which agreement shall not be unreasonably withheld, delayed or conditioned. 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 B 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.

Section 3. ***Transmission and Collection Lines***

(a) 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 location of each transmission poles (with above ground transmission lines) and the installation of below ground electric transmission lines within the public right-of-way, which upon approval of the County shall be attached as Exhibit C. 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.

(b) 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. All such proposed transmission poles and below ground electric transmission lines shall comply with 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 Engineer or the County Highway Superintendent, which approval may not be unreasonably withheld, delayed or conditioned.

(c) 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 (or transmit electricity for the sole purpose of attempting to avoid the loss of the rights provided by this Agreement) for a period of twelve (12) 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, or (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; provided, however that any underground transmission lines installed at a minimum depth of 48" below the lowest point of the Road shall not be relocated absent a showing of need for relocation by the County. If the transmission lines supported by the transmission poles or the underground transmission lines fail to transmit electricity (or transmit electricity for the sole purpose of attempting to avoid the loss of the rights provided by this Agreement) for a period of twelve (12) 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 Henry County Decommissioning Plan and Agreement to be entered into between Developer and County.

Section 4. Updating of Exhibits. 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 Engineer and the County Commissioners, 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 B 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 B. The Parties shall amend the Drain Location Map set forth in Exhibit B to include any additional Affected Drains not contained therein, subject to the approval of the County Drainage Board, which shall not be unreasonably withheld, delayed or conditioned. The Parties agree that the use of Roads for transmission poles (with above ground transmission lines) and the installation of below ground electric transmission lines within the public right-of-way shall initially only be as shown on the Plan. 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 to the Plan shall be at the request of Developer and, if such amendments to the Plan 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. Exhibits D through G hereto may be amended respectively as set forth in Sections 8, 9 and 10 hereof.

Section 5. 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, safety signs ("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, [list affected (volunteer) fire departments and school corporation(s)] _____

_____,
the Henry County Sheriff's Office, The Henry County Emergency Management Director, the County Engineer and/or the County Highway Superintendent, 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.

(e) The Project shall at all times comply with any applicable septic and well regulations.

Section 6. *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 Engineer, the County Highway Superintendent 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 6(c) and (d) below. It is anticipated that, primarily at said weekly meetings, any specific traffic control arrangements necessary in light of the planned work, including, but not limited to, re-routing of vehicular traffic, temporary signage, etc., shall be discussed, planned and subsequently implemented. Should weekly meetings not be mutually desired by the County Engineer, the County Highway Superintendent, 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 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 Engineer and/or 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 Developer's 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 within County road right of ways 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 the County Highway Superintendent, the County Engineer, or the County Surveyor (or any of their designees), inform the Transportation Coordinator of the existence of any road safety issues, damages during construction that need immediate repairs, safety signs needing replacement, or other activity or issue that requires remedial or corrective action by Developer, or its contractors, Developer will ensure that the appropriate remedial or corrective action is promptly effectuated.

(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 7. **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 8. **Driveways.** Developer may install driveways or entrances from certain Roads as shown on Exhibit D (attached hereto) and when finalized, shall list such driveway and road entrances on Exhibit D, 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 D 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 D.

(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 Highway Superintendent, Area Plan Commission Director, County Surveyor, the County Engineer, and the County GIS Coordinator.

(e) Exhibit D must be approved by the Henry County Drainage Board to ensure that each driveway is 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 if requested by the County Engineer or the County Highway Superintendent.

(f) Exhibit D may be amended from time to time; however any changes shall not extend beyond the Project Area depicted on Exhibit A hereto. Such amendments shall be at the request of Developer, and shall be subject to the approval of the County Commissioners and the Henry County Drainage Board, which approval may not be unreasonably delayed, withheld or conditioned.

Section 9. 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 1(b) 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, (which approval shall not be unreasonably withheld, delayed or conditioned), 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 E. Exhibit E may be amended in writing from time to time; however, any changes shall not extend beyond the Project Area depicted on Exhibit A hereto. Such amendments shall be at the request of Developer, and shall be subject to the approval of the County Highway Superintendent, the County Engineer and the County Surveyor, which approval may not be unreasonably delayed, withheld or conditioned.

(b) Drawings of “typical” improved corners of existing intersections are attached as Exhibit F 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. Exhibit F may be amended in writing from time to

time; however, any changes shall not extend beyond the Project Area depicted on Exhibit A hereto. Such amendments shall be at the request of the Developer, and shall be subject to the approval of the County Highway Superintendent, the County Engineer and the County Surveyor, which approval may not be unreasonably delayed, withheld or conditioned.

(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 Highway Superintendent specifically requests, in writing, that such improvements be removed; provided, however, that any improvements to public access roads 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 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 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. If Developer requests an exception as described herein, approval of same shall not be unreasonably withheld, delayed or conditioned. 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 10. 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 C 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 Highway Superintendent and the County Engineer.

(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 lowest point 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 G attached hereto. Exhibit G may be amended in writing from time to time at upon written notification of same by Developer. 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 Highway Superintendent and the County Engineer mutually agree (which agreement shall not be unreasonably withheld, delayed or conditioned), (and the County Surveyor if Drainage Improvements are being crossed) that underground crossings under Section 10(a) are not practicable, as determined by the Highway Superintendent and the County Engineer, in his or her discretion reasonably exercised, Developer may install overhead transmission lines across certain Roads as shown on Exhibit C, subject to the following:

(i) Overhead crossing transmission lines will be designed in accordance with National Electric Safety Code (“NESCA”) 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 3, Developer may install overhead transmission poles and underground transmission lines within the right of way of certain Roads as shown on Exhibit C 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 10(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 11. 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 damage to Roads and Drainage Improvements (to the extent of damage caused by it), 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. To the extent that a dangerous situation exists with respect to the Roads, Developer shall immediately address any necessary maintenance or repair issue. 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 Highway Superintendent or County Engineer (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 Highway Superintendent or County Engineer (or the County Surveyor with respect to damage to Drainage Improvements) to the Transportation Coordinator, and complete such repairs as soon as reasonably possible

but in no event more than sixty (60) days after receipt of written notice of demand. 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 or as soon as possible and be completed as soon as possible upon notice from the Highway Superintendent or County Engineer. The Highway Superintendent or County Engineer 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 control of dust and debris caused by the Project on gravel roads using commercially reasonable measures such as a dust palliative. The Highway Superintendent or County Engineer 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 and notice by the County, the County may initiate the necessary repair under the terms of Sections 11, 12, and 13 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 11, 12 and 13 of this Agreement for the costs incurred by the County for completing the repair.

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

(e) 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 12. *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 and similar infrastructure resulting from Developer's use of the Roads (but not other causes) during the construction, maintenance and/or decommissioning of the Project Facilities, based on the Road and Drain Upgrade and Restoration Schedule, set forth as Exhibit E. 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 by a qualified land surveyor. Developer shall reconstruct 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 E. 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 reconstruction 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 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 sixty (60) 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. In the case of repairs to Drainage Improvements, such repairs shall be made to the reasonable satisfaction of the Henry County Drainage Board and in a manner that does not impede natural water flow. 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 14 below, to pay the cost of such repairs. In no event will the County utilize the escrow account established under Section 9.6 (A)(4) of the Ordinance for any of the purposes in this Agreement.

Section 13. ***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 Highway Superintendent and the County Engineer (with respect to Roads) and the Drainage Board (with respect to Drainage Improvements) and act as liaison between Developer and the Highway Superintendent and the County Engineer, or 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 Superintendent and the County 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 \$100.00 per hour. Upon agreement as to a budget for the County Inspector, County shall pay the expense of the County Inspector from the Escrow Account established under Section 9.6(A)(4) of the Ordinance, subject to all other contractual limitations and requirements in the Ordinance applicable thereto.

(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 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 14. *Financial Assurance.*

(a) Within sixty (60) days after the approval of Exhibit A, but no later than 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 by the Developer together with the County Engineer to be one and one-half times the cost for work under the Road and Drain Upgrade and Restoration Schedule contemplated on Exhibit E, 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 an initial term of not less than four (4) years following the completion of the final repairs to the Roads and Drainage Improvements which term shall be renewed as necessary to maintain the Financial Assurance during the operational life of the Project, subject to the other applicable provision of this Agreement, including, but not limited to, in Section 14(g) hereof. The purpose of the Demand Bond is to provide a readily available source of funds that the County can use for emergency repairs for damage to roads and rights of way caused by Developer, 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 Company shall submit to the County Commissioners 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 reasonable approval of the County Commissioners. The County shall be named as a beneficiary of the Financial Assurance. The forms of the Demand Bond and the Performance Guarantee when mutually agreed upon shall be attached hereto as Exhibit H. Notwithstanding the above, upon preparation of Exhibit E, the parties shall work together in good faith to determine the appropriate amounts for the Demand Bond and the Performance Guarantee. Developer shall pay the cost of establishing and maintaining the Financial Assurance as described herein.

(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 12, or during construction of the Project Facilities pursuant to Section 11, 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 11 or 12 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 by 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 sixty (60) days after written notice of same 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 12 of this Agreement. In such event, 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 thirty (30) days after the completion of decommissioning of the Project under the Decommissioning Plan between the Parties, including the completion 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, 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 hereunder, 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 E, 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 E. On the Completion Date (as defined in Section 10(c) of this Agreement), the Performance Guarantee shall be reduced to an amount calculated to be 0.2 times the cost of post-construction restoration work that is to be completed on the Roads and Drainage Improvements as provided on Exhibit E. 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 E.

(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 15. Notwithstanding anything in this Agreement to the contrary, Developer shall be responsible for making repairs to, and/or reconstructing, as applicable, roads, bridges, signage, vehicles, drainage structures and other public improvements, to the extent such damage is caused by construction, operation or maintenance activities of Developer, its employees, contractors and subcontractors in connection with the Project, including, but not limited to, any damage that Developer or its employees, contractors, or subcontractors cause to the Roads or Drainage Improvements that occur after completion of construction of the Project Facilities. Such repairs or reconstruction shall be made to the reasonable satisfaction of the County Engineer or such inspector approved by the County Engineer for such purpose.

Section 16. 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 9, 10, 11, and 12 of this Agreement will be free from defects for a period of: (a) two (2) years after the Completion Date (as defined in Section 13(c) of this Agreement) with respect to Roads, and (b) four (4) years after the Completion Date with respect to Drainage Improvements. THE WARRANTY SET FORTH IN THIS SECTION 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, 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 CAUSED BY OR ARISING OUT OF ORDINARY WEAR AND TEAR. Prior to making a claim under the warranty provided by this Section, the County shall provide Developer 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 for such damage or defect, Developer and the County shall within 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.

Section 17. Imposition of Fines.

(a) In addition to any other remedy the County may have at law or in equity upon Developer's breach of any term or covenant of this Agreement, 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 under 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 shall be imposed for each day the default remains uncured following the expiration of the applicable notice/cure period 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. Developer waives, and agrees that it will not assert in any legal proceeding, any defense it may have to the enforceability of the fines required hereunder on the basis that such fines constitute an unenforceable penalty.

(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>
5(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 avoidance of any fine that might otherwise be assessed.

<u>Section</u>	<u>Amount</u>	<u>Notice/Cure Period</u>
1 (unauthorized use of Roads)		Automatic upon notice from County; no cure period
First or second Occurrence	\$500	
Third or more Occurrence	\$5,000	
11(b) (control of dust and debris)	\$500	Five (5) days from request made by Highway Superintendent pursuant to Section 11(b)
11(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 11(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 18. 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 Drainage Board, in their reasonable discretion.

Section 19. 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 assignor pursuant to this Agreement.

(c) Developer may, without the consent of the County, but upon notice to the 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 of the assets of the Developer. Additionally, upon prior written notice to the County and without consent of the County, Developer may assign this Agreement to a (i) 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 \$25,000,000.00 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 Plan, and Economic Development Agreement (the "Economic Development Agreement"), if any, executed by Developer 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; provided, however that following the expiration of such restrictions, Developer 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 Developer to an assignee shall still be subject to Developer assigning its rights and obligations under the Decommissioning Plan and Economic Development Agreement, if any, 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 an 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, 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 20. **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:
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

Section 21. *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; terrorism, sabotage, 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 22. *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 23. *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 24. *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 25. *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 26. *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 27. *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 28. *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 29. *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 30. *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 Engineer or the 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 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 reasonable election of the County Engineer or the County Highway Superintendent, to provide additional Financial Assurance, in such amount as is reasonably agreed to by the County Engineer or the Highway Superintendent and Developer.

Section 31. **Indemnity.** Developer shall provide the indemnity as stated in that certain Indemnity Agreement, by and between the County and Developer.

Section 32. **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 31 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”

BIG BLUE RIVER WIND FARM, LLC

By: _____

Name: _____

Its: _____

“COUNTY”

Henry County, Indiana

**By: Board of Commissioners of Henry
County, Indiana**

Bruce Baker

Kim L. Cronk

Ed Yanos

APPROVED:

Printed: _____
Henry County Engineer

ATTEST:

Patricia A. French
Auditor, Henry County, Indiana

List of Exhibits – To be agreed to by Developer and those County officials referenced with respect to each such Exhibit in this Agreement, not later than 60 days prior to the anticipated initiation of Project construction (with any amendments per Section 4)

Exhibit A – Roads

Exhibit B – Affected Drains

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

Exhibit D – Typical Reconstructed Roads, Driveways and Road Entrances

Exhibit E – Road and Drain Upgrade and Restoration Schedule

Exhibit F – Typical Improved Corners

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

Exhibit H – 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 E

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 1(c), 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) Asphalt roads may be utilized in their existing condition provided they are maintained during construction. At the end of construction all damage will be repaired to the pre-construction condition. Significantly damaged roads shall be repaired (full depth through subgrade) and a minimum of 1 ½" hot mix asphalt (HMA) surface applied. Lightly damaged roads will be fixed and patched as agreed with the County. The contractor may determine it best to stabilize the roads in the way as described in item 2 below, then capping with asphalt or double seal coat 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. When cement stabilizing, cement stabilization shall be used when no less than 10" of aggregate is present. Additional aggregate (#53 stone or equivalent) may be necessary and shall be added to achieve a minimum 10" depth. When lime or fly ash stabilizing, 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. Aggregates shall not be used in this process. Depth of cement stabilization shall be no less than 10", as long as the structural requirements are met for construction of the Project and that the stabilization will not include mixing of dirt or soil into the stabilized base; depth of lime or fly ash stabilization shall be no less than 14" as per INDOT Section 215 standard specifications. Aggregates may need to be removed to use this type of stabilization. The addition of 2 inches of #73 stone shall be placed, graded and compacted on top of the stabilized subgrade to provide a smooth driving surface for construction. 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 coat and a double seal coat shall be placed. Chip and seal will cover the entire stabilized area.

(3) 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 gravel or #73 stone added on top. Surface material shall be the similar to the material that was on the road surface prior to construction of the Project. The contractor may determine it best to stabilize them in the same way as described in item 2 above.

(4) Road widening shall be performed on a case-by-case basis. If roads need widening due to construction, the Developer will work with the County to determine the details of such widening. Developer will also develop a transportation plan that incorporates haul-out routes for empty trucks to minimize the need for in-bound construction traffic to pass out-bound construction traffic. Developer shall implement a plan to heed the right-of-way to public and agricultural traffic when passing on roads

less than 18' wide. Roads that are significantly reconstructed shall be at least 18' wide. **[NTD: Assistance from County to secure right of way for road widening to be discussed.]**

HENRY COUNTY
DECOMMISSIONING PLAN AND AGREEMENT

This Decommissioning Plan and Agreement (the “Agreement”) dated as of _____, 2018 (“Effective Date”), by and between Big Blue River Wind Farm, LLC, a Delaware limited liability company, qualified to do business in Indiana (the “Company”) and Henry County, Indiana (the “County”). The Company and the County are individually referred to as a “Party” and collectively, as the “Parties.” Initially capitalized terms used but not defined herein have the meanings set forth in the Ordinance (as defined below).

RECITALS

WHEREAS, the Company desires to build wind farm facilities in Henry County, Indiana (the “Wind Farm”);

WHEREAS, the Company has or will enter into certain Lease and Easement Agreements (collectively, the “Leases”) with the landowners within the Wind Farm area (the “Landowners”);

WHEREAS, pursuant to Section 9.12 of Henry County Ordinance, No. 2018 – (04) -08-22 (the “Ordinance”), the Company is required to submit a decommissioning plan approved by the County Commissioners and outlining the anticipated means and cost of removing the Generating Units (as defined below) and site restoration at the end of their serviceable life or upon becoming a discontinued or abandoned use, including by posting and maintaining financial resources to cover the cost of decommissioning the Wind Farm, in the form of a bond or other security acceptable to the County;

WHEREAS, the Company shall post a bond for the Net Removal Cost (as defined below) upon the terms and conditions more fully set forth below; and

WHEREAS, for purposes of this Agreement, “Generating Units” are defined to include, but not be limited to, wind power facilities, transformers, met towers, underground cable circuits, roads and collector substations.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
DECOMMISSIONING

Section 1.1 **Agreement to Decommission; Abandonment.**

- a. **Agreement to Decommission.** Company shall decommission each Generating Unit and related improvements and shall perform site restoration for each Generating Unit pursuant to the terms of this Agreement and the Ordinance, which shall be deemed the decommissioning plan under the Ordinance. The Company shall decommission each Generating Unit and related improvements upon the earlier of

(a) end of the Wind Farm's useful life or (b) Abandonment (as defined below). The site(s) of the Wind Farm shall be restored to the same condition as immediately prior to construction, or as near as practicable to, the condition of the Wind Farm site(s) immediately prior to construction, unless otherwise agreed by the applicable Landowner and the County. All physical improvements or features constructed in connection with the Wind Farm located above ground or within four (4) feet below ground level shall be removed within ninety (90) days after Abandonment of the Wind Farm, unless otherwise agreed by the applicable Landowner and the County.

- b. Abandonment. A Generating Unit shall be deemed abandoned if the Generating Unit fails to produce electricity for twelve (12) consecutive months, except where a plan outlining the steps and schedule for returning the Generating Units to service is submitted and approved by the Henry County Planning Commission and any required permit fees are paid prior to the Wind Farm remaining inactive for a period of one (1) year (exclusive of such exception, "Abandonment"). The approval of the Henry County Planning Commission of such a plan may not be unreasonably withheld.

Section 1.2 Cost Estimates.

- a. Initial Cost Estimate. After the Henry County Planning Commission approves the Wind Farm use and prior to the issuance of the improvement location permit or siting approval, the Company shall provide to the County a cost estimate for the demolition and removal of the Generating Units equal to the estimated amount, if any (the "Net Removal Cost"), by which the cost of removing the Generating Units, including reasonable professional fees related thereto, exceeds the salvage value of such Generating Unit, which Net Removal Cost shall be determined as follows: The Company shall retain a licensed professional engineer with knowledge of the operation and decommissioning of wind farms (a "Professional Engineer") to provide an estimate of the Net Removal Cost, which Professional Engineer shall be subject to reasonable approval of the County. If the Parties cannot agree on the Professional Engineer, then the County and the Company shall each select a Professional Engineer licensed in Indiana and the Professional Engineers thus selected shall select a third Professional Engineer which shall each provide an estimate of the Net Removal Cost. The amount of the Restoration Fund (as defined below) shall be an amount equal to the average of the three estimates of the Net Removal Cost. The Company shall pay all fees in obtaining the estimates of the Net Removal Cost.
- b. Cost Estimates after COD. Beginning with any replacement or extension of the Restoration Fund on or after eight (8) years from the date of this Agreement, the Company shall provide to the County an updated Net Removal Cost estimate, which shall be determine using the procedure described in Section 1.2(a).

Section 1.3 Financial Assurance.

- a. Restoration Fund. Company shall deliver to County a bond, issued by one of the acceptable companies listed in the latest version of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reimbursing Companies”, Department Circular 570, issued by the Department of the Treasury (the “Bond Provider”), in a form and substance reasonably satisfactory to County (the “Restoration Fund”) securing performance of the decommissioning obligations, which bond shall equal the amount of the Net Removal Cost. Company shall keep the Restoration Fund, or a like replacement bond, in force throughout the remainder of the term of this Agreement. The Company shall pay all fees and premiums associated with establishing and maintaining the Restoration Fund.

- b. Restoration Fund Provider; Restoration Fund Beneficiaries. At least thirty (30) days prior to such delivery of the Restoration Fund to the County, the Company shall submit to the County the name of the provider of the Restoration Fund and the documents governing the issuance of the Restoration Fund, both of which shall be subject to the approval of the County Treasurer, such approval not to be unreasonably withheld. The County shall be named as the beneficiary of the Restoration Fund, provided, however, that the disbursement of and rights to the Restoration Fund funds shall be governed by Article II below. The Company represents that it has not granted and the Company shall not grant to the Landowners or any other party rights to the Restoration Fund senior to the rights of the County to the Restoration Fund.

- c. Term of Restoration Fund. The Restoration Fund shall have an initial term of eight (8) years. The Company shall deliver to the County not later than one hundred twenty days (120) days prior to the expiration date of any posted Restoration Fund (the “Renewal Deadline”), a certificate of continuation extending the expiration date of the then-existing Restoration Fund for an additional period of five (5) years, and for additional subsequent 5 year renewal periods during the use of the Wind Farm, each of which shall be initiated by a certificate of continuation as described in this Section. Each certificate of continuation shall include an updated estimate of the Net Removal Cost prepared by a Professional Engineer (as determined pursuant to Section 1.1(a)) or if such engineer is unwilling or unable to provide a new estimate, a new engineer selected based on the process outlined in Section 1.1(a). At such time, the Company shall increase or decrease the amount of the Restoration Fund to equal the greater of the Net Removal Cost or twenty-five percent (25%) of the estimated costs of removing the Generating Units, and for purposes of estimating the salvage value, any turbine or other portion of the Generating Unit that is subject to a lien or security interest for the benefit of a lender or creditor of the Company or other party (other than the County) shall be deemed to have salvage value only to the extent that the salvage value exceeds the amount of the lien.

- d. Decommissioning Escrow Account. In addition to the Restoration Fund and the Escrow Account required by Section 9.6(A)(4) of the Ordinance, and prior to

requesting an improvement location permit for the Wind Farm, the Company shall establish an escrow account for the purpose of paying the annual premium and fees associated with maintaining the Restoration Fund hereunder (the "Decommissioning Escrow Account"). Company shall, during the term of this Agreement, maintain sufficient funds in the Decommissioning Escrow Account to pay for such premiums and fees. Any remaining funds in the Decommissioning Escrow Account after all Generating Units have been decommissioned to the satisfaction of the Henry County Planning Commission will be released to Company or its designee.

Section 1.4 Failure to Provide Restoration Fund. If the Company fails to provide the Restoration Fund or the certificate of continuation provided in Section 1.3, the County shall provide written notice to Company and Company shall be afforded thirty (30) days' notice and opportunity to cure, prior to County's declaring a default under this Agreement. If Company fails to provide the Restoration Fund or the certificate of continuation provided in Section 1.3 after such thirty (30) days and the County declares an event a default hereunder, the County shall have the right to (a) seek any necessary injunctive relief available under applicable law to affect the providing of the Restoration Fund or any other requirement under this Agreement, (b) pay any premium necessary to continue the Restoration Fund, in which case Company shall reimburse the County for the amount of such premium, (c) decommission the Generating Units and be reimbursed for the related costs from the Restoration Fund in effect pursuant to Section 2.1, and (c) seek all remedies at law. Company shall pay to County the County's attorney and professional fees and other costs with respect to the pursuit and implementation of such remedies.

Section 1.5 Updated Transportation Plan. The Transportation Plan and Agreement Regarding County Roads and Drains executed by the County and the Company (the "Road Use Agreement"), including Exhibit A thereto, shall be updated or restated as appropriate for decommissioning purposes and reapproved by the County Commissioners prior to commencing decommissioning activities. The updated Exhibit A shall be attached to the Updated Road Use Agreement which collectively shall govern the Company's use of County roads during decommissioning. If the County Commissioners do not approve the updated Transportation Plan, then so long as the Transportation Plan remains un-approved, the Company shall not be in default of its obligations under this Agreement.

ARTICLE II
DISBURSEMENT OF SECURITY

Section 2.1 Rights of County. In the event the Company and its lenders fail to decommission the Wind Farm in accordance with the requirements of this Agreement, the County may, in its sole election, undertake the decommissioning of the Wind Farm. The County's election to decommission all or any portion of the Wind Farm shall not create an obligation to the Landowners, the Company or any other third party to complete the decommissioning of the entire Wind Farm. In the event the County elects to undertake the decommissioning of the Wind Farm, it may make a claim(s) upon the Restoration Fund to the Bond Provider for the Net Removal Cost subject to the limitations set forth herein. Any claim made by the County upon the Restoration Fund shall be limited to such expenses incurred by the County for the removal of all structures including up to a depth of four (4) feet below ground level and the restoration of the Wind Farm area to the same condition as immediately prior to construction, or as near as practicable to the condition of the site immediately prior to construction, including reasonable professional fees (the "Decommissioning Obligations").

Section 2.2 County Cooperation. In the event the County elects not to complete the decommissioning of all or any portion of the Wind Farm, the County shall execute all documentation reasonably required or required by the Restoration Fund, the Company and/or its lenders necessary to waive the County's rights to all or a portion of the Restoration Fund funds and to otherwise permit the Landowners to make claims against the Restoration Fund or at the option of the Landowners, return the Restoration Fund to Company. Additionally, the County and Landowners may enter into a "Letter of Understanding" (in recordable form) by which certain Wind Farm facilities such as access roads and out buildings, as deemed necessary or useful by Landowners, may be allowed to remain.

Section 2.3 Abandonment. In the event of Abandonment of the Wind Farm by the Company, the Company will provide an affidavit to the Henry County Planning Commission attesting that the Wind Farm will be decommissioned and removed within ninety (90) days, subject to the terms of this Agreement. Provided, however, delivery of such affidavit shall not relieve the Company of any of its obligations under this Agreement.

Section 2.4 Release of Restoration Fund. The Bond Provider shall release the Restoration Fund when the Company has demonstrated to the reasonable satisfaction of the Henry County Planning Commission that the Decommissioning Obligations have been satisfied.

ARTICLE III
SALVAGE VALUE

Section 3.1 County Right to Salvage Value of Generating Units. In the event the Company, its lenders or the Landowners fail to decommission the Wind Farm in accordance with the terms of this Agreement, in addition to any rights to make a claim upon the Restoration Fund, the County shall be entitled to apply the salvage value of the Generating Units located within the Wind Farm to any costs of decommissioning the Wind Farm in excess of the funds available under the Restoration Fund. If the County removes a Generating Unit, it may also sell the salvage

materials to defray the cost of removal and the cost of repair of any infrastructure damaged as a result of the removal and restoration of the Wind Farm site as described above. Upon approval of the Wind Farm improvement location permit, Company grants a license to the County to enter any location where improvements are constructed to remove a tower and appurtenant facilities as described herein.

ARTICLE IV
OTHER RIGHTS OF COUNTY

Section 4.1 Other Relief. In addition to any other rights and remedies granted herein, the County shall have the right to seek any injunctive relief available under applicable law to effect or complete the decommissioning of the Wind Farm. In addition, the County shall have the right to seek reimbursement from Company, its successors or assigns, for any costs of decommissioning the Wind Farm incurred by the County in excess of the funds available under the Restoration Fund and the salvage value of the Generating Units.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

Section 5.1 Representations, Warranties and Covenants of County. The County represents and warrants to the Company as follows:

- a. The County has full power and authority to execute, deliver, and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.
- b. This Agreement has been duly executed and delivered by the County and constitutes the legal, valid, and binding obligation of the County, enforceable against the County in accordance with its terms.
- c. The execution, delivery, and performance of this Agreement by the County will not, to the best of County's knowledge, violate any applicable law of the State of Indiana.

Section 5.2. Representations, Warranties and Covenants of Company. The Company represents and warrants to the County as follows:

- a. The Company has full power and authority to execute, deliver, and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.
- b. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms.

ARTICLE VI
DEFAULT; DISPUTES

Section 6.1 Default; Disputes.

- a. Default. The breach of or default under this Agreement by the Company shall constitute a breach of the Ordinance, and any remedies set forth under the Ordinance shall be in addition to the remedies set forth in this Agreement.
- b. Disputes. Prior to the institution of any remedy available to the County for a default under this Agreement or the Ordinance, the County shall first provide written notice to the Company setting forth the alleged default. Such written notice shall provide the Company a reasonable time period, not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default; provided however, nothing herein shall be deemed to restrict the County ability to immediately perform any act permitted by law to abate a condition that presents an immediate danger to public health or safety. If the County determines that the Company cannot resolve the alleged default within the good faith negotiation period, the County may pursue all remedies at law or in equity as a result of the default. Subject to the foregoing, in the event of any dispute as to any amount to be paid pursuant to this Agreement, the right of the County to the Restoration Fund funds and the salvage value of the Generating Units shall take priority over the rights of the Landowners as set forth in this Agreement.

ARTICLE VII
TERM

Section 7.1 Term. The term of this Agreement shall commence on the date of this Agreement, and this Agreement and County's rights hereunder shall terminate upon the completion of the decommissioning of the Wind Farm in accordance with the terms of this Agreement. Upon termination of this Agreement, the County shall execute all documentation necessary or reasonably required in order to release and waive all claims to the Restoration Fund and the salvage value of the Generating Units upon the request of the Company.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 No Waiver; Remedies Cumulative. No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power, or remedy shall operate as a waiver thereof. No single or partial exercise by any party hereto of any such right, power, or remedy hereunder shall preclude any other further exercise of any right, power or remedy hereunder. The rights, powers, and remedies herein expressly provided are cumulative and not exclusive of any rights, powers, or remedies available under applicable law.

Section 8.2 Notices. All notices, requests and other communications provided for herein (including any modifications, waivers or consents under this Agreement) shall be given or

made in writing (including by telecopy) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by telecopier with confirmation of receipt received, personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein.

If to Company:

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 the County:

Henry County Commissioners
101 S Main St.
New Castle, IN 47362
Attn: County Auditor

All notices to the County shall include a copy to Henry County Attorney:

Richard J. Hall, Esq.
Barnes & Thornburg LLP
11 South Meridian
Indianapolis, IN 46204

Section 8.3 Amendments. This Agreement may be amended, supplemented, modified or waived only by an instrument in writing duly executed by each of the parties hereto.

Section 8.4 Successors and Assigns. (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 assigner 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 a (i) 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) Company will not be required to obtain consent of the County for or in connection with (i) a corporate reorganization of Company or any of its direct or indirect affiliates, or (ii) a sale or transfer of equity interest of any direct or indirect affiliate of Company.

(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 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 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 Economic Development Agreement, if any, to the same assignee.

(f) 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.

Section 8.5 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement constitutes the entire agreement and understanding among the parties hereto with respect to matters covered by this Agreement and supersedes any and all prior agreements and understandings, written or oral, relating to the subject matter hereof.

Section 8.6. Severability. If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by applicable law: (a) the other provisions hereof shall remain in full force and effect in such jurisdiction in order to carry out the intentions of the parties hereto as nearly as may be possible; and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

Section 8.7 Headings. Headings appearing herein are used solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 8.8 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Indiana. Venue for any action related to this Agreement shall be in a court of appropriate jurisdiction located in Henry County, Indiana.

Section 8.9 Force Majeure. If the Company’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; terrorism, sabotage, strife or other violence; the effect of any law, proclamation, action, demand or requirement of any government agency.

IN WITNESS WHEREOF, this Agreement has been duly executed on the date and year first written above.

"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 AGREEMENT

THIS ESCROW AGREEMENT (“**Agreement**”), dated this ___ day of November, 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. Use of the Escrow Funds, and administration of the Escrow Account, shall also be subject to all applicable laws and any applicable provisions of any other agreements between the County and the Company concerning the Project, including, but not limited to, with respect to any limitation upon attorneys' fees, for example.

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.
R. Scott Hayes, 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.** Company may at any time assign its rights and obligations under the Agreement, effective upon written notice to County as provided in Section 7 hereof.

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: _____
William D. Cronk

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: _____

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2018, by and between Henry County, Indiana (the "County") and Big Blue River Wind Farm, LLC, a Delaware limited liability company, qualified to do business in Indiana (the "Company"). The County and the Company may be referenced herein individually as a "Party" and together as the "Parties".

WITNESSETH:

WHEREAS, the Company is contemplating the development and construction of a wind-powered electric generating facility in the County (the "Project"); and

WHEREAS, Section 9.17 of the County's Wind Energy Conversion System Ordinance was recently added via Ordinance No. 2014-(04)-08-22 (as amended, the "Ordinance") and requires the Company enter into an indemnity agreement in connection with its application for commission approved use in connection with the Project;

WHEREAS, the County and the Company desire to enter into this Agreement to provide for such indemnification pursuant to the terms set forth herein; and

WHEREAS, the Company has all requisite authority to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE I. RECITALS

1.01 Recitals Part of Agreement. The representations and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

ARTICLE II. INDEMNITY

2.01 Indemnity. The Company, for itself and on behalf of its successors and assigns, covenants and agrees to indemnify, defend and hold the County, its elected officials, and employees harmless at all times protect, save and exempt the County and its officers, councils, employees committee members, attorneys, agents and consultants (the "Indemnitees") from any and all penalties, damages, costs, liabilities or charges arising out of any and all claims, suits, demands, causes of action or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which arise out of or are caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of any wind energy conversion system in the Project, excepting, however, any portion of such claims, suits demands,

causes of action or award of damages as may be attributable to the sole negligence or intentional misconduct of an Indemnitee ("Excluded Claims"). With respect to the penalties, damages or charges referenced herein, attorneys' fees, consultants' fees and expert witness fees in each case as are reasonable are included in those costs that are recoverable by the County. Indemnitees herewith forever release and discharge Company, its affiliates, and its and their directors, officers, members, shareholders, employees and agents, from any liability for such Excluded Claims. Except, and only to the extent expressly provided otherwise herein, Indemnitees waive all claims against Company, its affiliates, members, shareholders, offices, directors and employees for any consequential, incidental, indirect, special, or exemplary damages (including, but not limited to, loss of actual or anticipated revenue or profits, 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 expressly provided for herein), contribution, strict liability or any other legal theory.

ARTICLE III. TERM AND TERMINATION

The effectiveness of this Agreement is expressly conditioned on the issuance of the Commission Approved Use for the Project. This Agreement will automatically terminate on the date that is the earlier of (a) any final determination by the Planning Commission or the Zoning Administrator not to issue the Commission Approved Use or the Improvement Location Permit, as applicable, or to revoke or otherwise void previously-issued permits subject to applicable law, (b) 180 days after expiration of the latest statute of limitations for filing litigation related to the Project, or (c) termination of the Project provided that no Litigation is then pending. The parties may agree to any earlier termination only by express, mutual, written agreement.

ARTICLE IV. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE COUNTY

4.01 Authority. The County represents and warrants that it has all requisite authority to enter into this Agreement.

4.02 Powers. The County represents and warrants that it has full constitutional and lawful right, power and authority to execute and deliver and perform its obligations under this Agreement.

ARTICLE V. GENERAL PROVISIONS

5.01 Default. Before a Party shall be deemed to be in default due to failure to perform any of its obligations under this Agreement, the Party claiming such failure shall provide written notice specifying the default and manner of cure, the Party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if the Party allegedly failing to perform has begun efforts to cure to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice. The Party claiming a breach of this Agreement may seek any remedy available at law or equity, if the Party allegedly failing to perform has not begun efforts to cure within thirty (30) days of the

receipt of such notice and continued such efforts to cure to the reasonable satisfaction of the complaining Party.

5.02 Indiana Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

5.03 Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To the County:

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

with 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

If to Developer:

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

with copy to:

Big Blue River Wind Farm, LLC
4160 Dublin Boulevard, Suite 100
Dublin, CA 94568
ATTN: Assistant General Counsel

Or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

5.04 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 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), 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 a (i) 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. Company will not be required to obtain consent of the County for or in connection with (i) a corporate reorganization of Company or any of its direct or indirect affiliates, or (ii) a sale or transfer of equity interest of any direct or indirect affiliate of Company
- 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 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 Project; provided however, 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.

- f. 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 Project (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.

5.05 No Third Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the Parties hereto and shall not be deemed to be for the benefit of any third party.

5.06 No Admission or Waiver. Neither this Agreement, nor any payments made pursuant hereto, shall be interpreted as an admission of liability or a waiver of any rights on behalf of any entity or person including, but not limited to, the Parties hereto, except to the extent that same shall be fully and expressly stated herein. The terms hereof have been freely and fairly negotiated by the Parties with advice of competent legal counsel.

5.07 Consent to Jurisdiction. This Agreement has been delivered to the County and is to be performed in Henry County, Indiana, and shall be governed and construed according to the laws of the State of Indiana. With respect to all matters arising under this Agreement to be filed with courts of general jurisdiction, Company hereby designate(s) all courts of record sitting in Henry County, Indiana with respect to state subject matter jurisdiction and Marion County, Indiana with respect to federal subject matter jurisdiction, as forums where any such action, suit, or proceeding in respect of or arising from or out of this Agreement, its making, validity or performance, may be prosecuted as to all parties, their successors and assigns, and by the

foregoing designation the undersigned consent(s) to the jurisdiction and venue of such courts; provided, however, both Company and County hereby waive their right to a jury trial. Company hereby waives any objection which it may have to any such proceeding commenced in a state court located within Henry County, Indiana, based upon proper venue or forum non conveniens. With respect to all legal matters arising under this Agreement which are required by law to be initiated before a state or federal administrative agency, or for which jurisdiction is assigned by statute to a state or federal court with exclusive jurisdiction over such matter, jurisdiction shall be proper before such agency or court. All service of process may be made by messenger, or certified mail, return receipt requested or by registered mail directed to the Party at the address indicated herein and each Party hereto otherwise waives personal service of any and all process made upon such Party.

5.08 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements, or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

5.09 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

5.10 Force Majeure. If the Company'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 strife or other violence, 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; terrorism, sabotage; the effect of any law, proclamation, action, demand or requirement of any government agency.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

HENRY COUNTY, INDIANA

Board of Commissioners of Henry County, Indiana

By: _____
Bruce Baker

By: _____
Kim L. Cronk

By: _____
Ed Yanos

ATTEST:

Patricia A French
Auditor, Henry County, Indiana

BIG BLUE RIVER WIND FARM, LLC
a Delaware limited liability company

By: _____

Big Blue River Wind Farm, LLC

717 Texas Avenue, Ste. 1000
Houston, Texas 77002

November ____, 2018

Mr. Darrin Jacobs
Henry County Zoning Administrator
1201 Race Street, Suite 201
New Castle, IN 47362

Re: Agreement to Provide Training per Henry County WECS Ordinance Section 9.6
(A)(1)(g)

Dear Darrin:

This letter is to advise that, in accordance with the above-referenced section of the Henry County Wind Energy Conversion System (“WECS”) Ordinance, in connection with its application for a Commission approved use for a WECS project (the “Project”), Big Blue River Wind Farm, LLC (“BBR”) agrees to provide, or cause to be provided, training to all Henry County emergency service agencies, including, but not limited to, the Office of Emergency Management, such additional law enforcement personnel as Henry County may designate, and EMS and fire departments in both Henry County and such surrounding counties (Rush, Madison, Wayne, Randolph and Delaware counties) who wish to take part in such training.

It is anticipated that such training would occur at a mutually convenient time and location prior to the commencement of operation of the Project, and thereafter annually for “refresher” training during the operational life of the Project.

BBR also agrees to address any and all safety issues pertaining to the construction and operation of the Project, as may be required by the Ordinance.

Very truly yours,

BIG BLUE RIVER WIND FARM, LLC

By: _____
William Whitlock
Vice President