

COUNTY ROADS AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of _____ 2009 by and between DeKalb County, Illinois (the "County") and FPL Energy Illinois Wind, LLC, a Delaware limited liability company ("FPLE Illinois Wind").

WITNESSETH:

WHEREAS, FPLE Illinois Wind is in the process of developing a wind energy generating facility consisting of up to 18 wind turbines in the County (the "Project") and, in connection therewith, has submitted Conditional Use Permit applications for the Project to the County (collectively, the "Conditional Use Permit") in accordance with the Zoning Ordinance for the County (the "Zoning Ordinance"); and

WHEREAS, the County is directed and authorized pursuant to the Counties Code, 55 ILCS 5/5-101 *et seq.*, and the Illinois Highway Code, 605 ILCS 5/5-101 *et seq.* (the "Highway Code"), to construct, administer, operate and maintain highways in DeKalb County, Illinois, acting by and through its County Engineer (the "County Engineer"); and

WHEREAS, Section 9-113 of the Highway Code grants to the County the authority to impose reasonable rules, regulations and specifications for the use of County roads by public and private utilities; and

WHEREAS, Section 9-113.01 of the Highway Code imposes liability on public or private utilities for any damage to County roads; and

WHEREAS, FPLE Illinois Wind:

(i) has provided to the County Engineer a preliminary site layout plan for the Project complying with the State of Illinois Professional Engineering Act and signed by an engineer licensed in the State of Illinois, a copy of which is attached hereto as Exhibit "A" (the "Site Layout Plan"); and

(ii) will, prior to the issuance of any building permits by the County, physically mark the locations of the proposed Project site access road entrances and the underground collection system cable crossings; and

WHEREAS, the County and FPLE Illinois Wind wish to set forth their understanding and agreement as to the road issues relating to the construction of the Project in this Agreement which the parties intend to satisfy the requirements of Sections 10-2-3, 10-4-6 and App. H-15 of the Zoning Ordinance.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the parties, intending to be legally bound, agree as follows:

Section 1. County Approvals. The County hereby approves the following as depicted in the Site Layout Plan:

- (a) Project site access road entrances; and
- (b) Underground collection system cable crossings of the road right-of-ways; and
- (c) The widening of existing county and township road radii to accommodate turbine component and main transformer deliveries.

Section 2. FPLE Illinois Wind Undertakings. FPLE Illinois Wind hereby agrees to undertake the following in connection with the development of the Project:

(a) Although the final plans for the Project may vary from the preliminary Site Layout Plan (Exhibit A), FPLE Illinois Wind represents and warrants that no wind turbines will be constructed in areas other than those areas for which the County has granted a special use permit(s) to FPLE Illinois Wind.

(b) FPLE Illinois Wind will, prior to the issuance of building permits by the County, provide a transportation impact analysis to the County Engineer which (a) identifies by name and surface type the County roads which are to be used for construction of the Project; (b) includes a schedule of the across road bridges and culverts affected by the Project and the recommendations as to actions, if any, required with respect to such culverts and estimates as to the cost to replace such culverts and (c) sets forth the anticipated road repair costs to be made in advance of the Project and following construction of the wind turbines (the "Transportation Impact Analysis"). Before construction on the Project may proceed, the County Engineer must approve the Transportation Impact Analysis, which approval shall not be unreasonably withheld or delayed.

(c) FPLE Illinois Wind shall obtain a Utility Installation Permit from the County Engineer and shall comply in all respects with the rules and regulations associated with the Utility Installation Permit process.

(d) Permanent markers/stakes meeting the requirements of State and Federal regulations and good utility practice shall be installed at the edge of the road right-of-ways to identify where the collection system cables cross the roads.

(e) Iridescent marker tape shall be buried in the trench twelve (12) inches above the collection system cables where they cross the road right-of-ways.

(f) Prior to the start of construction on the Project, FPLE Illinois Wind shall become a member of Joint Utility Locating Information for Excavation ("JULIE") and provide JULIE with the necessary information to update their records and memorialize the locations where the underground cables cross the road right-of-ways. FPLE Illinois Wind shall preserve and protect all properties of public utility companies, such as lines, conduits, gas or water pipes, sewers and tile lines which run over, through or under any part of the County roads used by FPLE Illinois Wind. It shall be FPLE Illinois Wind's responsibility to contact the various public utility companies and locate their properties before any construction shall start and FPLE Illinois Wind shall assume full responsibility for reimbursing owners for any damage or injury to such properties which may be caused by FPLE Illinois Wind's operations.

(g) FPLE Illinois Wind shall obtain driveway access permits from the County Engineer, pay all fees required and comply in all respects with the rules and regulations associated with the driveway access permit process.

(h) Prior to the start of wind turbine installation on the Project, FPLE Illinois Wind shall identify all heavy lift crawler crane road crossings at locations to be coordinated with the County Engineer.

(i) Horizontal/directional boring shall be used where the collection system cables cross under the roads such that the road surface shall not be cut, and such cables shall be installed in steel conduit or Schedule 40 conduit or HDPE Grade SDR 17 used in public right-of-way locations in accordance with good utility practice.

(j) FPLE Illinois Wind represents and warrants that the Project plans have been prepared by a qualified professional engineer and, as a result of the construction of the Project, there will be no increased runoff or change in drainage patterns.

(k) At least fifteen inch (15") culvert pipes shall be used where the new Project site roads cross existing drains in the road right-of-ways, the exact size of such culvert pipes to be determined at or prior to the time FPLE Illinois Wind submits an application for any required permit.

(l) The size and type of any culverts installed or replaced as a result of construction of the Project or repair to the County roads shall be mutually determined by the County Engineer and FPLE Illinois Wind at or prior to the time such a culvert is replaced. The parties anticipate that any such replacement culverts shall be no less than fifteen inches (15").

(m) In the event that County road corners are widened for truck navigation in connection with the development of the Project, such modifications shall satisfy County road standards, and shall remain in place inside the existing County road rights-of-way after construction unless the County Engineer specifically requests that such widening be removed.

(n) FPLE Illinois Wind shall provide, upon request, the County Engineer with a copy of each overweight and oversize permit issued by the Illinois Department of Transportation ("IDOT") promptly upon receipt thereof.

(o) FPLE Illinois Wind shall obtain permits from IDOT's Bureau of Local Roads and Structures prior to transporting overweight and/or oversize loads over any bridges and, promptly upon receipt thereof, shall provide copies of such permits to the County Engineer.

(p) FPLE Illinois Wind shall, upon request, provide copies to the County Engineer of any delivery ticket bound for or delivered to the Project site so that the County Engineer may monitor the actual weights of construction vehicles which do not require permits for overweight loads.

(q) FPLE Illinois Wind shall pay to the County Engineer a Permit Fee pursuant to the Heavy Haul Fee Schedule attached to this Agreement. The parties deem this fee to be in accordance with Section 15-301 of the Illinois Vehicle Code, 625 ILCS 5/15-301. The fee shall be made payable to the County Highway Department for deposit into the County Highway Fund prior to the start of construction of the Project.

(r) FPLE Illinois Wind shall insure that its contractors, subcontractors, material suppliers and their respective transport providers transporting over width loads use the County roads during daylight hours only.

(s) If County roads degrade (by way of example and not limitation, "degrade" means to show signs of bleeding, rolling, breaking or pumping) while construction of the Project is ongoing due to construction activities or the volume of construction traffic related to the Project, FPLE Illinois Wind, at the request of the County Engineer, shall cause necessary remedies to be implemented to ensure safe passage of the motoring public within a reasonable time, and in any event within eight (8) hours; unless immediate hazards exist, in which case FPLE Illinois Wind shall take immediate action to make the road safe for the motoring public.

(t) FPLE Illinois Wind shall comply with the time limits established by the County Engineer with respect to any requested closures of County roads, the exact time of such closures shall be approved by the County Engineer, such approval shall not be unreasonably withheld, and FPLE Illinois Wind shall advise local law enforcement and fire protection and ambulance service providers of road closings prior to closing any roads, portion of roads or intersections.

(u) Representatives of FPLE Illinois Wind shall meet with the school bus operator(s) and the relevant school officials to ensure that County roads used by school buses are not closed during times students are transported to and from school or that acceptable alternative routes are put in place and to further ensure that suitable arrangements are put into place for the safe and timely transport of the local children to and from school via the normal services for such transport.

(v) FPLE Illinois Wind, upon the request of the County Engineer shall obtain and post traffic signs, including signs advising "No Wind Farm Construction Traffic" at various locations as an aid to traffic management. All such signage or postings shall comply with the Illinois Manual on Uniform Traffic Control Devices (and any updates thereto) issued by IDOT.

(w) In the event that FPLE Illinois Wind moves a traffic control device to accommodate its construction traffic, such sign shall be immediately replaced by FPLE Illinois Wind in accordance with the Illinois Manual on Uniform Traffic Control Devices (and any updates thereto) issued by IDOT at its expense.

(x) Road and intersection closures shall be marked and signed in accordance with the Illinois Manual on Uniform Traffic Control Devices (and any updates thereto) issued by IDOT and any other applicable requirements set forth in State statute or regulation or County ordinance.

(y) All construction traffic related to the Project shall use exclusively the routes designated on a traffic control plan to be determined by the parties prior to the start of construction of the Project and shall not use County Roads and routes other than those so designated. In the event this provision is violated by FPLE Illinois Wind's contractors, subcontractors, material suppliers and their respective transport providers (including empty

return trips after material or equipment has been unloaded), the County Engineer may impose a fine of \$500.00 per occurrence on FPLE Illinois Wind.

(z) In accordance with permits issued by State authorities and as otherwise required by the Illinois Vehicle Code (and regulations promulgated thereunder), oversize/overweight vehicles shall display slow moving vehicle emblems and provide escort vehicles and related signage and lighting, to the end of protecting public safety and property.

(aa) At all times during the construction of the Project and repair work performed on County roads, FPLE Illinois Wind shall ensure that construction areas and routes are free and clear of mud, dirt, debris, garbage, obstructions or hazards. Upon request of the County Engineer, FPLE Illinois Wind shall clear any mud, dirt, debris, garbage, obstructions or hazards from a County road, culvert or ditch prior to (i) dusk on the day such a request is made, if the request is made prior to 11:00 a.m. on such day; or (ii) prior to 11:00 a.m. on the next day, if the request is made after 11:00 a.m. on such day.

(bb) If, during the course of construction of the Project, the County Engineer notifies FPLE Illinois Wind of significant potholes or other conditions caused by the construction traffic or construction activities which make travel on a County road hazardous, FPLE Illinois Wind shall remediate the hazard (or place warning signs pending the remediation of the hazard within twenty-four (24) hours) prior to dusk on the day it receives notice of the hazardous condition from the County Engineer.

(cc) If work during the construction phase of the Project, or the post-construction road repair phase is suspended for an extended period, due to seasonal conditions or other cause, FPLE Illinois Wind, at FPLE Illinois Wind's expense, shall take such measures as laying additional gravel, installing barriers, posting signs and providing interim repairs or protections, as may be reasonably required to render County Roads safe for vehicular traffic during the period such work is suspended.

(dd) Heavy lift crawler cranes shall only cross the County roads in low traffic periods.

(ee) The County Engineer and/or his designee shall have unfettered access to the County roads to inspect the roads, culverts and adjacent ditches.

(ff) FPLE Illinois Wind shall reimburse the County and/or the County Engineer for all reasonable inspection costs, including, but not limited to, engineer fees, incurred in connection with the road issues relating to the construction of the Project. Payments shall be made within thirty (30) days of receipt of such engineering bill or other bills by FPLE Illinois Wind. Said reimbursements shall not exceed Twenty Thousand Dollars (\$20,000).

(gg) FPLE Illinois Wind shall submit applications to the County and/or the County Engineer as required.

(hh) FPLE Illinois Wind shall hold harmless, indemnify, defend, pay costs of defense (including attorneys' fees), and pay any and all claims or judgments which may hereafter accrue against the County and/or the County Board, County Engineer, County Zoning

Administrator and/or their agents, servants, employees and attorneys, arising out of any of the use of the County roads by FPLE Illinois Wind, its successors and/or assigns or its employees, agents, contractors, subcontractors and material suppliers and their respective transport providers in connection with the construction and maintenance of the Project. Said reimbursements shall not exceed _____ Dollars (\$_____).

(ii) With regard to work performed on County roads in connection with construction of the Project, FPLE Illinois Wind, its contractors and subcontractors shall pay wages in accordance with the Illinois Prevailing Wage Act, 820 IL CS 130/1, *et seq.*

(jj) With regard to work performed on paved County roads in connection with construction of the Project, FPLE Illinois Wind's contractors and subcontractors shall be pre-qualified by IDOT to perform the work such contractors and subcontractors are hired to perform.

(kk) FPLE Illinois Wind shall provide to the County Engineer any "As-Built" drawings of improvements to the County roads or road rights-of-way that FPLE Illinois Wind, its engineers, contractors or subcontractors may possess.

(ll) FPLE Illinois Wind, its contractors and subcontractors will not engage in construction activities on County roads or rights-of-way without County approval during spring posting season.

Section 3. Pre-Project Roadway Condition Survey. An independent pre-Project roadway condition survey shall be undertaken prior to commencement of work by FPLE Illinois Wind in the County, and shall record the condition of the County roads specified on the Site Layout Plan to be used or affected by the Project (the "Affected Roads"). FPLE Illinois Wind shall cause the results of the Independent Road Survey to be shared with the County Engineer promptly upon its receipt thereof. After review of the completed Independent Road Survey, FPLE Illinois Wind and the County Engineer agree to conduct an additional Independent Roadway Survey if all parties reasonably agree that such survey shall be necessary.

Section 4. FPLE Illinois Wind Payment and Obligation to Repair County Roads.

(a) In the event that FPLE Illinois Wind desires use of any County road which is an unsurfaced, unimproved dirt road, FPLE Illinois Wind shall, at its sole expense and subject to the review and approval of the County Engineer, improve such road with a gravel surface and install or improve culverts as directed by the County Engineer. In addition, at the conclusion of construction of the Project, FPLE Illinois Wind shall, at its expense, repair or cause to be repaired any damage to such road, including the culverts and the gravel surface, caused by the construction activities associated with the Project.

(b) FPLE Illinois Wind hereby agrees that upon notice from the County Engineer at any time during or after the construction of the Project, it shall, at its expense, repair, or cause to be repaired, any damage to the County seal coated roads caused by the construction of or maintenance activities associated with the Project (the "Repair Work") whether such damage is caused by

FPLE Illinois Wind, its successors or assigns and/or its employees, agents, contractors, subcontractors, material suppliers and/or their respective transport providers. "Damage" shall be interpreted in the broadest sense and shall include, but not be limited to, damage to the road surface, subsurface, culverts, bridges, drainage tiles, drainage facilities and adjacent ditches. All repair or restoration of County seal coated roads shall be constructed in a good and workmanlike manner and in accordance with the January 2006 Bureau of Local Roads and Streets Manual (and any updates thereto) issued by IDOT. The parties anticipate and agree that the Repair Work for the majority of the seal coated County roads used for the construction of the Project will consist of all labor, materials and equipment to: (i) repair any failures to the road base to a depth of eighteen inches (18"), (ii) recycle the road surface to a depth of two inches (2") below the bottom of the existing bituminous surface treatment for the full width of the road, (iii) add 3 to 3~ inches of compacted CA-6 or CA-10 from a limestone or dolomite quarry to the recycled surface (or more depending upon the amount of existing gravel which is determined at the time of the Repair Work), and, thereafter, the roads will be prepped, primed and surfaced with bituminous surface treatment Class A-3 for the full width of the road. Disturbed ditches will also be graded and seeded in compliance with all Federal, State and County requirements. Any repairs undertaken pursuant to this Section 4 shall be subject to approval by the County Engineer. Upon substantial construction of the wind turbines which comprise the Project, FPLE Illinois Wind shall provide to the County Engineer its engineer's estimates of the engineering, labor and material costs to repair, improve (in accordance with Section 4 of this Agreement) and maintain the County seal coated roads for use by FPLE Illinois Wind, and shall include the costs of the liability insurance premiums set forth in Section 6 of this Agreement. These engineer's estimates, once approved by the County Engineer, shall be used as the basis for determining the amount of the Performance Bond during the post construction road repair work phase as provided for in Section 7 hereinafter. FPLE Illinois Wind's post-construction road repair work shall begin as soon as practical upon the County Engineer's approval of FPLE Illinois Wind's engineer's estimates of the cost of the post construction road repair work.

(c) All road resurfacing shall be completed so as to provide a smooth, gradual integration with an existing road surface, even if such resurfacing requires improvements to County roads not affected by the construction traffic. FPLE Illinois Wind will repair any damage done to asphalt County roads by wheel rutting. If necessary, repair will be up to 3/4 inch leveling coarse followed by top coat.

(d) All post-construction repair work shall be completed within six (6) months of the date of the Performance Bond. If completion of the post-construction Repair Work cannot be completed within the period designated for road construction repair work by IDOT, then (i) the six (6) month repair period shall be tolled pending the resumption of the repair work in accordance with IDOT rules and regulations and (ii) FPLE Illinois Wind shall, at its expense, lay additional gravel, install barriers, post signs and take all actions necessary to make County roads damaged by FPLE Illinois Wind's construction activities safe for vehicular traffic until such time that construction of the Project and the post construction repair work is completed. All such actions undertaken by FPLE Illinois Wind shall be subject to the supervision and approval of the County Engineer.

(e) FPLE Illinois Wind shall provide written notice to the County Engineer when FPLE Illinois Wind has completed the Repair Work (the "Completion Notice"). Attached to

the Completion Notice shall be proof of payment to contractors, subcontractors and material suppliers and lien waivers executed by all contractors, subcontractors and material suppliers who have performed the Repair Work. The Completion Notice and lien waivers and a duplicate set shall be delivered by personal service upon the County Engineer or by certified mail, return receipt requested.

(f) Upon receipt of the Completion Notice and lien waivers by the County Engineer, the County Engineer shall have thirty (30) days to inspect the Repair Work and provide written notice to FPLE Illinois Wind of rejections of the Repair Work in whole or in part (the "Rejection Notice"). The Rejection Notice, if any, shall be delivered by certified mail, return receipt requested to the address for FPLE Illinois Wind provided hereinafter in Section 10(g).

i. If no Rejection Notice is tendered by the County Engineer, then the Performance Bond shall be adjusted to provide security for the Maintenance Period as provided for in Section 7 of the Agreement.

ii. If a Rejection Notice is tendered by the County Engineer, then:

(1) FPLE Illinois Wind shall make repairs as identified in the Rejection Notice. Upon completion of such additional repair work, FPLE Illinois Wind shall serve the County Engineer with a supplemental Completion Notice and the notice procedures set forth herein shall apply; or

(2) Within ten (10) days of receipt of the Rejection Notice, FPLE Illinois Wind shall provide written demand to the County Engineer requesting that the County Engineer and FPLE Illinois Wind select an independent engineering firm to inspect the Repair Work and determine if additional repairs as demanded by the County Engineer in a Rejection Notice are reasonably required. The parties shall select an independent engineering firm within twenty-one (21) days of FPLE Illinois Wind's written demand. The independent engineering firm shall complete its inspection within thirty (30) days and issue its written report. The determination of said independent engineering firm shall be binding upon the parties hereto. The cost of the engineering firm for such inspection and report shall be divided evenly between the parties hereto.

iii. The "Date of Final Acceptance" of all road repairs shall be the later of the following:

(1) The date of the delivery of the Completion Notice to the County Engineer if no Rejection Notice is given by the County Engineer to FPLE Illinois Wind; or

(2) If a Rejection Notice is given by the County Engineer to FPLE Illinois Wind, then either:

(a) the date the identified repairs are completed to the reasonable satisfaction of the County Engineer; or

(b) the date of the written report by the independent engineering firm showing no further repairs are necessary or reasonably required.

(g) If any County road used by FPLE Illinois Wind shall require any repairs, as a result of damage caused by FPLE Illinois Wind or Repair Work is defective and additional repairs are required, in the opinion of the County Engineer and verified by an independent third party inspector during the three (3) year period following the Date of Final Acceptance, (the "Maintenance Period"), FPLE Illinois Wind shall, upon notification by the County Engineer of the necessity for the repair, make repairs at its own cost and expense, and shall remain liable for any additional cost or expense incurred. The three (3) year Maintenance Period shall not be construed as a limitation or modification of any applicable statute of limitations.

Section 5. County Undertakings. In consideration for the obligations of FPLE Illinois Wind under this Agreement, the County agrees as follows:

(a) Beginning with the execution of this Agreement and continuing until the expiration of the Maintenance Period, overweight, oversize and all other applicable and necessary permits shall be issued by the County Engineer in accord with IDOT policy and County ordinances in a timely manner upon the filing of applications by or on behalf of FPLE Illinois Wind, its contractors and their respective transport providers, and the County Engineer agrees to send a copy of each permit issued to FPLE Illinois Wind at the address for FPLE Illinois Wind provided hereinafter in Section 10(g).

(b) The County Engineer will issue overweight and/or oversize vehicle permits on a weekly basis based upon the number of moves FPLE Illinois Wind expects to perform during that given week. A permit covering all moves in a designated week will then be issued after FPLE Illinois Wind makes the required lump sum permit fee payment.

(c) The County will coordinate and cooperate with FPLE Illinois Wind, its contractors, subcontractors, material suppliers and their respective transport providers to minimize the impact of their use of the roads on normal local traffic.

Section 6. Insurance. FPLE Illinois Wind shall furnish the County with evidence of liability insurance in the amount of at least Three Million Dollars (\$3,000,000.00) (United States Currency) per occurrence covering the construction and maintenance activities of FPLE Illinois Wind contemplated by this Agreement. The insurance shall be written by a company rated by Standard & Poor's rating group as B+ or better or as otherwise determined to be acceptable by the County. A certificate of insurance shall be provided to the County Supervisor and County Engineer before the commencement of any work by FPLE Illinois Wind, its contractors, subcontractors, material suppliers or their respective transport providers. The insurance policy shall provide for a thirty (30) day "prior notice of termination" provision in favor of the County. Should FPLE Illinois Wind allow such liability insurance to terminate prior to the completion of the construction contemplated by this Agreement, the County shall have recourse against the Performance Bond for funds sufficient to cause the liability insurance to be reinstated until the completion of such construction. The County, the County Board of Trustees, County Zoning Administrator and the County Engineer shall be named as additional insured's on the policy.

Section 7. Performance Bond.

(a) Not less than thirty (30) days prior to the start of construction of the Project, FPLE Illinois Wind shall provide to the County Engineer a Performance Bond (the “Bond”) substantially in the form attached as an Exhibit to this Agreement.

(b) The Bond shall provide security to the County for the following phases of the Project:

- (i) the construction of the Project,
- (ii) the post-construction road repair work, and
- (iii) the Maintenance Period.

(c) During the construction of the Project, the Bond shall not be less than one hundred percent (100%) of the cost of the estimated post-construction repair work as determined in the Transportation Impact Analysis.

(d) During the post-construction road repair work phase, the Bond shall not be less than one hundred twenty-five percent (125%) of the cost of the Repair Work as agreed upon by the parties in accordance with Section 4 of this Agreement.

(e) During the Maintenance Period, the Bond shall not be less than twenty-five percent (25%) of the actual cost of the post-construction road repair work as agreed upon by the parties when the post-construction road repair work is accepted by the County.

(f) A reduction in the Bond shall not amount to acceptance of by the County of improvements or repairs to County Roads by FPLE Illinois Wind.

(g) The County shall not make a claim on the Bond until fifteen (15) calendar days after the mailing of written notice to FPLE Illinois Wind specifying a default hereunder by FPLE Illinois Wind, during which fifteen (15) days FPLE Illinois Wind may cure such default and, in the event FPLE Illinois Wind so cures, the County shall not pursue a claim on the Bond on account of such default. The insuring or bonding over of any payment claim of a contractor, subcontractor or material supplier by FPLE Illinois Wind with the County shall constitute an acceptable cure of a default based upon FPLE Illinois Wind's failure to pay a contractor, subcontractor or material supplier.

(h) The Bond may be used by the County, in its sole discretion, to cure any uncured defaults of any kind or nature with respect to FPLE Illinois Wind's obligations under this Agreement, including, but not limited to:

(i) provide payment for any of FPLE Illinois Wind's obligations under this Agreement which remain unpaid for thirty (30) days after such obligations have been incurred and documented, which obligations shall include without limitation, modification and repairs of the County roads during construction of the Project and post-construction road repair work;

(ii) keeping the liability insurance policy pursuant to Section 6 in force and effect;

(iii) in the event the County is served with a notice pursuant to the Illinois

Mechanics' Lien Act from any of FPLE Illinois Wind's contractors, subcontractors, material suppliers, engineers or others (a "Lien Claimant") that FPLE Illinois Wind has not paid for work, payment may be made to such Lien Claimant; in such circumstance, the payment may be made through a title insurer or escrowee after a review of lien waivers and other documents for the purpose of insuring against claims by a Lien Claimant; and further provided that this right in the County shall not be construed as granting to any Lien Claimant any right as a third party beneficiary or otherwise to the proceeds of the Letter of Credit;

(iv) reimbursement for emergency actions by the County to protect public health and safety; and

(v) reimbursement for such other actions (erection of traffic control signs, payment for outside consultants and advisors, *etc.*) as are provided for under this Agreement.

(i) Upon the expiration of the Maintenance Period, FPLE Illinois Wind shall have no further obligation to maintain the Bond and the Bond shall be cancelled and returned to FPLE Illinois Wind.

Section 8. Future Work by FPLE Illinois Wind. This Agreement is limited to the Project as described in the recitals to this Agreement and as depicted in Exhibit A. In the event that FPLE Illinois Wind desires use of County roads for future maintenance work on the Project following the expiration of the Maintenance Period, then FPLE Illinois Wind shall be responsible for any road damage caused by FPLE Illinois Wind and shall be required to post a new Performance Bond to provide security to the County in an amount equal to 125% of the estimated costs to repair such damage until the date that such damage has been repaired. In addition, the acquisition of individual permits may be required as needed for overweight or over length loads, which permits will be issued by the County Engineer in a timely manner upon the payment of the permit fee. In the event FPLE Illinois Wind desires to use the County Roads for demolition of the Project or for the development of another Project, another roads agreement with the County shall be required.

Section 9. Approval of Conditional Use Permits by the County. The obligations of the parties hereto are subject to and conditioned upon approval of the Conditional Use Permits for the Project by the County. In the event that the County fails to approve all of the Conditional Use Permits applied for by FPLE Illinois Wind, this Agreement shall be, except as otherwise provided for herein, null, void and without legal effect.

Section 10. Miscellaneous.

(a) Incorporation of Recitals. The Recitals set forth above are hereby incorporated herein and made a part of this Agreement.

(b) Remedies and Enforcement. Each of the parties hereto, their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any party, or their successors or assigns, which default is not cured for a period of fifteen (15) days after written notice to the defaulting party of such default, the party seeking to enforce said provisions shall have the right of specific performance. The remedy of specific performance and injunctive relief shall not be exclusive of any other remedy available at law or in equity.

(c) Due Authorization. FPLE Illinois Wind hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of FPLE Illinois Wind. The County hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County.

(d) Severability. If any provision of this Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable.

(e) Entire Agreement. This Agreement contains the entire understanding of the parties as to the matters set forth herein, and this Agreement supersedes any prior agreements or understandings by and between the parties.

(f) Amendments. No waiver of a party's rights hereunder shall be binding unless it shall be in writing and signed by the party against whom enforcement is sought. Any amendment or modification to this Agreement shall be in writing and executed by each party hereto.

(g) Notices. All notices shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, to the parties hereto at their respective addresses set forth below. Notice may be sent via facsimile to a facsimile number; provided, however, notice via facsimile shall be followed by notice delivered by personal service or via registered or certified mail, return receipt requested, postage prepaid.

Notices shall be addressed as follows:

If to FPLE Illinois Wind:
FPLE Illinois Wind, LLC
700 Universe Boulevard
Juno Beach, Florida 33408
Attention: Business Manager
Telephone: (561) 691-7171
Facsimile: (561) 691-7177
and

FPLE Illinois Wind, LLC
700 Universe Boulevard LAW/JB
Juno Beach, Florida 33408
Attention: Carlos Megias
Telephone: (561) 691-7378
Facsimile: (561) 691-7793

If to the County:
DeKalb County
Attention: County Board Chairman
and:

DeKalb County Engineer
DeKalb County State's Attorney

or to such other party or address as any party hereto may from time to time designate in a written notice to the other parties.

(f) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be as effective as delivery of a manually signed counterpart to this Agreement.

(g) Commencement of Project. This Agreement shall be void if substantial construction of the Project is not commenced within three (3) years of the date of this Agreement.

(h) Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, (the state in which this Agreement is deemed to have been executed and delivered), irrespective of any conflict of laws provisions.

(i) Forum Selection. The parties agree that any disputes arising out of, related to, or connected with this Agreement shall be litigated, if at all, solely in the Circuit Court for the Fifteenth Judicial Circuit, DeKalb County, Illinois.

(j) Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their respective successors, assignees and legal representatives. This Agreement may not be assigned without the written consent of the other parties hereto; provided, however, that FPLE Illinois Wind may collaterally assign this Agreement, without the consent of the County, in connection with any financing or refinancing of the Project. Any such collateral assignment will not relieve FPLE Illinois Wind of its obligations under this Agreement.

(k) No Waiver or Relinquishment of Right to Enforce Agreement. Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

(l) Reimbursement of Costs. FPLE Illinois Wind shall reimburse the County for the expenses of any special meetings that may be held related to the adoption or amendment of this Agreement, including but not limited to the cost of publishing notice of such meetings in local newspapers and payment to the members of the County Board and support staff for attendance at such meetings. Such reimbursement payments shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00), shall be made within thirty (30) days of such meeting and shall be deposited in the County General Fund.

(m) Attorney's Fees and Costs. FPLE Illinois Wind agrees to reimburse the County and/or the County Engineer for all attorneys' fees and costs associated with the negotiation, drafting and execution of this Agreement, the ongoing review of compliance with the Agreement, the review of all notices, Letters of Credit and all documents in connection with this Agreement

or any extension, amendment or modification thereof, and all other legal work required by the County in connection therewith. In the event that the County fails to approve all or any of the Conditional Use Permits for the Project, FPLE Illinois Wind shall remain liable for the reimbursement of said attorneys' fees and costs incurred by the County and/or the County Engineer. If any action at law or in equity is brought by the County to enforce this Agreement and the County prevails in such litigation, the County shall be entitled to receive from FPLE Illinois Wind reasonable attorneys' fees and costs incurred, in addition to any other relief to which the County may be entitled. Said reimbursements shall not exceed _____ Dollars (\$_____).

(n) Memorandum of Agreement. A Memorandum of this Agreement shall be recorded with the DeKalb County Recorder of Deeds by FPLE Illinois Wind at its expense within thirty (30) days after the execution of this Agreement and a copy of the recorded Memorandum shall be delivered to the County Engineer within sixty (60) days after the execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

DeKalb County

By:

Name:

Title: County Board Chairman

ATTEST:

By:

Name:

Title: County Clerk

FPL Energy Illinois Wind, LLC

By:

Name: Dean R. Gosselin

Title: Vice President