

# Agreement Regarding County Roads and Drains

between

Jordan Creek Wind Farm LLC

and

Warren County, Indiana

This Agreement Regarding County Roads and Drains (“Agreement”), dated as of October \_\_, 2016, is by and between Jordan Creek Wind Farm LLC, a Delaware limited liability company qualified to do business in Indiana (“Developer”), and Warren County, Indiana (“County”) (Developer and the County being referred to herein, collectively, as the “Parties” and, individually, as a “Party”).

## Background

A. Developer desires to pursue the construction of a wind power project (the “Project”), consisting of wind turbines and related facilities, including, but not limited to, power collection and communication systems, site roads, pad-mount transformers, meteorological towers, an operation and maintenance building, electric substations, overhead transmission lines, switchyard, staging areas, and related facilities (collectively, the “Project Facilities”) in the County, that may be constructed in more than one phase as described in the Economic Development Agreement, between the Developer and the County, dated August 29, 2016 (the “Economic Development Agreement”).

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

C. Developer's use of the Roads, including use by its contractors and subcontractors, will include the operation of heavy trucks and other heavy equipment that weigh over five (5) tons gross when fully loaded (such trucks and equipment, even when empty or less than fully loaded, “Heavy Equipment”) to transport parts, facilities, materials, and equipment and to carry out other related activities during the construction of the Project.

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

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

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

Section 1.     *Use of Roads.*

(a)       The County hereby grants Developer and its contractors and subcontractors the right to use, improve, upgrade, construct, and repair the Roads pursuant to the terms of this Agreement in the planning, construction, and operations phases of its planned Project to transport parts, facilities, materials, and equipment and to carry out other related activities (collectively, "Developer Road Operations"). Developer Road Operations may include the operation of extremely heavy trucks and transports on the Roads. Notwithstanding the foregoing, Developer and its contractors and subcontractors, when utilizing Heavy Equipment, shall not allow such Heavy Equipment (even when empty) to use any other roads or rights-of-way within the County for Developer Road Operations other than the Roads, or State Highways, except in the case of an emergency where the prohibition on use will put the safety of persons or the property of citizens of the County at risk. Due to supply and other scheduling constraints, some of the construction of the Project will have to take place between January 1 and April 1 (the "Frost Season"). County hereby expressly allows Developer and its contractors and subcontractors to use Heavy Equipment on the Roads during the Frost Season.

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

(c)       Using such records and maps of County regulated and private open and tile drains, including lateral drains connecting directly thereto, as may be timely provided to Developer by the County, Developer shall, at Developer's expense, (i) determine which such regulated and private drains, which are known to the Developer or the County, lie under, or within one hundred feet (100') of, any point at which the Developer may conduct any Project construction activity or operate a motor vehicle or other equipment weighing more than five (5) tons gross vehicle weight (the "Affected Drains") and (ii) prepare one or more maps depicting all known Affected Drains and all points of intersection with such construction activity (collectively, the "Drain Location Map"). No later than ninety (90) days prior to the commencement of work on the Project, Developer shall deliver the Drain Location Map to the Warren County Drainage Board ("Drainage Board"), and if any Affected Drains under the jurisdiction of the Jordan Creek Conservancy District (the "District"), to the District. The Drainage Board shall have thirty (30) days after such delivery to review the Drain Location Map and, if the Drainage Board determines that the Drain Location Map is not a complete and accurate depiction of the location of all known

Affected Drains, to provide Developer with written objection to the Drain Location Map detailing such determination, whereupon Developer may revise the Drain Location Map or provide reasonable further documentation of the location of and effects of Project construction upon Affected Drains. As the Drain Location Map is based on records and maps initially provided by the County, Developer shall not be responsible for any inaccuracies or incomplete information contained in these records and/or maps and shall not be fined by the County for any damage caused by the Developer to drains not appearing on the Drainage Location Map; provided, however, the Affected Drains under this Agreement shall include any regulated and private open and tile drains, including lateral drains connecting directly thereto, which are damaged in connection with the completion of the Project, whether or not such drains were previously known to the County and the Developer and included in the Drain Location Map. If Developer disagrees with the Drainage Board's determination, the Parties shall promptly meet to confer and attempt to reach agreement. If the Drainage Board does not give written notice of any objection to the completeness and accuracy of the Drain Location Map within such thirty (30) days, the Drain Location Map shall be deemed accepted by the Drainage Board. The Drain Location Map shall be added to Exhibit A of this Agreement, and amended through the above process if the Project is completed in multiple phases or as otherwise necessary. No provision of this Agreement shall be interpreted as imposing on the County the duty to fix any private or regulated drain damaged as a result of the Project or any liability with respect to the repair of any private or regulated drain damaged by the Developer.

(d) The County hereby agrees to grant Developer a right-of-way to use the county road rights-of-way along the Roads (and such other County roads which may be agreed-upon-designated by the Developer ~~and the County~~) for the purposes of the erection of transmission poles (with above ground transmission and communication lines) and the installation of below ground electric and communication lines within the public right-of-way in accordance with all local ordinances, regulations and conditions of any approval or permit, pursuant to a Right-of-Way Agreement in the form attached hereto as Exhibit H ("Right-of-Way Agreement") with Developer or an affiliate of Developer designated by Developer. At Developer's request, County agrees to replace the Right-of-Way Agreement with an equivalent agreement reasonably acceptable to the County. All poles shall be placed as close to the edge of the right-of-way and as far from the road surface as practicable, except upon written approval of the Board of Commissioners or the County Highway Superintendent. Prior to the erection of any such poles or the installation of below ground electric and communication lines within the public right-of-way, Developer shall provide to the County Highway Superintendent for his or her information a master plan that shows the location of all proposed transmission poles and below ground electric and communication lines associated with the Project that are to be located in the right-of-way to insure compliance with Section 8(c) of this Agreement and all local ordinances, regulations and conditions. Such locations of the proposed transmission poles and below ground electric and communication lines shall be subject to the approval of the County Highway Superintendent, which approval may not be unreasonably withheld, delayed or conditioned. In addition, at Developer's request, County hereby agrees to establish "apparent rights-of-way" in one or more designated county road rights-of-way to be used by Developer in Warren County in connection with the Project pursuant to the procedure set forth in Indiana Code § 8-20-1-15.5 or other applicable provision of state law; provided

that Developer shall pay all reasonable expenses related to such establishment of the apparent rights-of-way and the County shall not be obligated to expand the existing apparent right-of-way shown in its records or acquire any apparent right-of-way that exceeds the legal right-of-way pursuant to Indiana Code § 8-20-1-15.5(e).

(e) The County agrees that the right to use of county road rights-of-way for transmission poles and electric and communication lines shall be irrevocable, except in the event (i) the transmission lines supported by the transmission poles and underground transmission lines fail to transmit electricity for any purpose (other than avoiding the loss of the rights provided by this Agreement) for a period of eighteen (18) consecutive months after initial operations, (ii) Developer defaults in its obligations to maintain such transmission poles and underground transmission lines in a safe condition; provided, however, that in case of either (i) or (ii), Developer shall have the opportunity to cure any default within a reasonable time after receipt of written notice from County, except in the event that such default relates to an emergency situation, in which case Developer shall immediately cure such default, and (iii) the Developer fails to perform its obligations under or otherwise comply with the terms of this Agreement after notice and a reasonable cure period. If, from time to time, County should determine, in its sole discretion, that it will widen a road, upon notice from County, Developer shall, at Developer's sole cost, as soon as reasonably possible, relocate any of the transmission poles or underground transmission lines installed pursuant to this Agreement to allow the widening. If the event described in clause (e)(i) or (e)(ii) above occurs and is not cured after notice and a reasonable cure period, then Developer shall promptly remove such poles and underground transmission lines. The cost of the removal of such poles or overhead lines, net of salvage value, may be included in the amount of any security posted by Developer for the decommissioning of the Project as required by the Decommissioning Agreement to be entered into between Developer and County.

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

(g) The Parties agree that initially this Agreement shall apply only to those Roads listed on Exhibit A; provided, however such Exhibit may be amended by the written

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

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

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

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

(c)       Upon finalization and prior to any use of the Roads by the Developer’s Heavy Equipment, the Exhibits attached hereto that include the locations of the turbine access roads will be provided to the Warren County Area Plan Commission Director, the Fountain/Warren County 911 Dispatch, the Benton County Community School Corporation, the Metropolitan School District of Warren County, the Warren County Sheriff’s Office, the Warren County Emergency Management Director, the County Surveyor, the County Highway Superintendent, and the Board of Commissioners (collectively, the “Notified Parties”).

(d)       County acknowledges that track mounted equipment will be used on the Roads and for crossing the Roads. Track mounted equipment weighing in excess of five (5) tons gross vehicle weight will be subject to GPS tracking. Such daily records shall be maintained throughout the duration of the project and during extended maintenance operations extending for the life of the contract. Said records shall be made available to the County Surveyor for archive. All track mounted equipment weighing in excess of five (5) tons gross vehicle weight are subject to road crossing protection as detailed in Exhibit D.

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

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

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

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

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

**Section 4. Establishing Roads and Drainage Improvements Pre-Construction Condition.** Prior to the start of construction of Project Facilities, at the expense of Developer, Developer shall create a detailed video visual record and summary textual narrative of the pre-existing condition of all Roads covered under this Agreement ("Road Condition Report") that is reasonably acceptable to the County Highway Superintendent. The reasonable and necessary cost

of the Road Condition Report shall be paid by the Developer. Such Road Condition Report should reflect the existing regulated and private drainage system shown on the Drain Location Map, including open ditches, bridges, small structures and culvert pipes (the “Drainage Improvements”), and the direction of current flow of storm water drainage, all as acceptable to the County Surveyor. County Bridge inspection reports shall be used as a reference in the Road Condition Report. Developer shall consult with the County Highway Superintendent and the County Surveyor regarding the means and methods to be used to create the Road Condition Report, including commonly used analytical testing methods to assess the existing condition of the Roads, prior to commencing such work. If the County Highway Superintendent or the County Surveyor does not give written notice of any objection to the completeness and accuracy of the Road Condition Report within twenty-one (21) business days after receipt, the Road Condition Report shall be deemed accepted by the County Highway Superintendent and the County Surveyor.

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

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

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

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

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

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

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

**Section 7. Road Improvements and Improvements in Right of Way.** Developer shall improve designated areas of certain Roads and improve designated intersections of certain Roads

(including any necessary improvements to the Affected Drains), and upgrade the base thickness and surface of the Roads as required to ensure stability throughout the construction phase, subject to the following:

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

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

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

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

(e) Separate permits or agreements from the County for wide-outs and improved corners of existing intersections are not required; provided however the Developer shall be responsible for securing the requisite permission from private landowners to the extent any wide-outs and improved corners are located on private land .

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

(g) After construction of the Project is complete, Developer shall, unless permitted otherwise, in writing, by the County Highway Superintendent and the County

Surveyor, return drainage located within the public right-of-way to its existing condition as of the start of construction by repairing or replacing, as necessary, any field tiles, culverts, pipes or other drainage facilities damaged in the public right-of-way and the reconstruction of any open ditches as required to provide proper drainage. The parties acknowledge that the Developer shall address crop damage with landowners and tenant farmers pursuant to the terms of the applicable lease.

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

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

**Section 8. Use of County Road Rights-of-Way.**

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

(i.) Developer may cut an “open trench” across gravel and unimproved roads, and the trench will be backfilled two (2) feet beyond each shoulder with compacted number fifty-three (No. 53) stone per the permit specifications. No open trench shall be cut in a paved road, unless approved by the County Highway Superintendent. After the installation of underground lines is complete, Developer shall back-fill any trenches. Developer shall also repair any construction damage to paved roads in accordance with the specifications set forth in Exhibit D.

(ii.) Developer will bore under paved roads and may bore under certain Drainage Improvements, and all boring pits and ditch excavation will be backfilled, compacted and raked to return it to conditions substantially similar to those prior to commencement of work. Any such boring by the Developer must be at a minimum depth of 48” below the Road or Drainage Improvements.

(iii.) Each boring or cut across a county road or Drainage Improvement will be identified by general location and also by centerline coordinate, and within 90 days after the completion of construction, Developer will provide an as-built location.

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

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

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

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

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

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

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

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

(iv.) If transmission poles are already situated within a County Road right-of-way where Developer intends to locate its poles and lines, Developer shall arrange and receive any necessary agreement with the owner of the transmission poles and lines for co-location.

The County agrees that to the extent that any provision herein conflicts with the terms of County Ordinance No. 2010-9, the terms of this Agreement shall supersede and control.

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

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

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

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

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

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

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

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

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

**Section 11. *County Inspector.***

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

with this Agreement. The County Inspector shall inform Developer of any damage noted by the County Inspector in the performance of the County Inspector's duties.

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

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

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

#### Section 12. ***Financial Assurance.***

(a) At or prior to the start of construction of the Project Facilities, Developer will put in place two forms of financial assurance, one constituting a repair bond issued by a financial institution, which shall be defined to include an insurance company (the "Repair Bond"); the other constituting a performance bond for work under the Road and Drain Pre-construction Upgrade and Post-construction Restoration Schedule contemplated on Exhibit D, issued by a financial institution or an investment grade entity (the "Performance Guarantee"). The Repair Bond and Performance Guarantee collectively shall be referred to as the "Financial Assurance," which shall be in place for a term of two (2) years following the completion of the final repairs to the Roads

and Drainage Improvements. The purpose of the Repair Bond is to provide a readily available source of funds that the County can use for emergency repairs, if after notice and reasonable opportunity to cure Developer fails to make the emergency repair. The amount of the Repair Bond will be \$50,000 and Developer shall cause the Repair Bond to be replenished within ten (10) business days if properly drawn upon. The initial amount of the Performance Bond will be one and one-half times the cost of Road and Drain Postconstruction Restoration calculated in accordance with Section 7(a)(iv) above and Exhibit D. The purpose of the Performance Guarantee shall be to ensure the completion of Developer's obligations under this Agreement during and upon completion of construction and to ensure performance of Developer's obligations in relation to its warranty of the quality of construction under this Agreement. At least thirty (30) days prior to the delivery of the Financial Assurance to the County, the Developer shall submit to the County the name of the provider of the Financial Assurance and the documents governing the issuance of the Financial Assurance, both of which shall be subject to the approval of the County, such approval not to be unreasonably withheld. The County shall be named as a beneficiary of the Financial Assurance. The forms of the Repair Bond and the Performance Guarantee are attached hereto as Exhibit G. The parties shall work together in good faith to determine the appropriate amount of the Performance Guarantee.

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

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

(d) If Developer commences but does not complete construction of the Project Facilities, Developer shall repair the damage, if any, caused by Developer's construction activities. If such damage is not repaired by Developer within one hundred eighty (180) days after commencement of the construction activities causing the damage to the Road or Drainage Improvements, then after ten (10) days' notice from the County to Developer and opportunity to cure, the County may draw upon the Financial Assurance and use such funds to repair damage to the Roads and Drainage Improvements caused by Developer during construction of the Project

Facilities to the condition required by Section 10 of this Agreement. Any amount of the Financial Assurance remaining after completion of such repairs will be promptly returned to Developer upon completion of such repairs but in no event later than ninety (90) days from the date of the final draw down of funds from the Financial Assurance for such repairs.

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

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

(g) Upon the completion of the construction of the Road upgrades as provided on Exhibit D, the Performance Guarantee shall be reduced to an amount calculated to be 1.2 times the estimated cost of post-construction restoration of Roads and Drainage Improvements as provided in Section 7(a)(iv) above and Exhibit D. On the Completion Date (as defined in Section 11(c) of this Agreement), the Performance Guarantee shall be further reduced to an amount calculated to be 0.2 times the cost of post-construction restoration work to be completed on the Roads and Drainage Improvements as provided in Section 7(a)(iv) above and Exhibit D.

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

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

**Section 13. Warranty.** Developer warrants that all materials supplied and workmanship performed by Developer to satisfy its obligation to upgrade and repair damage to the Roads and the Drainage Improvements resulting from their use by Developer during the construction of the Project Facilities pursuant to Sections 7, 8, 9, and 10 of this Agreement will be free from defects for a period of: (a) two (2) years after the Completion Date (as defined in Section 11(c) of this Agreement), with respect to Roads, and (b) two (2) years after the Completion Date (as defined in Section 11(c) of this Agreement), with respect to Drainage Improvements (except five (5) years for drainage tiles in County rights-of-way). THE WARRANTY SET FORTH IN THIS SECTION 13 IS EXCLUSIVE AND IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, OF

PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CUSTOM, USAGE OR OTHERWISE. EXCEPT AS SET FORTH IN THIS SECTION 13, THERE ARE NO OTHER WARRANTIES, AGREEMENTS OR UNDERSTANDINGS WITH RESPECT TO THE REPAIR OF THE ROADS AND NO OTHER WARRANTY, ORAL OR WRITTEN, WHICH MIGHT HAVE BEEN GIVEN BY AN EMPLOYEE, AGENT, OR REPRESENTATIVE OF DEVELOPER IS AUTHORIZED BY DEVELOPER. DEVELOPER IS NOT AND SHALL NOT BE HELD LIABLE FOR ANY ALLEGED BREACH OF THE WARRANTY GIVEN IN THIS SECTION 13 CAUSED BY OR ARISING OUT OF ORDINARY WEAR AND TEAR. Notwithstanding anything in this Agreement to the contrary, Developer shall be responsible for any damage that it or its employees, contractors, or subcontractors cause to the Roads or the Drainage Improvements that occur after completion of construction of the Project Facilities.

**Section 14. Imposition of Fines.**

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

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

<b><u>Section</u></b>	<b><u>Amount</u></b>	<b><u>Notice/Cure Period</u></b>
2(b) (signage)	\$500	24 hours for non-custom, non-specialty signs; 72 hours for custom or specialty signs. Provided, that to the extent that a permanent sign is not available through the use of reasonable diligence, temporary signs are permissible and effective in avoidance of any fine that might otherwise be assessed.
1 (unauthorized use of Roads)		Automatic upon notice from County; no cure period
First or second occurrence	\$1,000	
Third or more occurrence	\$5,000	

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

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

Section 16. *Assignment.*

(a) This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

(b) Except as provided in subsections (c), (d) (e) and (f) below, no Party to this Agreement shall assign, transfer, delegate, or encumber this Agreement or any or all of its rights, interests, or obligations under this Agreement without the prior written consent of the other Party. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned, or delayed; and (ii) without limiting the foregoing, in the case of the County, the County's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of the Developer pursuant to this Agreement.

(c) Developer may, without the need for consent of the County, but upon notice to County, assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement to any affiliate or subsidiary, or with the consent of the County (not to be unreasonably withheld), to a company or other entity that acquires substantially all of the assets of the Developer. Additionally, with prior written notice to the County but without the need for consent of the County, Developer may assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement, to a (i) public utility or (ii) any other company or other entity, provided in either instance that such assignee or

an affiliated company shall have comparable experience to the Developer in constructing and operating a wind project in the United States and a net worth of a minimum of \$25,000,000 as confirmed by audited financial statements as of the most recent fiscal year.

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

(e) Any transfer or assignment pursuant to this Section shall be subject to the assignee agreeing in writing to be bound by the terms of this Agreement to the extent of the assigned rights, interests, and obligations hereunder. Any transfer or assignment of this Agreement by Developer to an assignee shall be subject to Developer assigning its rights and obligations under the Decommissioning Agreement dated the date hereof (the “Decommissioning Agreement”) and the Economic Development Agreement to the same assignee to the extent of the assigned rights, interests, and obligations hereunder. Any notice of assignment required to be delivered by Developer pursuant to this Section shall be in writing, shall set forth the basis for the assignment, including such supporting information as may be necessary to demonstrate compliance with this Section, and shall be delivered to the County not less than forty-five (45) days prior to the effective date of the assignment. The restrictions on the Developer’s ability to transfer or assign this Agreement set forth in this Section shall expire on the later of (i) the payment of the last Economic Development Payment by the Developer to the County under the Economic Development Agreement, or (ii) ten (10) years after the date of the completion of the Project; provided however, following the expiration of such restrictions, the Developer shall still provide notice of any assignment of this Agreement to the County not less than forty-five (45) days prior to the effective date of the assignment, the assignee shall still agree in writing to be bound by the terms of this Agreement, and any assignment of this Agreement by Developer to an assignee shall still be subject to Developer assigning its rights and obligations under the Economic Development Agreement and the Decommissioning Agreement to the same assignee, all as provided in this Section.

(f) Developer may, also, without the need for prior approval of the County, enter into any partnership, joint venture or contractual arrangement including, but not limited to, a partial or conditional assignment of equitable interest in whole or in part in the Developer or its parent or affiliate to any person or entity including, but not limited to, tax equity investors, or by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Project or any portion thereof (any of the foregoing actions, a “Collateral Assignment”) and County shall agree to execute and deliver any reasonably requested estoppels related to a Collateral Assignment. Promptly after making such encumbrance, Developer shall notify the County in writing of the name, address, and telephone and facsimile numbers of each party in favor of which Developer’s interest under this Agreement has been encumbered (each such party, a “Financing Party” and together, the “Financing Parties”). Such notices shall include the names of the account managers or other representatives of the Financing Parties to whom all written and telephonic communications may be addressed. After giving the County such initial notice regarding either an Assignment or a Collateral Assignment, Developer shall promptly give the County notice of any change in the information provided in the initial notice or any revised notice. The Developer shall, in the event of any such Collateral Assignment, remain bound to the terms of this Agreement unless otherwise agreed by the County.

Upon its receipt of notice of any Financing Parties, County shall provide all such Financing Parties with notice of any alleged breach or default under this Agreement and a reasonable time to cure such breach or default, and shall accept any cure of a breach or default by a Financing Party.

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

If to the County:

Warren County Board of Commissioners  
Warren County Courthouse (Second Floor)  
125 North Monroe Street, Suite 7  
Williamsport, IN 47993  
Attn: County Auditor

Warren County, Indiana  
Warren County Highway Garage  
425 West Washington Street  
Williamsport, IN 47993  
Attn: Highway Superintendent

Warren County, Indiana  
Warren County Courthouse (First Floor)  
125 North Monroe Street, Suite 2  
Williamsport, IN 47993  
Attn: County Surveyor

With a copy to:

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

If to Developer:

Jordan Creek Wind Farm LLC  
c/o Orion Wind Resources LLC  
Attn: General Counsel  
155 Grand Avenue, Suite 706  
Oakland, CA 94612

With a copy to:

Bingham Greenebaum Doll LLP  
2700 Market Tower, 10 West Market Street  
Indianapolis, IN 46204  
Attn: Mary E. Solada, Esq.

If to Financing Parties: To the address indicated in each Financing Party's notice sent to County under Section 16(f) hereof

If to District:

Jordan Creek Conservancy District  
6095 W 650 N  
Ambia, IN 47917  
Attn: Charles Little

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

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

**Section 20. Amendments and Integration.** This Agreement (including Exhibits) shall constitute the complete and entire agreement between the Parties with respect to the subject matter hereof. No prior statement or agreement, oral or written, shall vary or modify the written terms hereof. Except as set forth in this Agreement, this Agreement may be amended only by a written agreement signed by the Parties.

**Section 21. Exercise of Rights and Waiver.** The failure of a Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a

waiver thereof; nor shall a waiver by a Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

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

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

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

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

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

Section 27. ***Jordan Creek Conservancy District.*** With respect to any Affected Drains which are within the jurisdiction of the District, the District shall have the same rights and obligations under this Agreement as the County Surveyor and the Drainage Board have with respect to the other Affected Drains.

Section 28. ***Indemnity.*** Developer shall indemnify, defend, and hold the County harmless for any and all claims, demands, suits, actions, proceedings, or causes of actions (“Actions”) brought against County, its officers, Board of Commissioners, and employees of any of the foregoing for any judgments, liabilities, obligations, fines, penalties, or expenses, including reasonable attorneys’ fees and expenditures pertaining to third party personal injury or property damage (“Losses”), but only to the extent that such Losses arise directly from the acts of

Developer in the course of performance by Developer under or in relation to or connection with this Agreement and excluding such Losses caused by the sole negligence of the County. The County shall provide the Developer prompt notice of any Actions and Developer shall have the right to defend any such Actions with counsel of its choosing.

Section 29. ***Limitation on Damages.*** The Parties waive all claims against each other (and against each other's parent company and affiliates and their respective members, shareholders, officers, directors, and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity (other than the indemnity obligations of Developer as set forth in Section 28 with respect to Losses that arise from personal injury to third persons), contribution, strict liability or any other legal theory.

*[Signatures and Exhibits on Following Pages]*

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

**“DEVELOPER”**

**Jordan Creek Wind Farm LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**“COUNTY”**

**Warren County, Indiana**

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

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

ATTEST:

\_\_\_\_\_  
Auditor, Warren County, Indiana

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

Exhibit A – Roads and Affected Drains

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

Exhibit C – Typical Reconstructed Roads, Driveways and Road Entrances

Exhibit D – Road and Drain Preconstruction Upgrade and Postconstruction Restoration Schedule

Exhibit E – Typical Improved Corners

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

Exhibit G – Form of Financial Assurance

Exhibit H – Form of Right-of-Way Agreement

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

**EXHIBIT A**

**ROADS AND AFFECTED DRAINS**

**EXHIBIT B**

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

**EXHIBIT C**

**TYPICAL RECONSTRUCTED ROADS, DRIVEWAYS AND ROAD ENTRANCES**

## EXHIBIT D

### **ROAD AND DRAIN PRECONSTRUCTION UPGRADE AND POSTCONSTRUCTION RESTORATION SCHEDULE ("Schedule")**

While the Developer and the County will agree upon the details of this Schedule for each Road to be used during construction not later than 90 days prior to the anticipated initiation of Project construction, the Parties now agree on the specifications below for such Roads and affected Drainage Improvements with discretion as to substitutions mutually agreeable by the Parties acting reasonably and in good faith. The Parties recognize that the Road Condition Report shall set out the then-current width and condition of Roads, including chip seal roads. As indicated in Section 4, the Road Condition Report, once accepted by the County Highway Superintendent, shall be the "baseline" for the Developer and the Highway Superintendent to consider when seeking to mutually agree as to what Roads will be widened and improved as required to ensure safety and stability throughout the construction phase as indicated in Section 7. Any improvements to Affected Drains to ensure safety and adequate drainage throughout the construction phase must be made pre-construction. Any road widening within the County's existing right-of-way shall be kept in place post-construction. If the County desires to widen or improve the Roads beyond the widening or improvement deemed necessary by Developer, then the Parties shall work together to determine their appropriate proportional contributions to such work.

The pre-construction and post-construction improvements to the Roads shall comply with the following specifications.

- I. Special note pertaining to all roads.** Any portion of a Road used by the Developer during construction will be repaired or reconstructed as needed to at least the same standard to which such Road was originally constructed.
  
- II. Pre-construction upgrade standards for Gravel/Stone and Chip and Seal Roads.**
  1. If substantial drainage issues within the right of way are identified, Developer and the County Highway Superintendent, consulting with the County Surveyor and acting reasonably and in good faith, shall establish mutually agreeable solutions.
  2. Pulverize existing gravel and chip and seal roadway material.
  3. Furnish and place 53-2 blend aggregate to an average depth of 4".
  4. Cement stabilize existing pulverized roadway material and new blend aggregate with 4% solution 12" deep.
  
- III. Pre-construction upgrade standards for Hot Mix Roads (if any).**
  1. Suitable upgrades will be determined by Developer and the County Highway Superintendent, consulting with the Developer's engineer and the County Inspector and acting reasonably and in good faith to establish mutually agreeable solutions.

#### IV. Post-construction Standards

*Placement of corrugated drainage tile system:* At specified locations on the Roads that are mutually agreed upon by the Parties to require drainage tile, acting reasonably and in good faith, corrugated perforated 3-inch tile shall be installed by trench (not by plow) parallel to and on one side of the road surface and as close to the berm as practicable. When practicable said tile will outlet into a pre-existing tile structure, open ditch, or depression in the adjoining field so as to facilitate gravitational flow of subsurface water. Mapping to indicate said tiling will be provided to the County.

*Gravel/Stone Roads:* Furnish, place, and compact #73 aggregate to an average depth of 3”.

*Hot Mix Asphalt Roads:*

1. Mill and remove 5” of existing asphalt (disposal site at the County Highway Supervisor’s reasonable discretion).
2. Compact remaining existing roadway material.
3. Furnish, place, and compact HMA 19.00 mm intermediate to an average depth of 3”.
4. Furnish, place, and compact HMA 9.5mm Surface to an average depth of 2”.

*Chip and Seal Roads:*

1. Grade and repair any failed areas.
2. Compact remaining existing roadway material.
3. Furnish, place, and compact HMA 19.00 mm intermediate to an average depth of 3”.
4. Furnish, place, and compact HMA 9.5mm Surface to an average depth of 2”.

*Standards for Widened Road Subsurface: [To be provided by Developer ninety (90) days prior to anticipated initiation of Project after consultation with the Highway Superintendent.]*

*Standards for Aggregate Berms (shoulders):* Work to be done within County right-of-way in accordance with applicable Warren County and INDOT reference specifications, as shown below.

**V. Protection of Roads for tracked vehicle crossings on Hot Mix Asphalt and Chip and Seal Roads**

For tracked equipment weighing in excess of 500,000 pounds, 12” crane mat or steel plates will be provided. All other tracked equipment will cross using rubber mats or other suitable protection as approved by the County Highway Superintendent.

**Warren County Reference Specifications  
for Berms (Shoulders)**

**WARREN COUNTY HIGHWAY DEPARTMENT**

425 W. Washington St.

Williamsport, IN 47993

Phone (765) 762-6181

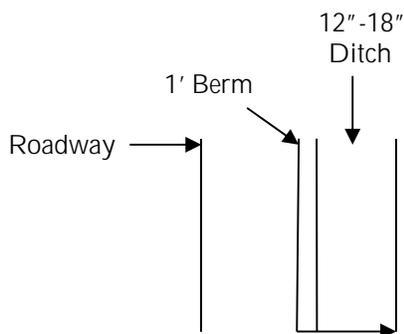
Fax (765) 762-6182



**Road Ditch Spec for Warren County**

Effective April 10, 2012 the following specs should be applied under normal situations:

1. The total work done for ditching should be encompassed to no more than 10 feet from the edge of the roadside
2. 1 foot of flat drivable berm should be established, starting at the roadside. For berms within the cement stabilized road bed: Backfill material for berm shall be no less than 4 in. of 53-2 blend or asphalt millings free of soil. For berms outside of cement stabilized road bed: No less than 6 in of #2 stone with a cap comprised of 53-2 blend or asphalt millings free of soil, backfilled to the desired grade to the road surface.
3. The established ditch should be no more than 12" -18" deep
4. The excess dirt should be feathered out to the field, if applicable, or dipped, scooped, etc. out of the ditch and hauled away.

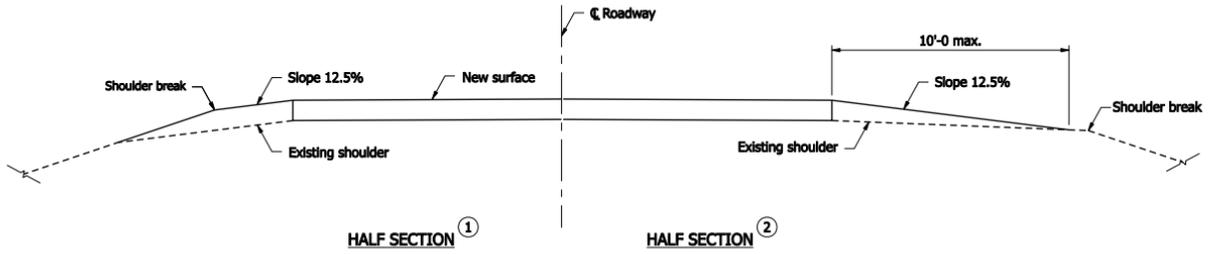


Edge of completed ditch work  
No more than 10' from edge of road

# INDOT Reference Specifications for Berms (Shoulders)

**GENERAL NOTES**

- ① This section shall be used when the existing shoulder width is less than 3 ft. or the slope is steeper than 12.5%.
- ② This section shall be used when the existing shoulder slope is flatter than 12.5%.



**TYPICAL SECTION FOR SHOULDER TREATMENT**

<b>INDIANA DEPARTMENT OF TRANSPORTATION</b>	
<b>SHOULDER TREATMENT RESURFACING WORK</b>	
<b>SEPTEMBER 2007</b>	
<b>STANDARD DRAWING NO. E 303</b>	
	<p><i>/s/ Richard L. VanCleave</i> DESIGN STANDARDS ENGINEER</p> <p><i>/s/ Mark A. Mill</i> CHIEF HIGHWAY ENGINEER</p>
<small>DESIGN STANDARDS ENGINEER</small>	

**EXHIBIT E**

**TYPICAL IMPROVED CORNERS**

**EXHIBIT F**

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

**EXHIBIT G**

**FORM OF PERFORMANCE BONDS**

**EXHIBIT H**

**FORM OF RIGHT-OF-WAY AGREEMENT**