



DeKalb County  
Planning/Zoning/Building Department  
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**SUPPLEMENTAL  
MEMORANDUM**

**TO:** Planning and Zoning Committee

**FROM:** Paul R. Miller, AICP  
Planning Director

**DATE:** May 19, 2009

**SUBJECT:** FPL Wind Farm Special Use Permit  
Petition MI-09-01

The Planning and Zoning Committee is scheduled to take up the request of FPL Energy Wind, LLC for approval of a wind farm in portions of Shabbona, Milan, Afton, and Clinton Townships at its meeting on May 27, 2009. Staff has prepared and submitted memoranda dated March 25 and March 30, 2009 related to that request. Included with those memos was a draft list of possible conditions for consideration in the case that the Committee recommends, and the County Board subsequently agrees, to approve the project. Since that time, the public hearing was re-opened on May 11, 2009 because the petitioner submitted additional exhibits. New information includes commitments to such things as a formal County Roads Agreement, a proposed Property Value Guarantee Program, details on monitoring and repairing damage to drain tiles, details and security for decommissioning, commitments related to property tax revenues, and an agricultural aerial spraying program. The attached list of possible conditions of approval reflects this additional information in the form of strikeouts and underlines. In a separate memo regarding the possible Property Value Guarantee, staff has attempted to lay out how the program would work, and identified possible changes that reflect input from the re-opened public hearing.

The Hearing Officer has submitted a Supplemental Report of Findings of Fact following the re-opened hearing, and now recommends approval of the project, subject to conditions (attached). Staff notes again that the Committee has the full range of options before it with respect to this petition: it may recommend approval, approval with conditions, or denial of the request, or may table action or refer the matter back to the Hearing Officer for further consideration.

cc: David Markarian, NextEra  
John Farrell, Chief Civil Assistant

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**FPL ENERGY ILLINOIS WIND, LLC  
WIND FARM CONDITIONS**

1. FPL Energy Illinois Wind, LLC ("FPL Energy Wind") shall locate all wind towers so as to maintain a setback distance from the right of way line of all existing public roads of not less than 429 feet, and from above-ground utility easements and property lines equal to or greater than the height, plus ten percent, of the blade tip at its highest point, unless written approval is received in advance from the property owner allowing for a smaller setback from their property line. Distance will be measured from the foundation at the base of the tower. The minimum distance between the ground and any protruding blade(s) utilized on a wind tower shall be one hundred twenty (120) feet, as measured at the lowest point of the arc of the blades. The minimum distance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel. The height of the mounted turbine shall not exceed two hundred sixty-three (263) feet measured from the foundation at the base of the tower to the center line of the hub of the rotor.
  
2. Except as provided herein, the setback distance for wind towers shall be 1,400 feet or more from any residence, and from the boundary of any lot in an existing, platted and recorded residential subdivision, which was occupied or existed as of December 31, 2008. Distance shall be measured at the time of application for building permit from the foundation at the base of the tower to the closest foundation wall of any existing or occupied residence or to the closest recorded developable lot line for a platted subdivision, provided further that no wind tower shall be closer than 429 feet from any point on a property line of a non-participating property containing an existing residence. A tower may be placed as near as 600 feet from any occupied residence with the prior written approval of the owner, which shall be submitted as part of the Building Permit application.
  
3. This Special Use Permit is intended to provide conditions to allow wind turbines, towers and related communications and electrical facilities. All wind power facility equipment and construction of the Wind Energy Center shall be in compliance with generally accepted engineering standards and all applicable County, State and federal regulatory standards including, but not limited to, the Uniform Building Code as adopted by the State of Illinois, the National Electrical Code as adopted by the State of Illinois, FAA requirements, EPA regulations (hazardous waste, construction, storm water; etc) and any other statutory or regulatory requirements, subject to these conditions. Facility equipment shall conform to applicable industry standards including the American Wind Energy Association standards for wind turbine design and related standards adopted by the American Standards Institute (ANSI). FPL Energy Wind shall submit certificates from equipment manufacturers that the equipment is manufactured in compliance with industry standards.
  
4. FPL Energy Wind shall obtain all required permits from other governmental agencies (such as the Federal Aviation Administration) prior to commencing construction or as otherwise required by the applicable laws and regulations. Copies or evidence of such

permits shall be submitted to the County on or before issuance of the first Building Permit for an individual wind tower. Building Permits shall be obtained from DeKalb County for the wind towers.

5. FPL Energy Wind shall work with local rescue authorities to provide training (at FPL Energy Wind's expense) to personnel who can assist with a rescue from a wind turbine or tower.

6. Should shadow flicker in excess of 40 hours per year affect any adjoining property owner with a view of a wind turbine who is not a participant in the project, FPL Energy Wind shall use commercially reasonable efforts to remedy the problem on a case-by case basis by undertaking measures such as trees or vegetation plantings or awning installation.

7. If any television, cell phone, internet, or broadcast radio frequency interference is shown to be created by the Wind Energy Center, FPL Energy Wind shall use commercially reasonable efforts to mitigate any problems on a case-by-case basis.

8. Construction within DeKalb County shall commence within 12 months of the date of this Special Use Ordinance, with operations to commence within 12 months after issuance of the first Building Permit. The County Zoning Administrator may grant an extension of the foregoing time periods upon FPL Energy Wind showing reasonable justification for such a request. After construction is complete, FPL Energy Wind shall provide certified "as built" drawings to the County Zoning Administrator showing the locations of the wind towers, roads, transmission lines and all other improvements related to the wind towers (collectively, the "Improvements") and a legal description of the land utilized for the Improvements. This Special Use Permit shall thereafter automatically be modified to limit the legal description of the area of the Special Use to the land utilized for the Improvements.

9. FPL Energy Wind shall provide the following as part of its application for Building Permits for wind towers for approval by the County Planning, Zoning Department to confirm satisfaction of the conditions of this Special Use approval:

- a. The property lines of the proposed site of construction.
- b. Proposed location of the wind tower, including distances from property lines and any existing or occupied residence within 2,000 feet of the foundation of the tower, as verified by a registered surveyor.
- c. Location and description of all structures located on the property where the wind tower site is proposed.
- d. Location of all above-ground utility lines within a radius equal to two (2) times the height of the proposed wind tower.
- e. Location of all underground utility lines on the wind tower site.
- f. Dimensional representation of the structural components of the tower construction including the base and footings.

- g. Schematic of electrical systems associated with the wind tower including all existing and proposed electrical connections.
- h. Manufacturer's specifications and installation and operation instructions or specific wind tower design information.
- i. Certification by a registered professional engineer that the tower design is sufficient to withstand wind load requirements for structure as defined by BOCA
- j. Location of all access roads required for the wind tower including necessary approvals from the County Engineer for county roadways and Township Road Commissioner for township roadways.
- k. A topographical map of the proposed site of construction.
- l. Proposed location of all easements necessary for the operation of the wind tower (executed copies of which shall be submitted prior to issuance of Certificate of Occupancy).
- m. Other information as reasonably required by the County Zoning Administrator.

10. Each application for a Building Permit for a wind tower shall be accompanied by an application for Site Development Permit addressing stormwater management, drainage, soils, drain tiles, wetlands, waterways, ditches, etc., in accordance with the requirements of the DeKalb County Stormwater Management Ordinance.

11. Construction activity associated with wind towers shall not commence before 6:00 a.m. nor continue past 9:00 p.m. on any day of the week.

**NOTE: The petitioner is requesting the County allow certain construction activities without limitation on hours (see attached memo).**

12. FPL Energy Wind shall provide dust control measures as may be commercially and reasonably required by the County during construction and shall repair any roads or other infrastructure damaged by Wind Energy Center construction or maintenance in accordance with the County Roads Agreement attached hereto as Exhibit "E". Any road or bridge damage or repairs caused by the transport of the facility's equipment, as determined by the County Engineer or Township Road Commissioner, the installation, maintenance or removal of same, must be completed to the satisfaction of the Township Road Commissioner and the County Engineer. Further, a letter of credit in an amount to be fixed by the Township Road Commissioner or the County Engineer may be required by the Township Road Commissioner or the County Engineer to insure the Township or the County that future repairs are completed to the commercially reasonable satisfaction of the unit of local government.

13. FPL Energy Wind shall ensure that the facilities are properly decommissioned upon the end of the project life or facility abandonment. FPL Energy Wind's obligations with respect to decommissioning shall include removal of all physical material pertaining to the project improvements to a depth of 48" beneath the soil surface, and restoration of the area

occupied by the project improvements to as near as practicable to the same condition that existed immediately before construction of such improvements, and repair or replacement of any damage to public roads and bridges that may occur as a result of traffic associated with decommissioning. Prior to issuance of a any Building Permit for each any wind tower, FPL Energy Wind shall provide a letter of credit or other security acceptable to the County, ~~for the actual cost of decommissioning each wind tower to be constructed under that Building Permit, in the amount of \$3,523,179 payable to DeKalb County, for a term of not less than 15 years, to provide assurance that decommissioning will take place. FPL Energy Wind shall also provide~~ a description of the conditions under which operation of a tower shall be considered terminated and schedule of when subsequent and consequent decommissioning shall occur, such condition and schedule subject to review and approval by staff and which approval shall not unreasonably be withheld. Any wind tower which does not operate for a period of one year or more shall be decommissioned in accordance with the schedule afore mentioned unless an extension of the one-year period is granted by action of the Planning and Zoning Committee of the DeKalb County Board. ~~When such tower is operational, such security shall be modified to cover the cost of removing all improvements above the foundation and shall not be released during the entire term of the Special Use Permit until those improvements are removed. FPL Energy Wind will provide an affidavit to the DeKalb County Board representing that all easements for wind towers shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the property owners to ensure that facilities are properly decommissioned within twelve (12) months after expiration of the applicable easement, lease or other property interest or earlier termination of the project.~~

14. FPL Energy Wind has provided evidence from assessors in areas with existing wind farm projects, as well as other independent economic analysis, showing no adverse impact on property values. Nevertheless, FPL Energy Wind shall abide by the Property Value Guarantee Agreement (“Agreement”) attached hereto as Exhibit D.

15. With respect to sound emissions from wind turbines, FPL Energy Wind shall comply with all applicable federal and State regulations including the Illinois Pollution Control Board rules and regulations.

16. All turbines shall be new equipment commercially available; no used, experimental or proto-type equipment still in testing shall be approved by the County Zoning Administrator.

17. All solid waste, whether generated from supplies, equipment, parts, packaging, or operation or maintenance of the Wind Energy Center, including old parts and equipment, shall be removed from the site in a timely manner consistent with industry standards.

18. All hazardous waste generated by the operation and maintenance of the Wind Energy Center, including but not limited to lubricating materials, shall be handled in a manner consistent with all local ordinances, and State and federal laws, rules and

regulations.

19. Coatings and colorings of wind towers shall be a non-reflective, unobtrusive color.

20. To the extent feasible, the project shall consist of wind towers of similar design and size, including tower height. Further, all turbines shall rotate in the same direction.

21. The project shall utilize minimal lighting. No tower lighting other than normal security lighting shall be permitted except as may be required by the FAA.

22. If approved by the FAA, FPL Energy Wind shall install aviation light deflectors on the medium to high intensity FAA red and white strobe lights and large red flashing lights to be used on the Wind Energy Center.

23. FPL Energy Wind shall reimburse non-participating landowners for the additional cost of aerial application due to the presence of wind turbines for all land within one-half mile of any turbine. To accomplish this, FPL Energy Wind shall either:

a. Pay the difference between the cost of acreage sprayed outside the one-half mile distance and acreage within the one-half mile distance. Where a landowner intends to make a claim to FPL Energy Wind for such reimbursement, that landowner shall contact FPL Energy Wind prior to executing a contract for aerial spraying which contains terms more costly than for land not containing turbines, in order to allow FPL Energy Wind the right to seek alternate competitive bids for the work; or

b. FPL Energy Wind shall sponsor a program of annual spraying requiring non-participating landowners to opt in to the program by November 1st of each year. By opting in, non-participating landowners elect to have their property included in one general competitive bid for all land included in the spraying program.

24. All new power lines used to collect power from individual turbines and all communication lines shall be trenched-in and located underground at a depth consistent with local utility and telecommunication underground lines standards unless located on public or utility rights of way with approval of the County Zoning Administrator. Prior to construction of any wind tower, access drives, surrounding gravel area, and access routes across farmland for construction vehicles and equipment, FPL Energy Wind shall investigate and identify existing drainage systems and drain tiles, and shall retain a qualified third-party drainage expert to be on site during construction of wind towers, access roads, electric power or communication systems and all related work. It shall be the responsibility of FPL Energy Wind to correct any and all drainage problems that occur as a consequence of this project. FPL Energy Wind will repair field tiles damaged by Wind Energy Center construction and maintenance activities within two weeks of the date of receipt of notification, and will repair damage to other drainage facilities, including but not limited to waterways and drainage ditches, as soon as reasonably possible, but in any

event within six (6) months of the date of receipt by FPL Energy Wind of notification.

25. FPL Energy Wind shall reimburse non-participating landowners with property abutting any turbine the monetary value of the loss of agricultural production that is demonstrably the consequence of changes in drainage attributable to the construction and presence of any wind tower.

26. An engineer's certificate shall be completed by an engineer registered in the State of Illinois and shall certify that the tower and foundation are compatible with and appropriate for the turbine to be installed and that the specific soils at the site can support the apparatus and such certificate shall accompany each Building Permit application. All commercially installed wind turbines must utilize self-supporting, tubular towers with an internal ladder and locked door and a sign shall be placed on each tower stating "Warning Electrical Shock Hazard. No unauthorized person on tower. No Trespassing".

27. FPL Energy Wind shall provide information on underground utilities it constructs as part of the Wind Farm to the "One-Call System" operated by the Joint Utility Locating Information for Excavators company, commonly known as JULIE.

28. FPL Energy Wind shall catalogue and annually report to the County Planning, Zoning and Building Department all birds that are discovered to have been injured or killed by the wind towers. The annual report of avian injuries and deaths shall include species, number, and dates when the injured or killed bird was discovered.

29. Prior to issuance of a Certificate of Occupancy, FPL Energy Wind shall submit a certificate to the County Planning, Zoning and Building Department verifying that any power purchase contracts, power transmission contracts and other legal rights are in place.

30. FPL Energy Wind shall construct the project and the wind towers in substantial accordance with the following documents submitted as part of the public hearing, subject to modification so long as such modifications comply with the above conditions:

- a. GE Wind Energy Megawatt Series 1.5 Wind Turbines GExle or GEsle and the Wind Turbine Drawing drawing, both included in FPL Energy Wind' Application submittals to the County (provided that these are prototypical schematics and may be modified based on change in manufacturer or engineering and technical modifications); and
- b. The Conceptual Project Overview Map with a latest revision date of December 23, 2008 (provided that location of the towers is conceptual and subject to relocation based on satisfaction of the above conditions, negotiations with individual property owners, and other project requirements).

31. FPL Energy Wind shall annually provide property taxes as required by applicable

State law, provided, however, that in the event that property tax laws applicable to wind energy generation devices change such that the total property tax amount in any given year would be less than that which would have been required under the tax laws effective as of the date of this Ordinance, then FPL Energy Wind will provide additional funds to bring the total property tax up to the amount that would have been required if the property tax formula in place at the date of this Ordinance were in place; unless any future change in property tax laws applicable to wind energy generation devices result in a formula that would generate more tax revenue than would be generated under the property tax laws in place as of the date of this Ordinance, in which case FPL Energy Wind shall pay property tax in accordance with the tax laws then in force.

32. FPL Energy Wind shall establish a 24-hour “complaint hot line” telephone number and response service prior to and throughout construction and the operating life of the wind energy center and make such available to property owners and the general public for the receipt and redressing of complaints associated with the wind energy center. Disputes as to complaints and resolution of complaints shall be resolved per Condition #33 below.

33. In the event a dispute arises as to satisfaction of the Conditions to this Special Use Permit Ordinance, such dispute may, at the request of FPL Energy Wind, DeKalb County, or a third aggrieved party provided such third party grievance is sponsored by the County or FPL Energy Wind, be resolved pursuant to binding arbitration in accordance with the procedures of the American Arbitration Association by an independent arbitrator acceptable to FPL Energy Wind and the County, as applicable. If FPL Energy Wind and the County are unable to agree on an arbitrator, then each such party shall choose an independent arbitrator and their respective choices shall then choose an arbitrator. This condition shall not bind an aggrieved party, other than the County or FPL Energy Wind, to submit to arbitration.

34. This Special Use Permit may be transferred by FPL Energy Wind only upon the transferee’s execution and delivery to the County Zoning Administrator of a letter agreeing to be bound by the foregoing conditions.

**Property Value Guarantee Agreement**

This Property Value Guarantee Agreement ("Agreement") made and entered into on this \_\_\_ day of \_\_\_\_\_, by and between FPL Energy Illinois Wind, LLC, having its principal offices at \_\_\_\_\_ ("guarantor") and \_\_\_\_\_, residing at \_\_\_\_\_ Illinois ("Property Owners").

**RECITALS**

**WHEREAS**, Property Owners own eligible Property as described herein ("Property"), that Property having the legal description as follows:

[INSERT LEGAL DESCRIPTION OF NON-PARTICIPATING PROPERTY WITHIN 3/4 MILE RADIUS OF ANY WIND TOWER, AS MEASURED FROM THE FOUNDATION OF A WIND TOWER TO THE FOUNDATION OF A RESIDENCE]

**WHEREAS**, Guarantor has been granted a Special Use Permit by DeKalb County Ordinance No. \_\_\_\_\_, for the construction and operation of a wind energy center consisting of up to 119 turbines on properties located in unincorporated Shabbona, Milan, Afton and Clinton Townships in DeKalb County, Illinois ["Wind Energy Center"];

**WHEREAS**, Guarantor desires to alleviate concerns about the preservation of Property values of ~~residences~~ property located in proximity to the Wind Energy Center, specifically within three-quarters of a mile of any wind tower; and

**WHEREAS**, Property Owners are desirous of preserving equity in the Property, by ensuring that if the Property described herein is sold at a price less than the ASKING PRICE as a result of proximity to the Wind Energy Center, as determined by the procedures contained herein, the Guarantor will guarantee payment to the Property Owners of such difference;

**IT IS HEREBY AGREED AS FOLLOWS:**

1. EFFECTIVE DATE OF AGREEMENT. This Agreement shall become effective and binding on Guarantor when signed by both parties. Notwithstanding the foregoing, if an administrative agency or court of competent jurisdiction rules or holds that the permit issued by DeKalb County for the Wind Energy Center has been in excess of or in violation of said governmental body's authority or otherwise unlawful, then Guarantor's obligations under this Agreement shall be null and void.

2. ELIGIBILITY: EXERCISE OF GUARANTEE. Property ~~containing a residence~~ that is within three-quarters of a mile of the foundation of any wind tower that is part of the Wind Energy Center is covered by this guarantee, to the extent developed on \_\_\_\_\_, 2009, the date DeKalb County signed Ordinance No. approving the Wind Energy Center (“Ordinance Date”). Owners of such Property who were owners of record as of the Ordinance Date (“Property Owners”), or their legitimate heirs or assigns as described in Paragraph 13, are eligible to exercise this guarantee. In the event that the Property Owners wish to sell their eligible Property, and exercise the guarantee set out in this Agreement, they shall notify Guarantor of same in writing by certified mail and thereafter they shall make a good faith effort to sell said Property by entering into a listing contract with a licensed real estate broker pursuant to the terms herein.

3. QUALIFIED PROFESSIONAL APPRAISER. For the purposes of this Agreement, a “qualified professional appraiser” shall mean a person who is licensed by the State of Illinois, not related to the Property Owners, who is not an employee or contractor of FPL Energy Wind or its affiliates and does not otherwise have a business relationship with FPL Energy Wind or its affiliates, and who is a member of at least one national appraisal association. All appraisal reports shall conform to the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

4. AGREED TO ASKING PRICE. The ASKING PRICE is the value of the Property at the time the Property Owner decides to sell. The ASKING PRICE of the Property may be mutually agreed to by the Property Owners and the Guarantor. The ASKING PRICE may be mutually amended by the Property Owners and Guarantor at any time, subject to agreement.

5. DETERMINATION OF ASKING PRICE BY APPRAISAL. If the parties are unable to agree on the ASKING PRICE of the Property prior to the Property Owner listing the Property for sale, then the Guarantor shall hire, at its expense, a qualified professional appraiser, and shall notify Property Owner of such appraiser. If the Property Owner objects to the Guarantor’s choice of appraisers, it shall state those objections, in writing, within thirty (30) days of the notification of the choice of appraisal, to Guarantor. In the event Property Owner reasonably objects, the Guarantor shall choose another qualified professional appraiser, and proceed as described below.

When a qualified professional appraiser is hired pursuant to this Paragraph 5, he or she shall be instructed to determine the fair market value (which will become the ASKING PRICE) of the Property as follows:

- a. Assume that no wind energy center or commercial wind tower was located within 3/4 miles of the Property;
- b. Utilize comparable property, developed as the Property was developed as of the Ordinance Date and located a sufficient distance

away from the Wind Energy Center so that, in the opinion of the appraiser, the selling price of that property was not influenced by the presence of the Wind Energy Center;

- c. Utilize comparable property, located approximately the same distance from major population centers (such as DeKalb) so that in the opinion of the appraiser the selling price of the comparable property was not influenced by its closer proximity to new or existing population centers.
- d. Establish a fair market value which is based upon the Property as developed on the Ordinance Date (without considering any development, including new structures, after the Ordinance Date);
- e. Prepare a full narrative appraisal, which conforms to the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute;
- f. Prepare the appraisal in full compliance with any and all state standards and state regulations which pertain to the preparation of an appraisal of the Property except those standards and regulations which conflict with these instructions; and
- g. The appraiser shall note the condition of the premises, both interior and exterior, at the time of the appraisal.

If Property Owner and Guarantor accept the appraised value, then such value shall constitute the ASKING PRICE, and the Property Owners shall offer the above-described Property for sale at no less than that price.

If either the Property Owner or the Guarantor does not accept the appraised value, the non-accepting party may retain a second qualified professional appraisal, of its choice, who shall not be made aware of the first appraised value and who shall determine the fair market value of the above-described Property on the basis of Paragraph 4 (a) through (g) above. If both parties do not accept the original appraisal, they shall agree to the second qualified professional appraiser and split the costs. In the event a second appraised value is obtained pursuant to this paragraph is within fifteen percent (15%) of the first appraisal, the ASKING PRICE shall be the arithmetic average of the original appraised value and the second appraised value, unless the Guarantor is unsatisfied with such value.

In such event, the first two appraisers shall hire a third qualified professional appraisal, at the sole expense of the Guarantor, who shall not be made aware of either the first or second appraised values, and who shall determine the fair market value of the above-described Property on the basis of Paragraph 4 (a) through (g) above. The ASKING PRICE will then be the arithmetic average of the three appraised values within fifteen

percent (15%) of each other and if none are within fifteen percent (15%) of each other the third appraisal shall conclusively determine the ASKING PRICE for the purpose of this Agreement.

6. LISTING WITH BROKER. Property Owners shall utilize the services of a real estate broker who shall be licensed in Illinois, shall not be related to the Property Owners and, ~~unless waived by the Guarantor~~, shall be a member of the Board of Realtors Multiple Listing Exchange, unless these requirements are waived by the Guarantor upon the request of a Property Owner. Property Owners shall give Guarantor notice of the broker with whom they wish to contract and shall obtain Guarantor's approval of said broker. Guarantor will not unreasonably withhold such approval. If the Guarantor objects to the Property Owners' choice of brokers, it shall state those objections, in writing, to Property Owners. In the event Guarantor reasonably objects, the Property Owners shall choose another broker, and proceed as described above. As sellers of the Property, Property Owners shall be responsible for the broker's fee. Nothing herein shall prevent the Property Owner from marketing the Property at a value higher than the ASKING PRICE as determined herein.

7. TERM OF LISTING. Property Owners shall list the Property, at the ASKING PRICE as determined in Paragraphs 4 or 5 above, or at a higher value. During the listing term, Property Owners shall accept any offer of purchase for the ASKING PRICE, or any offer of purchase otherwise acceptable to the Guarantor

Said listing contract shall provide: (a) that the broker shall list the Property in the multiple listing exchange; (b) that the Property will be so listed until the occurrence of either the (i) sale of the Property or (ii) expiration of a period of 270 days; (c) that the broker shall not be entitled to any commission after the expiration of the listing contract.

The Property Owners shall cooperate with the broker in obtaining a purchaser pursuant to the terms set forth in the listing agreement and shall make, in good faith, all reasonable efforts necessary to conclude a sale pursuant to the said terms.

8. OFFERS TO PURCHASE. The Property Owners shall accept any offer of purchase for the ASKING PRICE and, in such event, Guarantor will have no liability to Property Owners. Property Owners shall provide the Guarantor with written notification of every Offer to Purchase that they receive for the Property and agree, for a period of 270 days, not to accept any offer below the ASKING PRICE without the express and written approval of the Guarantor. In no event shall the Property Owners entertain anything other than good faith, bona fide offers of purchase.

9. GUARANTOR'S CONSENT TO PURCHASE. Guarantor shall have the right to make counter offers on any offers of purchase which are below the ASKING PRICE, said counter offer to be tendered to the purchaser within thirty (30) days of notification by the Property Owner of the offer of purchase. In the event the purchaser accepts any such

counter offer made or requested by the Guarantor, or in the event the Guarantor otherwise consents to a sale of the Property below the ASKING PRICE, the Guarantor shall pay the Property Owners, at closing, the difference between the ASKING PRICE and the sales price so established.

10. SALE WITHOUT GUARANTOR'S CONSENT. If the Property Owners have not received an offer of purchase at the ASKING PRICE within 270 days of listing the Property for sale, or the Guarantor has not consented to the sale of the Property below the ASKING PRICE, the Property Owners may sell the Property at the highest offer of purchase still pending or at the next good faith bona fide offer to purchase. It shall notify the Guarantor, in writing, of its intention to accept such offer.

11. PROPERTY OWNER'S CLAIM. If the Property has sold for less than the ASKING PRICE, as determined herein, and Property Owner reasonably believes that the reason for such lowered value is because of the Property's proximity to the Wind Energy Center, it shall make a claim to the Guarantor, requesting payment for the difference between the ASKING PRICE and the sales price. Within thirty (30) days of such request, Guarantor shall pay the Property Owner the difference unless Guarantor, within that time, has invoked the procedures set forth in Paragraph 12.

12. GUARANTOR APPEAL. Within thirty (30) days of receipt of any claim from Property Owner pursuant to Paragraph 11 above, if Guarantor has a reasonable good faith belief that the difference in value between the ASKING PRICE and purchase price was not attributable to the Property's proximity to the Wind Energy Center, it shall simultaneously notify the Property Owners, by certified letter, and the DeKalb County Zoning Administrator, also by certified letter. Within thirty (30) days of the Property Owner's receipt of such notice, the Guarantor shall retain an independent appraiser, subject to the approval of the DeKalb County Zoning Administrator, at Guarantor's expense, for the purpose of making a determination of whether (and to what extent) the difference in value between the ASKING PRICE and the actual sales price is caused by factors other than the Wind Energy Center, which determination shall be binding. To the extent the difference in value is determined to be caused by other than the Wind Energy Center, the difference between the ASKING PRICE and the sales price which is guaranteed shall be reduced.

13. TERMINATION OF GUARANTOR'S OBLIGATIONS. This Agreement shall terminate and Guarantor shall have no obligation to guarantee the purchase price once the wind tower within three-quarters of a mile of the Property is decommissioned and demolished, or operations at the Wind Energy Center have been permanently terminated as the result of an order, judgment, or decree issued by a federal, state, or local agency, court, or unit of government having jurisdiction under administrative code, statute, law, or ordinances.

14. ASSIGNMENT OR TRANSFER. Neither this Agreement nor the rights under it may be assigned, conveyed, or otherwise transferred by Property Owners.

The guarantee given by Guarantor to guarantee the Property value and to purchase the Property is personal, and does not run with the land; however, said Agreement shall inure to the benefit of the Property Owners, their personal representatives, trustees, guardians, custodians or their heirs; but, in all events, shall terminate as described in Paragraph 13.

15. APPLICATION OF LAW; DISPUTES. This Agreement shall be construed consistent with law in the State of Illinois. Disputes concerning the application or terms of this Agreement shall be subject to the circuit court jurisdiction of DeKalb County.

**GUARANTOR:**

ATTEST:

FPL Energy Wind Illinois, LLC

By \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

DATE: \_\_\_\_\_

**PROPERTY OWNERS:**

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DATE:

**Details:**

- o FPL and Owner can agree on Asking Price
- o If FPL and Owner **cannot** agree on Asking Price, FPL hires and pays for appraiser (1) to determine Asking Price (A)
  - Property owner may object to appraiser (in writing), and FPL must hire and pay for a different appraiser (1)
- o FPL and Owner can agree on Asking Price (A)
- o FPL or Owner may **reject** Asking Price (A) from appraiser (1)
  - If **only one** objects, objecting party may hire and pay for a different appraiser (2), who will be aware of Asking Price (A) in coming up with Asking Price (B)
  - If **both** FPL and owner reject Asking Price (A), both agree to a different appraiser (2) and split the cost, and appraiser (2) is aware of first Asking Price (A) in coming up with Asking Price (B)
- o If Asking Price (B) is within 15% of Asking Price (A), Asking Price (C) shall be the average of the two
- o FPL and Owner can agree on Asking Price (C)
- o FPL **only** may reject Asking Price (C), in which case the first two appraisers (1) and (2) shall hire third appraiser (3), the cost to be paid by FPL
  - Appraiser (3) shall **not** be made aware of Asking Price (A) and (B), and shall come up with Asking Price (D)
  - If Asking Price (D) **is** within 15% of Asking Prices (A) and (B), the Final Asking Price (E) shall be average of (A), (B) and (D)
  - If Asking Price (D) **is not** within 15% of Asking Prices (A) and (B), Asking Price (D) shall be the Final Asking Price (E)
  
- o Owner must list property and attempt to sell for at least 9 months
- o Owner **must** accept any offer of Asking Price (E) or above;
- o Owner **must not** accept any offer below Asking Price (E) without approval from FPL
  - FPL may make a counter-offer to the possible purchaser of the property in response to any offer below Asking Price (E)
- o If Owner agrees to offer below Asking Price (E), with FPL's approval, or if purchaser agrees to FPL's counter-offer that is still below Asking Price (E), FPL pays Owner difference between accepted offer and Asking Price (E) at closing
- o If Owner **has not** received Asking Price (E) offer or above, or offer below Asking Price (E) that is approved by FPL, after 9 months on the market, Owner may sell property for any offer that is active
  - Owner must notify FPL in writing of intent to accept offer
  - After closing, Owner must request in writing payment from FPL of difference between sale price and Asking Price (E), and FPL must pay difference within 30 days
  - However, FPL may retain and pay for an appraiser to determine if sale price was lower than Asking Price (E) due to the wind farm

- o If appraiser finds accepted offer was lower than Asking Price (E) due to factors other than wind farm, the difference between accepted offer and Asking Price (E) to be paid by FPL to Owner shall be reduced by appraiser's estimate

**Possible Amendments:**

1. **Section 5** -- Allow that Owner also may reject Asking Price (C) and pay for a appraiser (3) that is hired by appraisers (1) and (2)
2. **Section 12** -- Allow that Owner also may hire an appraiser to determine that difference between sale price and Asking Price (E) was due to wind farm. If the two appraisers estimates of influence from wind farm on sale price is with 15%, the amount to be paid by FPL to Owner shall be the average of the two. If the estimates are not within 15%, the two appraisers shall hire a third appraiser (FPL and Owner shall split the cost) to determine the influence of the wind farm on the sale price. If third appraiser's estimate is within 15% of first two appraisers, the difference to be paid by FPL to Owner shall be the numeric average of the three estimates. If third appraiser's estimate is not within 15% of first two appraisers, FPL shall pay to Owner the difference identified by third appraiser.
3. **New Section** -- If property has no active offers of purchase after 9 months on the market, Owner may hire appraiser to determine if this is due to the wind farm. FPL may respond in conformance with Section 5. If FPL and Owner agree, or if final appraiser determines affirmatively, that lack of offers is due to the wind farm, FPL shall pay Owner the Asking Price (E) for the property.

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## COUNTY ROADS AGREEMENT

Exhibit "E"

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 119 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 County 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:

(a) 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

(b) 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 Treasurer 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, rutting, 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.

**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 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 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 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 hot-mix asphalt 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 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.
- (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.

- (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 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 individual permits for overweight and/or oversized vehicles good for a period of five days for one movement only. The fees for such permits will be issued by the County Engineer on a monthly basis.
- (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.** 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.

**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 Special Use Permits by the County.** The obligations of the parties hereto are subject to and conditioned upon approval of the Special Use Permits for the Project by the County. In the event that the County fails to approve all of the Special 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

with a copy to:

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, Lee 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 Chair

ATTEST:  
By:  
Name:  
Title: County Clerk

FPL Energy Illinois Wind, LLC  
By:  
Name: Dean R. Gosselin  
Title: Vice President