

MARION COUNTY, KANSAS
RESOLUTION NO. 2019-- 21

A RESOLUTION APPROVING A COMPREHENSIVE DEVELOPMENT AGREEMENT FOR A WIND ENERGY CONVERSION SYSTEM FOR CERTAIN LANDS LOCATED WITHIN THE UNINCORPORATED AREA OF MARION COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE MARION COUNTY ZONING REGULATIONS ARTICLES 24 AND 27.

WHEREAS, Expedition Wind LLC ("Expedition Wind") is the holder of the following existing Conditional Use Permits: Marion County Commission Resolutions Numbered 2010-19; 2011-22; 2014-13; 2014-22; 2015-5; 2019-11; and 2019-15 (collectively, the "CUPs"); and

WHEREAS, in accordance with the CUPs, Expedition Wind desires to construct and operate a wind energy conversion system on the real property subject to the CUPs, with an expected total gross nameplate capacity of approximately two hundred (200) megawatts, subject to total size and configuration in Expedition Wind's discretion; and consisting of wind turbine generators, meteorological towers, substations, collection and transmission lines (overhead and underground), access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (all collectively referred to as the "Project"); and

WHEREAS, it is in the best interest of the public health, safety and welfare of Marion County, Kansas ("County") that Expedition Wind and County reach an agreement to address possible issues that may arise pertaining to the design, construction, development, use, operation, maintenance, and decommissioning of the Project, including potential issues that may arise pertaining to the roads in, around and near the Project; and

WHEREAS, in accordance with the CUPs, and to effectuate the foregoing, County and Expedition Wind desire to enter into that certain Development Agreement, presented in the form as attached hereto as Exhibit "A" and incorporated herein (the "Development Agreement"), a copy of such agreement is available for public inspection at the Marion County Planning and Zoning Department, 203 S. 3rd Street, Marion, Kansas, during normal business hours; and

WHEREAS, the Board of County Commissioners of Marion County, Kansas (the "Governing Body") desire to authorize Kent. D. Becker, as Chairman of the Governing Body, in the name and on behalf of the Governing Body, to execute and deliver the Development Agreement and all such further documents, agreements, and instruments necessary or advisable to carry out the intent and accomplish the purpose of the Development Agreement and the transaction contemplated thereby.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, KANSAS, that the Development Agreement, as provided in Exhibit A, is approved and is the current and only Development Agreement in effect regarding any of the CUPs.

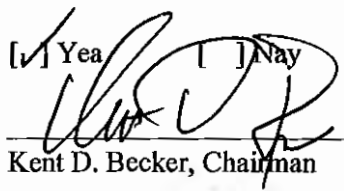
FURTHER RESOLVED, that Kent. D. Becker, as Chairman of the Governing Body, in the name and on behalf of the Governing Body, is hereby authorized to execute and deliver the Development Agreement and all such further documents, agreements, and instruments necessary or advisable to carry out the intent and accomplish the purpose of the Development Agreement and the transaction contemplated thereby.

This Resolution shall be in full force and effect from and after its publication in the official county newspaper.

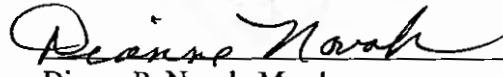
ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS of Marion County, Kansas, this 25 day of November, 2019.

BOARD OF COUNTY COMMISSIONERS MARION
COUNTY, KANSAS

☒ Yea ☐ Nay ☐ Abstain


Kent D. Becker, Chairman

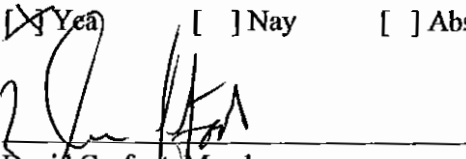
☐ Yea ☒ Nay ☐ Abstain


Dianne R. Novak, Member

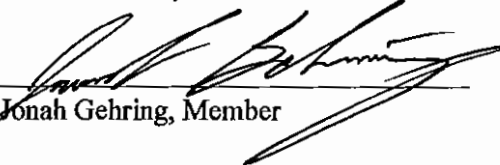
☒ Yea ☐ Nay ☐ Abstain


Randy Dallke, Member

☒ Yea ☐ Nay ☐ Abstain


David Crofoot, Member

☐ Yea ☒ Nay ☐ Abstain


Jonah Gehring, Member


ATTEST: 
Tina D. Spencer, Marion County Clerk



Exhibit "A"

Development Agreement

EXPEDITION WIND AND MARION COUNTY DEVELOPMENT AGREEMENT

This Expedition Wind and Marion County Development Agreement ("Agreement") is made effective as of the date first signed on behalf of both Parties ("Effective Date"), by and between Expedition Wind LLC, a Kansas limited liability company ("Expedition Wind"), and Marion County, Kansas, a government entity in the State of Kansas ("County") (each individually referred to herein as a "Party", and collectively as the "Parties").

RECITALS:

WHEREAS, on November 22, 2010, the Board of County Commissioners of the County (the "Board") approved Resolution 10-19, pursuant to which the Board authorized the issuance of a conditional use permit ("Doyle 1 CUP") to Windborne Energy, Inc., a Kansas corporation ("Windborne"); and

WHEREAS, pursuant to the Doyle 1 CUP, County and Windborne entered into several agreements intended to bind and obligate any assignee or transferee of the Doyle 1 CUP, including: (1) that certain Amended Decommissioning Security Agreement for Doyle No. 1, dated as of June 15, 2015; (2) that certain Amended Infrastructure and Public Safety Agreement, dated as of June 15, 2015; and (3) that certain Amended Payment in Lieu of Taxes Agreement, dated as of June 15, 2015 (collectively referred to as the "Doyle 1 CUP Agreements"); and

WHEREAS, on October 10, 2011, the Board approved Resolution 11-22, pursuant to which the Board authorized the issuance of a conditional use permit ("Doyle 2 CUP") to Windborne; and

WHEREAS, pursuant to the Doyle 2 CUP, County and Windborne entered into several agreements intended to bind and obligate any assignee or transferee of the Doyle 2 CUP, including: (1) that certain Amended Decommissioning Security Agreement for Doyle No. 2, dated as of June 15, 2015; (2) that certain Amended Infrastructure and Public Safety Agreement, dated as of June 15, 2015; and (3) that certain Amended Payment in Lieu of Taxes Agreement, dated as of June 15, 2015 (collectively referred to as the "Doyle 2 CUP Agreements"); and

WHEREAS, on May 14, 2014, the Board approved Resolution 2014-13, pursuant to which the Board authorized the issuance of a conditional use permit ("Doyle 3 CUP") to Windborne; and

WHEREAS, pursuant to the Doyle 3 CUP, County and Windborne entered into several agreements intended to bind and obligate any assignee or transferee of the Doyle 3 CUP, including (1) that certain Amended Decommissioning Security Agreement for Doyle No. 3, dated as of June 15, 2015; (2) that certain Amended Infrastructure and Public Safety Agreement, dated as of June 15, 2015; and (3) that certain Amended Payment in Lieu of Taxes Agreement, dated as of June 15, 2015 (collectively referred to as the "Doyle 3 CUP Agreements"); and

WHEREAS, on November 10, 2014, the Board approved Resolution 2014-22, pursuant to which the Board authorized the issuance of a conditional use permit ("Doyle 4 CUP") to Windborne; and

WHEREAS, pursuant to the Doyle 4 CUP, County and Windborne entered into several agreements intended to bind and obligate any assignee or transferee of the Doyle 4 CUP, including (1) that certain Amended Decommissioning Security Agreement for Doyle No. 4, dated as of June 15, 2015; (2) that certain Amended Infrastructure and Public Safety Agreement, dated as of June 15, 2015; and (3) that certain Amended Payment in Lieu of Taxes Agreement, dated as of June 15, 2015 (collectively referred to as the "Doyle 4 CUP Agreements"); and

WHEREAS, on February 17, 2015, the Board approved Resolution 2015-5, pursuant to which the Board authorized the issuance of a conditional use permit ("Doyle A CUP", and collectively with Doyle 1 CUP, Doyle 2 CUP, Doyle 3 CUP, and Doyle 4 CUP, the "Doyle CUPs") to Windborne; and

WHEREAS, pursuant to the Doyle A CUP, County and Windborne entered into several agreements intended to bind and obligate any assignee or transferee of the Doyle 2 CUP, including (1) that certain Decommissioning Security Agreement for Doyle A, dated as of June 15, 2015; (2) that certain Infrastructure and Public Safety Agreement, dated as of June 15, 2015; and (3) that certain Payment in Lieu of Taxes Agreement, dated as of June 15, 2015 (collectively referred to as the "Doyle A CUP Agreements", and together with Doyle 1 CUP Agreements, Doyle 2 CUP Agreements, Doyle 3 CUP Agreements, and Doyle 4 CUP Agreements, the "Doyle CUP Agreements"; and

WHEREAS, on July 15, 2019, the Board approved Resolution 2019-11, pursuant to which the Board authorized the issuance of a conditional use permit to Expedition Wind ("Expedition CUP 6"); and

WHEREAS, on November 4, 2019, the Board approved Resolution 2019-15, pursuant to which the Board authorized the issuance of a conditional use permit to Expedition Wind ("Expedition CUP 7", and together with the Doyle CUPs and Expedition CUP 6, the "CUPs"; and

WHEREAS, within the land area shown in white on page 1 of 23 of the Development Plan approved by the Board of Marion County Commissioners in Resolution No. 2019-16 ("Expedition Wind Project Footprint"), a copy of which for illustrative purposes only is attached as Exhibit A, subject to total size, configuration, and construction Phasing (including without limitation installing less nameplate capacity and installing infrastructure upon only portions of the Expedition Wind Project Footprint) as might be determined in Expedition Wind's discretion: Expedition Wind desires to construct and operate a wind turbine electrical generation facility with an expected total gross nameplate capacity of approximately two hundred (200) megawatts, consisting of wind turbine generators, meteorological towers, substations, collection and transmission lines (overhead and underground), access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto, including without limitation infrastructure as contemplated by the CUPs and the Development Plan as might be updated from time-to-time (all collectively referred to as the "Project");

WHEREAS, pursuant to that certain Assignment and Assumption of Conditional Use Permits and Related Agreements dated as of June 15, 2018, and recorded with the Marion County, Kansas, Register of Deeds on June 22, 2018, at Book M212, Page 120, Windborne, and its successors and assigns, assigned to Expedition Wind all of the rights and interests in and to the Doyle CUPs and the Doyle CUP Agreements pertaining to that part of the real property both included within any of the Doyle CUPs and also included within the Expedition Wind Project Footprint; and

WHEREAS, Expedition Wind, as a new member of the local business community, wishes to demonstrate good citizenship by making a commitment to assist County in improving and maintaining a physical, business and social environment benefiting all members of the community by making contributions to County as set forth herein, subject to the conditions set forth herein; and

WHEREAS, it is in the best interest of the public health, safety and welfare that Expedition Wind and County reach an agreement to address possible issues that may arise pertaining to the design, construction, development, use, operation, maintenance, and decommissioning of the Project, including potential issues that may arise pertaining to the Roads (as hereinafter defined) in, around and near the Project; and

WHEREAS, in connection with the construction, operation, repair and maintenance of the part of the Project area included under the CUPs, the Parties desire to address certain issues relating to the use of roads, bridges, culverts, ditches,

intersections and similar structures within the public right-of-way of the County (collectively, the "Roads"), over which it will be necessary for Expedition Wind to, among other things: (i) transport heavy equipment, components, and materials which may be in excess of the capacity limits of certain Roads; (ii) transport materials, such as concrete and gravel, on the Roads; (iii) make specific modifications and improvements (both temporary and permanent) to the Roads but not without timely review and approval by the County (including various associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; and (iv) place electrical and communication cables ("Cables") for the Project adjacent to, along, under, or across such Roads where installation is in accordance with the Zoning Regulations of Marion County, Kansas ("Zoning Regulations") and other permits (items (i) through (iv) collectively, the "Construction Activities"). The Roads included are County roads within the Expedition Wind Project Footprint and County roads that are used outside the Expedition Wind Project Footprint for transporting project equipment, components, materials, or personnel. Use of Roads for Construction Activities and Decommissioning does not include the usage of roads by Project personnel for commuting in passenger vehicles and light trucks; and

WHEREAS, the County has on staff an engineer to assist the County in the implementation of this Agreement as it relates to Construction Activities ("County Engineer"); and

WHEREAS, in accordance with the CUPs, and to effectuate the foregoing, the Parties desire to amend and restate each of the Doyle CUP Agreements in their entirety as set forth herein as each relates to the Expedition Wind Project Footprint.

NOW, THEREFORE, in consideration of the above Recitals, and in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration the receipt and sufficiency of which is confirmed by each Party, the Parties agree as follows:

ARTICLE I: TERM

Section 1.1 Term. The "Term" of this Agreement shall commence on the Effective Date, and shall terminate upon the completion of the Decommissioning of the Project in accordance with the terms of this Agreement.

Section 1.2 Non-Binding Obligation to Construct. Expedition Wind is not under a binding obligation or commitment to construct the Project or any portion thereof, or to continue any operation of the Project. Expedition Wind will provide notice to the County, should it ever entirely and irrevocably elect not to proceed with the Project.

ARTICLE II: PAYMENTS IN LIEU OF TAXES; PROFESSIONAL SERVICE FEES REIMBURSEMENT

Section 2.1 Payments. Notwithstanding that as of the Effective Date of this Agreement K.S.A. 79-201 *et seq.* exempts wind energy and other renewable resource facilities from *ad valorem* taxation, Expedition Wind agrees to make "PILOT payments" to County. Such PILOT payments shall be paid by Expedition Wind (or the then current owner of the applicable Project "Phase," meaning any fractional part of the entire Project) to the County. Upon receipt of each PILOT payment, the County Treasurer shall disburse (1) sixty percent (60%) of the amount of such PILOT payment to the County and the County may direct such payments to any general County fund or such specific fund or funds as may be established by the County from time to time, and the County shall be under no obligation to distribute such payments in the same manner as taxes are distributed, (2) thirty-six percent (36%) of the amount of such PILOT payment to the school districts located within the County, which such amount shall be proportioned between the school districts based on actual megawatts install in each school district measured at the time of such PILOT payment, and (3) four percent (4%) of the amount of such PILOT payment to Special School District No. 617; provided, however, that the County hereby acknowledges and agrees that (i) it is intended that this Agreement and the PILOT payments contemplated hereunder

constitute the only agreement relating to PILOT payments or similar payments, regarding the property area of the Project included in the CUPs, that Expedition Wind (or the then current owner of the applicable Phase of the Project) will enter into and for the benefit of Marion County or any government and quasi-government entities within Marion County that would otherwise be entitled to tax revenues received by the County ("County Entities"), and it is the County's intent to distribute the PILOT payments hereunder to such County Entities as the County determines may be in the best interests of the County.

Section 2.2 Amounts. Except as provided elsewhere in this Agreement, such PILOT payments shall be made by Expedition Wind (or the then current owner of the applicable Phase of the Project) to the County for each Phase of the Project to the extent the Phase is located within the property area of the Project included in the CUPs, as follows:

- a. The first PILOT payment ("Initial Payment") shall be made during the calendar year immediately following the calendar year in which the first Phase of the Project is completed and has commenced commercial operations ("COD"). The Initial Payment is due and payable on or before December 31 of such calendar year immediately following the calendar year in which the first Phase of the Project has achieved COD, and is due in the amount of \$2,000.00 per megawatt multiplied by the actual gross nameplate capacity installed in the Phase of the Project that has achieved COD. *See also* Exhibit B ("Financial Commitments Summary").
- b. For each of the succeeding nine (9) full calendar years in which any Phase of the Project achieves COD prior to each of such calendar years, PILOT payments in the amount of \$2,000.00 per megawatt multiplied by the actual gross nameplate capacity installed in those Project Phases. *See also* the Financial Commitments Summary.
- c. Commencing in the eleventh full calendar year in which the Project is operational, for that part of the Project for which on the close of the applicable calendar year the wind turbines continue to be eligible for exemption from *ad valorem* property taxes pursuant to K.S.A. 79-201 *Eleventh* ("Lifetime Exemption Turbines") which Lifetime Exemption Turbines is understood and agreed to apply only to the Doyle CUPs, PILOT payments in the amount of \$2,500.00 per megawatt multiplied by the actual gross nameplate capacity of the Lifetime Exemption Turbines actually installed in the Project as of the close of that particular calendar year. *See also* the Financial Commitments Summary.
- d. Commencing in the sixteenth full calendar year in which the Project is operational, for that part of the Project for which on the close of the applicable calendar year the wind turbines continue to be Lifetime Exemption Turbines, which Lifetime Exemption Turbines is understood and agreed to apply only to the Doyle CUPs, the PILOT payments pursuant to sub-Section 2.2.c. will cease, and instead PILOT payments in the amount of \$5,000.00 per megawatt multiplied by the actual gross nameplate capacity of the Lifetime Exemption Turbines actually installed in the Project as of the close of that particular calendar year. *See also* the Financial Commitments Summary.
- e. No PILOT payments, except for PILOT payments subject to reductions or offset pursuant to this Agreement, shall accrue or be due or payable after January 1 of the first (1st) year of any applicable *ad valorem* tax assessments against the Project. Any PILOT payments accrued but unpaid before January 1 of the first (1st) year of any applicable *ad valorem* tax assessments against the project shall be paid pursuant to this Agreement.
- f. In the event of amendments to K.S.A. 79-201 *et seq.* which extend the period of exemption from *ad valorem* property taxes beyond the 10-year period in effect as of the date of this Agreement, the Parties agree that the PILOT payments provided herein shall continue for such extended period but only in an amount equal dollar-for-dollar to the amount of the property tax exemption value received by Expedition Wind during the extended period.

For purposes of calculating the PILOT payments, the "gross nameplate capacity" shall mean the designed electrical output of a generating unit as determined by the manufacturer of such unit. For illustrative purposes only, an example calculation of the estimated PILOT payments and *ad valorem* taxes is attached hereto as Exhibit C.

Section 2.3 Offset for Taxes. If any taxes, fees, assessments, charges or surcharges, including but not limited to those listed in this paragraph (collectively, "Taxes"), are imposed on Expedition Wind (or the then owner of the applicable Phase of the Project) by the County, the State of Kansas, or any of their respective governmental subdivisions, the amount of the payments due under this Agreement shall be reduced by the amount of the Taxes imposed. Such Taxes shall include, but not be limited to, the following: (a) real or personal property tax due with respect to property located in Kansas, owned by Expedition Wind (or the then owner of the applicable Phase of the Project) and associated with the operation of the Project; (b) any amount of Kansas sales or use tax due with respect to (i) property purchased for use in either the construction or enlargement of the Project or (ii) any purchase of machinery and/or equipment used either (x) as an integral or essential part of the integrated production operations of the Project or (y) for the handling, movement or storage of the output of the Project; (c) any Kansas state or local tax (other than Kansas income tax, the Kansas franchise tax or the Kansas sales and use tax) is imposed on the income, operations or property of the Project; (d) any amendment after the date of this Agreement that reduces the tax benefits available to Expedition Wind (or the then owner of the applicable Phase of the Project) and/or the Project under the following Kansas statutes (or the regulations thereunder): K.S.A. 79-32,160a; K.S.A. 74-50,132; K.S.A. 79- 3606(cc); K.S.A. 74-50,115; K.S.A. 79-3606 (kk); K.S.A. 79-3606 (fff); K.S.A. 79-201 (Eleventh) or K.S.A 79-259; (e) any mortgage registration fee or tax; (f) any excise tax or other fee, assessment, charge or surcharge relating to the generation, transportation or sale of electricity generated by Expedition Wind (or the then owner of the applicable Phase of the Project); or (g) any other governmental actions by the County, the State of Kansas, or any of their respective governmental subdivisions which materially and negatively affect the financial operations, return or viability of the Project, including but not limited to changes in zoning regulation, conditional use permit restrictions or related governmental permits or approvals.

But, if the Taxes are:

- a. already in effect as of the Effective Date (including for example, construction permit fees),
- b. a reasonable charge by County expressly to authorize, permit, inspect, regulate and enforce legal compliance of the Project;
- c. imposed by the State of Kansas other than as a property tax, or other than intended to be imposed in lieu of a property tax, and to the extent funds from such imposition are not received by the County or any of its governmental subdivisions;

then the offset right pursuant to this Section 2.3 is limited, and the offset may not solely cause any total annual PILOT payment otherwise due to equal less than:

- y. an amount that equals the product of \$750 multiplied by the total megawatts of installed gross nameplate capacity within the Project, for the first 10 annual PILOT payments due;
- z. and thereafter starting with the eleventh annual PILOT payment due, an amount that equals the product of \$1500 multiplied by the total megawatts installed gross nameplate capacity of all Lifetime Exemption Turbines within the Project.

An annual PILOT payment due may be less than the foregoing amounts if the reduction is pursuant to a provision of this Agreement other than this Section 2.3.

Section 2.4 Repeal or Amendment of K.S.A. 79-201; Reduction of PILOT Payments. In the event K.S.A. 79-201 *et seq.* is repealed, amended, or interpreted in a manner that results in an obligation of Expedition Wind or any owner of the Project to make *ad valorem* property tax payments to the County in a particular calendar year for the Project, the PILOT payments hereunder in such calendar year shall be reduced by an amount equal to the amount of *ad valorem*

property tax payments so made or to be made by the owner with respect to such calendar year; provided, however, that the County shall have no obligation to refund any ad valorem property taxes that exceed the amount of the PILOT payments made or to be made by the owner.

Section 2.5 Professional Service Fees Reimbursement. Expedition Wind agrees to reimburse County for its Professional Service Fees incurred throughout the Term, up to \$250,000 ("Professional Service Fees Cap"). "Professional Service Fees" are any costs, fees, or expenses (including legal fees) of any third party consultants or professional services first incurred after the Effective Date pursuant to any engagement with Marion County reasonably in connection with the implementation and enforcement of this Agreement, the CUPs, and the ROW Use Agreements. But, Professional Service Fees expressly do not include: (a) any employee or employment costs, (b) other costs that the County would have incurred without this Agreement or the CUPs in effect, (c) any legal fees or expenses incurred by the County in any action initiated by the County and in which the County is not the prevailing party, (d) any legal fees or expenses incurred by the County in any action initiated by the County against Expedition Wind in which the County is the prevailing party and which instead is reimbursed by Expedition Wind pursuant to Section 7.2 below, (e) any legal fees or expenses incurred by the County in any lawsuit, matter or dispute other than when the County is solely adverse to Expedition Wind because the parties intend to further negotiate any such reimbursement at a later time, (f) any County Engineer Support Costs, or (g) any costs, legal fees or expenses incurred by the County in any action initiated against the County regarding Expedition Wind in any way, to the extent those amounts either (i) are to maintain insurance coverage, or (ii) are incurred because the County ceases to maintain the insurance coverage that the County has in place as of the Effective Date. Nothing in this Agreement is intended to or shall limit Expedition Wind's right to make claims against third parties as authorized by Kansas law or is intended to or shall affect the allocation of attorneys' fees or costs associated within any such claims.

All Professional Service Fees reimbursement requests will be delivered to Expedition Wind from the County Clerk not more frequently than once per calendar month, in the form of an invoice specifying the provisions of this Agreement for which the invoiced amount was incurred, along with copies of proof of incurring the amount with sufficient information for Expedition Wind to verify that the amounts are Professional Service Fees. Expedition Wind has thirty (30) days to review and respond to whether it agrees with or disputes any requested reimbursement. Expedition Wind shall pay the requested amount within thirty (30) days of receipt from County Clerk of each undisputed reimbursement request.

ARTICLE III: ROADS

Section 3.1 Duties of Expedition Wind. Expedition Wind has or shall undertake the following activities in accordance with the terms of this Agreement:

- a. Within fifteen (15) days following the Effective Date of this Agreement, Expedition Wind shall designate to the County Zoning Administrator, the County Road Superintendent and County Engineer, the name, address, email address, and phone number of the Expedition Wind on site representative, and Expedition Wind's primary traffic engineer, and an additional Expedition Wind representative, contemplated to be present often during Construction Activities. Expedition Wind shall assign these primary contacts for the entire length of the Construction Activities and notify the County Engineer within forty-eight (48) hours of any change of any of the designees.
- b. Expedition Wind shall establish a "Roads Management Working Group" consisting of: Expedition Wind's primary traffic engineer, a senior construction manager/scheduler on behalf of Expedition Wind, an additional designee of Expedition Wind (if any, from time-to-time), the County Engineer, County Roads Superintendent, and a designee of the County's Consulting Engineer (if any), and a landowner designated by Expedition Wind.

The Roads Management Working Group will be managed by Expedition Wind's traffic engineer and the Roads Management Working Group shall until the date that is ninety (90) days post COD: (1) distribute names and contact information of its members to key County and project personnel, (2) meet at least monthly in the ninety (90) days prior to the estimated NTP Notice Date, and at least every two weeks during Construction Activities, and for ninety (90) days post COD, (3) review and schedule road and culvert repairs as necessary, (4) provide at least monthly updates to key County staff and the Board, (5) keep and distribute an active inventory of road improvement projects and schedules, (6) Report, at least Quarterly, to the Board. Beginning ninety-one (91) days post COD, the Roads Management Working Group will consist of only: one designee of Expedition Wind, the County Engineer, the County Roads Superintendent, and a landowner designated by Expedition Wind. Annually after COD and until Decommissioning, the Roads Management Working Group will meet annually and will invite the County Commission to such annual meeting, but in any year the County Engineer and the County Commission may elect to cancel the meeting.

The County Engineer has the authority to delegate to a third-party any such tasks as s/he may deem necessary except that the following must be made and performed by the County Engineer and may not be delegated to a third-party: any and all final determinations (including without limitation approvals; assessment of road-use-and-disruption fees; ordering suspension of any Construction Activities; requirements to repair, restore or improve Roads; resolutions of disagreements; issuance of Roads Certificates); serving as the lead Construction Activities liaison; and membership in the Roads Management Working Group. As provided in Section 3.3(b) and elsewhere in this Agreement, others may support the County Engineer with his or her responsibilities pursuant to this Agreement.

The County Engineer and one designee of Expedition Wind with written authorization from Expedition Wind may elect to establish Road Management Working Group Rules "Rules"). Once a Rule is established, it may only be modified or eliminated upon the written express agreement of both the County Engineer and one designee of Expedition Wind with written authorization from Expedition Wind.

- c. Prior to commencement of Construction Activities, Expedition Wind, in coordination with the County Engineer and County Road Superintendent shall take a video reasonably showing the condition of the Roads and provide a copy of such video to the County Engineer. The County Engineer shall either accept this video within five (5) business days or give notice to Expedition Wind that the County Engineer does not accept the video and will obtain its own video pursuant to sub-Section 3.4.a. below.
- d. Prior to commencement of Construction Activities, Expedition Wind shall consult with the County Engineer with respect to any construction reasonably necessary to improve, upgrade or protect bridges and/or culverts or to temporarily widen any corner/intersection radius necessary to facilitate the turning movements of the transport trucks during such Construction Activities. The County Engineer, or their designee, shall be Expedition Wind's principal point of contact with respect to the activities under this Agreement. Expedition Wind personnel shall familiarize themselves and adhere to the agreed transportation routes, for delivery of turbine parts, inventory, towers, and electrical materials.
- e. Expedition Wind shall, at its sole expense, make any such reasonably necessary permanent or temporary improvements determined pursuant to Section 3.1.d. upon approval from the County Engineer, or their designee. Upon the completion of the Construction Activities, Expedition Wind shall remove any such temporary improvements and restore the affected property to its original or better conditions, as contemplated in Section 3.4.e. of this Agreement. Any permanent improvements approved by the County Engineer to remain in place, shall be released to the County and shall, upon completion of the Construction Activities and thereafter, become

the responsibility of and inure to the benefit of the County. But, Expedition Wind has no obligation to secure rights for any temporary improvements to use or remain on private property after completion of the Construction Activities.

- f. Expedition Wind shall notify the County Engineer, or their designee in advance of all oversize transportation and crane movements along any Road, including perpendicular crossings. Expedition Wind shall provide axle configurations with loading diagrams for any oversize transportation, cranes, or other construction vehicles prior to Construction Activities.
- g. Expedition Wind shall transport or cause to be transported the turbine segments, other oversize loads, and construction equipment, materials and supplies in a manner reasonably designed to minimize adverse impact on the local traffic, including by expediting efficient construction of the part of the Project area included under the CUPs.
- h. Expedition Wind shall provide reasonable advance notice to the County Engineer, or their designee when it is necessary for a Road to be scheduled for closure for more than fifteen (15) minutes due to a crane crossing or for any other reason relating to the Construction Activities. Notwithstanding the foregoing, Expedition Wind shall provide no less than twenty-four (24) hours' notice when reasonably practicable for any reasonably anticipated closure exceeding fifteen (15) minutes and shall in all cases provide all materials and personnel necessary to close the Road safely. It will be the responsibility of the Roads Management Working Group to oversee all road closures relating to the Construction Activities, including as governed by any Rules.
- i. Expedition Wind shall provide signage of all Road closures and work zones in compliance with the most current manual on Uniform Traffic Control Devices adopted by the State of Kansas.
- j. Expedition Wind shall provide dust control measures to prevent the surface and air transport of dust due to Construction Activities and minimize low visibility conditions caused by airborne dust along Roads due to Construction Activities. Such dust control measures must comply with industry standards and with applicable federal, state and local laws, rules, regulations or permit requirements governing this practice. It will be the responsibility of the Roads Management Working Group to oversee these dust control measures, including as governed by any Rules. County has no obligation to enforce dust control measures more stringent than as permitted by the Zoning Regulations (including without limitation Zoning Regulation 1-106(2)).
- k. Expedition Wind shall, at its sole cost and expense and in a timely manner, provide regular maintenance of Roads including grading and repairing damaged areas along paved and unpaved Roads during Construction Activities for Roads maintenance and repair due to Construction Activities, prior to issuance of a Roads Certificate as to the applicable part of the Roads, as reasonably necessary to permit the continued safe and efficient use of the Roads by the general public and the continued safe and efficient Construction Activities. Appropriate maintenance techniques and methods will be approved by County Engineer. The Roads Management Working Group may choose to implement Rules regarding the scope and frequency of Expedition Wind's Road maintenance and repair obligations.

Expedition Wind is not assuming Roads maintenance and repair obligations that otherwise are County responsibilities for use of the Roads by the public, including use of Roads by other businesses, and including use of Roads by passenger vehicle and light truck traffic of contractors and employees working on or related to the Project (collectively, "Project light vehicle traffic"). Expedition Wind agrees to take reasonable measures that do not materially impact the Project construction schedule or costs, to direct Project light vehicle traffic to use haul

route Roads. It will be the responsibility of the Roads Management Working Group to oversee all Project light vehicle traffic use of Roads, including as governed by any Rules.

- l. Expedition Wind shall, upon completion of Construction Activities, either (i) as provided in Section 3.4.e. of this Agreement, or (ii) earlier as to any part of the Roads; purchase and install applicable road materials for repairs and bear all costs to restore any Roads that are utilized by Expedition Wind during the Construction Activities to a condition no worse than existed immediately prior to the commencement of the Construction Activities (including the improvements required pursuant to Section 3.1.e.), which restoration requirement more specifically will be identified in the post-construction inventory.
- m. Expedition Wind shall source materials for repairs to the Roads in a manner that will not materially impact County's ability to source materials for performance of County's routine and regular maintenance obligations. All material used by Expedition Wind for repairs to County property must be approved by County Engineer to the extent inconsistent with any existing materials utilized in the maintenance of County roads.
- n. Expedition Wind shall repair conditions on Roads that create an immediate or material hazard to the traveling public as provided in Section 3.4.f. of this Agreement, prior to issuance of a Roads Certificate as to the applicable part of the Roads.
- o. Expedition Wind shall comply with all applicable federal, state (including without limitation, Kansas Department of Transportation), and local laws, statutes, ordinances, rules, regulations, judgments, and other valid orders of any governmental authority having jurisdiction over the part of the Project area included under the CUPs, and obtain all permits and licenses required by any governmental authority having jurisdiction over the part of the Project area and included under the CUPs to conduct any and all activities associated with the part of the Project area included under the CUPs.
- p. Upon completion of the part of the Project area included under the CUPs, Expedition Wind may, at its sole discretion, determine whether to donate to the County any surplus gravel, culverts, and other materials not including turbine components. If Expedition Wind provides notice to the County of its decision to donate identified surplus materials and the County has not taken possession or given notice to take control of the surplus materials within thirty (30) working days following such notice, the County will be deemed to have waived any right to the surplus materials. If the County takes possession or gives notice of its intent to take control of the surplus materials, it shall be responsible for all costs and expenses related to removing or relocating the materials and shall do so within a commercially reasonable period of time.
- q. Expedition Wind agrees to reimburse County for its County Engineer Support Costs incurred prior to release of the Road Security, up to \$350,000 ("County Engineer Support Costs Cap"). County, solely at County's cost, will retain a full-time employee to oversee the County Engineer responsibilities and authority pursuant to this Agreement. That full-time employee may be the County Engineer, or if no County Engineer is employed by the County, then that employee may be a different County full-time employee. Other than one full-time employee at County's sole cost; "County Engineer Support Costs" means:
 - i. reasonable costs incurred by County to perform engineering or surveyor review related to the Project's obligations pursuant to Article III of this Agreement, to support the County Engineer responsibilities and authority pursuant to this Agreement;
 - ii. that are also either:
 - A. the cost to retain one or more additional competent County employees at compensation levels typical for similar Kansas public employee positions;

or

B. out-of-pocket third-party expenses for which both (A) the third party engineer or surveyor is selected pursuant to a competitive bid process and the qualified bidder at the lowest cost is selected, and (B) and Expedition Wind in advance of the bid process approves in writing the scope of the bid.

County Engineer Support Costs do not include any fees or costs that are Professional Services Fees.

Expedition Wind will deposit \$100,000 in escrow with the County by the date upon which Expedition Wind delivers to County written notice that the final notice to proceed has been issued to the Project construction contractor ("NTP Notice Date"). All County Engineer Support Costs reimbursement requests will be delivered to Expedition Wind from the County Engineer not more frequently than once per calendar month, in the form of an invoice specifying the provisions of this Agreement for which the invoiced amount was incurred, along with copies of proof of incurring the cost with sufficient information for Expedition Wind to verify that the cost was a County Engineer Support Cost. Expedition Wind has thirty (30) days to review and respond to whether it agrees with or disputes any requested reimbursement. If no dispute, County Engineer may draw the undisputed requested reimbursement amount from the escrowed deposit. Expedition Wind shall replenish the escrow balance back to \$100,000 within thirty (30) days of receipt from County of an undisputed reimbursement request. Whenever the escrowed deposit is insufficient for the County to fully pay all undisputed reimbursement requests, Expedition Wind shall, in addition to replenishing the escrow deposit, pay the difference to the County. Promptly after completion of Construction Activities, the County shall refund to Expedition Wind any remaining balance of any escrow deposit made by Expedition Wind. County shall credit to the deposit any amount Expedition Wind has paid which, as a result of any challenge by Expedition Wind, County determines was the result of an inappropriate charge.

Upon completion of Construction Activities and County's release of all Road Security due to be released, an amount equal to 50% of the difference between \$350,000 and the actual total amount of County Engineer Support Costs if those costs totaled less than \$350,000, will be added to the next PILOT payment due.

- r. In the event that for Construction Activities, Expedition Wind or any Project contractors or suppliers, other than Project light vehicle traffic, use County roads other than those designated for Construction Activities purposes, Expedition Wind agrees, at the County's option, to either pay the County for the costs of repair of any damage resulting therefrom or to repair immediately any damage resulting therefrom in a manner approved by County Engineer. In addition, with respect to each such day in which such use occurs, County shall provide Expedition Wind a written notice of such disruption. In the event additional disruptions occur within a 24-hour period after such written notice, Expedition Wind shall, at the discretion of County Engineer, pay to County with respect to each such disruption in which such use occurs a road-use-and-disruption fee for all disruptions that occur within the same 24-hour period, per contractor or supplier who engaged in such use on that day, of \$2500 for that specific contractor's or supplier's second occurrence within that same 24-hour period, and of \$7500 for each of that specific contractor's or supplier's second occurrence and any additional occurrence within that same 24-hour period. All road-use-and-disruption fees due pursuant to this paragraph will be paid to the County within thirty (30) days of demand.
- s. In the event Expedition Wind fails to satisfy its obligations under sub-Sections 3.1.e., f., g., h., j., k., l., and n. within twenty-four (24) hours, or if a cure reasonably required more than twenty-four (24) hours, fails to commence such cure within twenty-four (24) hours and diligently complete it, the County may order the immediate suspension of any or all Construction Activities in the part of the Project area included under the CUPs, as the County determines advisable in light of the nature of the failure, until such default is cured or a plan

to prevent future defaults of a similar nature is approved by County Engineer. However, in any emergency situation in which Expedition Wind has failed to satisfy the above-referenced obligation, the County may order the immediate suspension of any or all Construction Activities within the part of the Project area included under the CUPs without an advance opportunity to cure as determined by the County to be advisable.

Section 3.2 Obligations of County. The County, in accordance with the terms of the Agreement, agrees that it has or shall:

- a. Notify Expedition Wind of routine and regular maintenance of the Roads, including snow removal, striping, and regularly scheduled maintenance and repair with respect to designated haul routes when such activities are reasonably expected to interfere with Expedition Wind's use of the Roads. The County shall have no obligation to Expedition Wind with respect to the performance of any such routine and regular maintenance.
- b. In addition to the Zoning Administrator pursuant to the Zoning Regulations, the County has authorized the County Engineer to agree on behalf of the County to the approval and revisions to the Development Plan as originally approved by the Board, as such revisions may be submitted to the County Engineer or its designee by or on behalf of Expedition Wind; as the County acknowledges and agrees that the Board initial Development Plan approval included only preliminary turbine locations, laydown yard location, operation and maintenance building location, substation location, site access points, Road crossings, the part of the Project area included under the CUPs (which may be reduced but not enlarged from the initial Development Plan), transportation routes and any other requested information as generally depicted or described as part of the initial Development Plan approved by the Board.
- c. Enforce this Agreement as it might apply to third parties and County citizens, to the extent within the legal authority of the County, including all County employees and divisions.

Section 3.3 Approvals, Process and Appeals. The Parties, in accordance with the terms of the Agreement, agree that each has and shall continue to:

- a. Acknowledge that the County has final approval and permitting authority pursuant to the Zoning Regulations.
- b. Acknowledge that the County Engineer has been engaged to assist the County in reviewing and evaluating the implementation of this Agreement, and in granting on behalf of the County (when so authorized by the Zoning Administrator pursuant to the Zoning Regulations) such approvals, permits, surveys, evaluations or the like as are required by the Zoning Regulations and this Agreement to facilitate the Construction Activities associated with the part of the Project area included under the CUPs. Subject to Section 3.1.b. limits on County Engineer delegation, the County Engineer's responsibilities and authority may be supported in part by other County employees, and may also be supported in part by third party engineers or surveyors retained by the County, with those costs to be reimbursed by Expedition Wind to the extent they are County Engineer Support Costs within the County Engineer Support Costs Cap pursuant to Section 3.1.q. above.
- c. County acknowledges it has directed the County Engineer to consult and cooperate, and Expedition Wind acknowledges that it shall consult and cooperate, both in good faith and in a commercially reasonable manner, with respect to Construction Activities and County Engineer's responsibilities and authority to conduct their respective activities in such a manner as to facilitate the efficient, economic, safe and timely construction and operation of the Project. Expedition Wind is entitled to rely on approvals, representations and decisions (collectively "County Engineer's Approvals") made or directed by the County Engineer on behalf of the County.

- d. In the event of an issue or disagreement between Expedition Wind and County Engineer regarding the nature of scope of County Engineer's requirements or authority, or regarding the implementation of this Agreement, cannot be mutually resolved to the satisfaction of Expedition Wind or the County Engineer; such matter may be presented to the Board for review and for the Board to perform County Engineer's requirement or authority, or to implement this Agreement on behalf of the County or County Engineer.

Section 3.4 Planning Inventory; Liaison; Repairs.

- a. Pre-Construction Inventory. Prior to commencement of Construction Activities, the County Engineer or its designee shall, with the input of Expedition Wind, perform a survey and evaluation to record, document and report on the existing condition of the Roads and will include the video referenced in Section 3.1.c., if any ("Pre-Construction Inventory"). During this survey and evaluation, the entire length of the Roads within the Project area and other Roads located outside the Project area used for transporting equipment, materials, components, etc. shall be videotaped and/or photographed by the County Engineer, unless that already occurred to the County Engineer's approval pursuant to Section 3.1.c. Testing, evaluation, core samples, or similar evaluations of existing Roads shall be performed as determined to be advisable by County Engineer and conducted by the County Engineer with the input of Expedition Wind. To whatever extent available to the County, the County shall make available to Expedition Wind copies of any plans, cross-sections and specifications relevant to any existing Road's structure. The Pre-Construction Inventory, including all documentation and information, shall be prepared by and approved by County Engineer, which approval shall not be unreasonably withheld. The Pre-Construction Inventory shall include but not limited to performing visual field evaluations of the road surfaces and drainage structures located along the Roads, load analysis of bridge structures and span culverts located under the Roads, and performing core samples on paved portions of Roads where crane crossings have been identified.
- b. Pre-Construction Improvements. Prior to commencement of Construction Activities, Expedition Wind shall construct, at its sole cost and expense, any improvements or repairs as agreed with the County Engineer and identified in the Pre-Construction Inventory as reasonably necessary to permit the safe and efficient use of the Road by the general public and the safe and efficient commencement of Construction Activities.
- c. Construction Activities Liaison. The County Engineer will serve as a liaison between the parties of this Agreement during the Construction Activities. But, neither the County Engineer nor any other County employee, contractor or representative is obligated to serve as a liaison between Expedition Wind and any County landowner or citizen.
- d. Post-Construction Inventory. Within thirty (30) days after completion of construction of the part of the Project area included under the CUPs, the County Engineer or its designee will perform a post-construction survey and evaluation, similar to the Pre-Construction Inventory described above, in coordination with and permitting input from Expedition Wind and record, document and report on the then-existing conditions of the Roads ("Post-Construction Inventory"). To the extent the Post Construction Inventory demonstrates any portion of the Roads has deteriorated, declined or diminished from the Pre-Construction Inventory (e.g., wheel lane rutting, cracking, less gravel, or other damage), Expedition Wind and the County Engineer shall in good faith attempt to mutually determine the extent, nature and cost of the repairs or improvements reasonably necessary to return the Roads to not less than the Pre-Construction Inventory condition. The Post-Construction Inventory, including all documentation and information, shall be prepared and approved by the County Engineer, which approval shall not be unreasonably withheld. The Post-Construction Inventory shall include but not limited to performing visual

field evaluations of the road surfaces and drainage structures located along the Roads and providing an opinion of probable cost for repairing damaged Roads.

- e. Repairs and Restoration. Following the Post-Construction Inventory and evaluation of the damage, Expedition Wind shall, at its sole expense, restore the Roads to not less than pre-construction condition in accordance with the determinations of the Post-Construction Inventory and directions of County Engineer. Expedition Wind shall within twenty (20) calendar days following the completion of the Post-Construction Inventory, provide written notice to the County Engineer of when it will make the repairs. The notice shall specifically identify the methods and materials to be used to make the repairs identified in the comparison of the Pre- and Post-Construction Inventories and the expected date by which such repairs shall be completed. The methods and materials will be approved by the County Engineer prior to commencing any repair work. Subject to force majeure events, all identified repairs are to be completed within one hundred eighty (180) calendar days after completion of the Post-Construction Inventory. If Expedition Wind fails either (i) to begin repairs and restoration within thirty (30) days of the date of the above described notice; or (ii) to complete the repairs and restoration within one hundred eighty (180) calendar days after the Post-Construction Inventory, each subject to force majeure events, the County may immediately undertake all repairs necessary to return the Roads to a pre-construction condition at Expedition Wind's sole cost and expense. Such expense may include, but shall not be limited to, the reasonable costs to purchase and deliver all road materials used by the County to restore the Roads to a pre-construction condition, and costs incurred in obtaining the labor and equipment necessary to undertake and complete such repairs in a timely and workmanlike manner. Expedition Wind further agrees that in undertaking such repairs, the County may, in its commercially reasonable discretion, enter into agreements with one or more third party contractors specifically for the purpose of repairing those Roads that suffer damage caused by or contributed to any of Expedition Wind's activities undertaken in the construction of the part of the Project area included under the CUPs, and that Expedition Wind will bear all commercially reasonable costs incurred by County in the retention of any such third party contractor(s). These costs incurred by County will be reimbursed to the County by Expedition Wind within thirty (30) days following receipt of invoice. But, the obligations of Expedition Wind pursuant to this Section 3.4.e. do not include any part of the Roads for which a Roads Certificate was issued and subsequently that part of the Roads was not used for any further Construction Activities.
- f. Emergency Repair. Expedition Wind shall, as soon as reasonably possible and not later than twenty-four (24) hours after becoming aware of any emergency or hazardous conditions on the Roads, notify the County Engineer of any such conditions and, unless directed otherwise by County Engineer, shall repair or otherwise ameliorate such conditions at Expedition Wind's sole expense if such condition arises out of, and also prior to issuance of a Roads Certificate regarding, Expedition Wind's use of that part of the Roads, irrespective whether such condition also results from deferred maintenance by the County during the course of Expedition Wind's use of the Roads. If any such condition is Expedition Wind's obligation to correct and not corrected by Expedition Wind immediately after being notified, the County may cause emergency road and bridge repair to be performed by County personnel or qualified contractors. Expedition Wind shall, within thirty (30) days following receipt of an itemized invoice for the costs of said repairs, reimburse the County for all reasonable repair costs, including overtime for County personnel, incurred by the County for said emergency repairs.

Section 3.5 Security and Payments.

- a. Road Security Required. By the NTP Notice Date, Expedition Wind shall provide \$2,000,000 of security to the County in the form of a performance or payment bond, cash escrow deposit of readily available funds, letter of credit, guarantee from a guarantor with a credit rating of Moody's Baa3 or higher or Standard and Poor's BBB- or higher; or else in the form of other reasonable security acceptable to and approved by the Board in its sole

discretion ("Road Security"). Any readily available funds deposited with the County shall be held in a segregated, interest-bearing account, with interest accruing to the benefit of Expedition Wind. A letter of credit shall be deemed acceptable Road Security to the County if (i) presented substantially in the form shown in Exhibit D and (ii) issued from a highly rated financial institution utilized by the wind energy industry, and approved by the County, which approval shall not be unreasonably withheld. The purpose of the Road Security shall be to provide a guaranteed source of funds for the payment by or on behalf of Expedition Wind as a result of an Expedition Wind Event of Default of this Article III that continues beyond all applicable cure periods.

- b. Costs. All direct costs and expenses of maintaining the Road Security, including the fees and expenses of the Road Security, and the costs and expenses of making distributions out of the Road Security, shall be borne by Expedition Wind.
- c. Roads Certificates; Termination of the Road Security. Upon request from Expedition Wind at any time regarding any particular part of the Roads, County Engineer, in cooperation with the Roads Management Working Group, will deliver a certificate identifying at that time all outstanding claims for Expedition Wind to complete its performance, payments or reimbursements arising under sub-Sections 3.1.k., 3.1.l., 3.1.n., 3.4.e. and 3.4.f. above as to that part of the Roads (a "Roads Certificate").

The County Engineer will act diligently and in good faith to deliver each requested Roads Certificate, which in any event means that the County Engineer will cause inspection to occur within two business days after the date of any written request by Expedition Wind for inspection of a Road restoration or repair area that Expedition Wind identifies as ready for County final inspection, and within twenty-four (24) hours of that inspection deliver the Roads Certificate unless the County Engineer has determined that Expedition Wind has not restored that part of the Roads to the condition required pursuant to Section 3.1.l.

As each Roads Certificate is delivered, Expedition Wind will no longer have any obligation to monitor, maintain, repair, restore or improve that part of the Roads covered by the applicable Roads Certificate, unless and until Expedition Wind subsequently elects in its sole discretion to use that part of the Roads again for Construction Activities.

As to any part of the Roads on which any Construction Activities have occurred and for which Expedition Wind is not entitled pursuant to this Agreement to receive a Roads Certificate, Expedition Wind may not claim force majeure as a reason or excuse that Expedition is no longer obligated to perform its Agreement obligations, although the force majeure may continue to be a reason that Expedition is allowed additional time to perform its Agreement obligations.

Only after COD, as each Roads Certificate is delivered, the Road Security will reduce by an amount that County Engineer reasonably deems no longer necessary for the County to hold as security for Expedition Wind's remaining Road repair and restoration performance. Upon delivery of the final Roads Certificate, all remaining Road Security shall be released and all remaining amounts held shall be distributed or returned to Expedition Wind.

- d. Disputed Costs. In the event Expedition Wind challenges all or part of an amount invoiced or for which the County otherwise seeks reimbursement, Expedition Wind shall provide a written notice of any amount disputed and the basis for such dispute to the County. The County and Expedition Wind shall then meet and confer in good faith and in a reasonable manner to analyze, discuss and resolve the dispute.

Section 3.6 Construction Cooperation

- a. With Others. Prior to the commencement of Construction Activities, Expedition Wind shall meet with County Engineer and such other County, City and public safety officials as designated in writing by the County prior to the meeting to provide notice and a description of the plans for the construction of the part of the Project area included under the CUPs. The Emergency Medical Services, Sheriff's office and County Engineer shall be notified by Expedition Wind of any temporary Road closures that may influence the daily traffic or routing of emergency response vehicles.
- b. Between the County and Expedition Wind. During the Construction Activities, the County, by and through the Board or any designated agent, including the County Engineer, and other designated members of the Roads Management Working Group and Expedition Wind shall meet regularly to keep the County apprised of Construction Activities, including anticipated material and equipment deliveries.
- c. Determinations of County Engineer. As to any decision which this Agreement identifies the County Engineer as having authority to make, Expedition Wind may request that such decision of County Engineer be reviewed by the Board.

ARTICLE IV: COMMUNICATION MAINTENANCE SECURITY AGREEMENT

Section 4.1 Obligation of Expedition Wind to Reimburse for Services Maintenance Costs. If County incurs any Services Maintenance Costs, Expedition Wind shall reimburse those costs to the County within sixty (60) days of receipt from the County of reasonable evidence of the incurred costs. Further, Expedition Wind shall conduct initial testing and analysis of electronic communication services in the project footprint area to serve as a "baseline" to evaluate prospective future issues associated with the various electronic communication systems. Said report shall be delivered to the Board, and the County's Emergency Services Department, as a reference point for administration of this Article IV.

Section 4.2 Financial Security for Services Maintenance Costs.

- a. By the NTP Notice Date, Expedition Wind shall provide the County with \$50,000 of security in the form of a performance or payment bond, cash escrow deposit of readily available funds, letter of credit, guarantee from a guarantor with a credit rating of Moody's Baa3 or higher or Standard and Poor's BBB- or higher; or else in the form of other reasonable security acceptable to and approved by the Board in its sole discretion ("Communications Security"). Any readily available funds deposited with the County shall be held in a segregated, interest-bearing account, with interest accruing to the benefit of Expedition Wind. A letter of credit shall be deemed acceptable Communications Security to the County if (i) presented substantially in the form shown in Exhibit D and (ii) issued from a highly rated financial institution utilized by the wind energy industry, and approved by the County, which approval shall not be unreasonably withheld.
- b. The purpose of the Communication Security shall be to provide a guaranteed source of funds for the payment by Expedition Wind of reasonable costs incurred to complete upgrades, signal boosters, extenders or repeaters that the County reasonably determines as necessary to resolve any material interference or performance issues that arise with the County's communication towers, County radar systems, including Doppler Radar, AM/FM radio systems, and/or 800MHz emergency radio systems that are located or frequently used within the Project area (collectively, "Services Maintenance Costs").
- c. County agrees that Expedition Wind may access and utilize the Communications Security funds to perform Services Maintenance Costs obligations.

- d. The Communications Security shall be maintained until both (i) the fifth (5th) anniversary of COD, and (ii) Expedition Wind's expenses and obligations with respect to Services Maintenance Costs are fully paid; at which time the County shall release any remaining Communications Security to Expedition Wind.

ARTICLE V: DECOMMISSIONING

Section 5.1 Obligation of Expedition Wind to Decommission the Project. Expedition Wind shall decommission individual wind turbines and the Project in accordance with this Agreement and the Zoning Regulations in effect as of the date of this Agreement and as may be amended as permitted by this Agreement and in the exercise of the County's police power ("Decommissioning"). Such Decommissioning obligations are, as of the date of this Agreement:

- a. removal of each turbine and tower and associated above-ground structures, accessories and facilities including but not limited to transformers, overhead transmission lines, Project-owned substations and interconnection facilities, meteorological towers and maintenance buildings;
- b. removal of tower foundations to a depth of four (4) feet beneath the surface of the areas surrounding such foundation, or even deeper to achieve a plowable depth after surface area and topsoil restoration;
- c. removal of access roads, access gates and fencing as requested by an individual landowner;
- d. restoration of the surface area to substantially the same grade, slope and condition as prior to construction, including providing a minimum of eighteen (18) inches of topsoil and re-seeding with native grasses as appropriate together with such leveling, terracing, mulching and other steps reasonably required to prevent soil erosion and ensure the establishment of suitable grasses and forbs, and the removal, unless otherwise requested by the participating landowner, of ditch crossings connecting access roads to public roads;
- e. restoration and repair of damages to county roads, bridges, culverts and other infrastructure ("Road Repairs") resulting from the Decommissioning.

Section 5.2 Timing of Decommissioning. Expedition Wind shall initiate Decommissioning upon exhaustion of all appeals, cure periods (which at a minimum means sixty (60) days after the Project receives written notice from the County expressly identifying the issue and required resolution), and amendment and extension periods, relating to the termination or revocation of all of the CUPs.

Section 5.3 Financial Security for Estimated Decommissioning Costs.

- a. By the NTP Notice Date, Expedition Wind shall provide the County with security of \$130,000.00 per turbine, but if Expedition Wind has entered into a full-service operation and maintenance contract that includes conditions regarding parts replacement planned and unplanned for each turbine located on the Project area, and provides insurance in accordance with Section 6.3 ("O&M Contract"), then instead Expedition Wind's initial security obligation is \$50,000 per turbine ("Decommissioning Security"). *See also* the Financial Commitments Summary.
- b. The Decommissioning Security may be in the form of a performance or payment bond, cash escrow deposit of readily available funds, letter of credit, guarantee from a guarantor with a credit rating of Moody's Baa3 or higher or Standard and Poor's BBB- or higher; or else in the form of other reasonable security acceptable to and approved by the Board in its sole discretion. Any readily available funds deposited with the County shall be held

in a segregated, interest-bearing account, with interest accruing to the benefit of Expedition Wind. A letter of credit shall be deemed acceptable security to the County if (i) presented substantially in the form shown in Exhibit D and (ii) issued from a highly rated financial institution utilized by the wind energy industry, and approved by the County, which approval shall not be unreasonably withheld. In the absence of an agreement otherwise such security shall be in the form of an escrow.

- c. Regardless of form, and no later than fourteen (14) years after COD, the Decommissioning Security amount shall be the greater of:

- (i) \$130,000 per turbine, but for any period that an O&M Contract is in place then instead only \$50,000 per turbine; or

- (ii) One hundred twenty-five percent (125%) of the estimated Decommissioning costs, including Road Repairs, net of reasonable salvage value of any Project facilities, equipment or components, as determined by a qualified, licensed, professional engineer or engineers with experience in the wind energy industry.

- d. Expedition Wind shall propose to the County in writing a professional engineer to determine estimated Decommissioning costs not less than ninety (90) days prior to the date any estimate of Decommissioning costs is to be determined under this Agreement. The County shall have thirty (30) days in which to, in writing, accept the proposed engineer, which acceptance shall not be unreasonably withheld. The selected professional engineer(s) may, at the County's option, be engaged by the County or by Expedition Wind but in either case shall be responsible to the County for the good-faith, reasonable and workmanlike performance of determining the net Decommissioning costs as set forth herein. All fees and expenses reasonably incurred by such engagement shall be paid by Expedition Wind.
- e. The estimated cost of Decommissioning shall be initially determined and provided to the County on the 14th anniversary of the NTP Notice Date pursuant to sub-section 5.3.c. above, and a revised estimated cost of Decommissioning shall be provided on or within ninety (90) days prior to each 5-year anniversary thereafter, and the Decommissioning Security amount re-determined.
- f. All Decommissioning Security shall be maintained until Decommissioning is completed and Expedition Wind's expenses and obligations with respect to such Decommissioning are fully paid or until a new estimate of the cost of the Decommissioning obligations is determined and the security is revised.

During the course of Decommissioning the County shall release up to eighty percent (80%) of the security upon the application of Expedition Wind upon a satisfactory showing that (a) Expedition Wind has incurred and paid for Decommissioning expenses in at least the amount requested to be released or that the amount requested to be released will be applied to pay incurred Decommissioning expenses and (b) that the security remaining is in an amount not less than one hundred twenty-five percent (125%) of the anticipated remaining cost of Decommissioning.

Section 5.4 Authorization for County Decommissioning. Within thirty (30) days of the obligation to initiate Decommissioning set forth in Section 4.2, above, Expedition Wind shall submit to the County Zoning Administrator a Decommissioning Plan demonstrating that decommissioning obligations will be completed within the time period in which Expedition Wind holds a right to possession of real property actually used in the Project, including the anticipated decommissioning schedule and sequence, the contractor(s) engaged to complete the decommissioning, and such other information as reasonably requested by the County Zoning Administrator. If such Decommissioning Plan is not submitted

within such 30-day period, the County may declare an Event of Default and proceed as set forth in Section 3, above. If an uncured Event of Default occurs under this Section 4, Expedition Wind hereby assigns its rights of ingress, egress, access and possession under the leases with Project landowners to the County for the purposes of the County's performance of decommissioning.

Section 5.5 Restoration and Repair of County Roads, Bridges, Culverts and Infrastructure. Prior to commencing Decommissioning, Expedition Wind shall provide to the County a Decommissioning Plan setting out the roads to be used during Decommissioning and the expected load on those roads. The County may engage a consulting engineer to document the pre-Decommissioning conditions of the roads, bridges, culverts and other infrastructure anticipated to be used by Expedition Wind in the course of Decommissioning. Such assessment shall form the baseline for determining the repairs required to be made by Expedition Wind as a result of Decommissioning. The County Road Superintendent or equivalent senior-most employee with responsibility for County shall determine the Road Repairs required. Expedition Wind may appeal such determination to the Board which shall, in that circumstance, be the final decision maker. If the County engages a consulting engineer, reasonable costs and fees of such engineer shall be paid by Expedition Wind.

Section 5.6 Continuing Obligation; Forfeiture of CUPs. Expedition Wind acknowledges its obligations under this Agreement are continuing in nature. The occurrence of an Event of Default may result in forfeiture and termination of the CUPs. Unless otherwise provided by law, the County may not terminate the CUPs for an Event of Default under this Agreement if Expedition Wind disputes in mediation, arbitration or litigation whether an Event of Default occurred, prior the resolution of such dispute. However, the County may terminate the CUPs for Expedition Wind's failure to provide or maintain security or to pay engineer fees as required under this Agreement without limitation provided that Expedition Wind fails to cure the default within sixty (60) days of the County giving written notice to Expedition Wind of the County's intention to terminate the CUPs. The termination of the CUPs shall not prevent either Party from seeking any other legal remedies it may have under or as a result of the breach of this Agreement.

Section 5.7 Release of Decommissioning Obligations. Promptly following Expedition Wind's delivery of documentation reasonably acceptable to the County Zoning Administrator evidencing Expedition Wind's fulfillment of its Decommissioning obligations, the County shall execute and deliver to Expedition Wind a Certificate of Completion. Upon Expedition Wind's receipt of the Certificate of Completion, this Agreement shall terminate and be of no further effect, and County shall further execute and deliver all documentation necessary or reasonably required in order to release and waive all claims to the Decommissioning Security and the salvage value of the turbines upon the request of Company.

Section 5.8 Roads Management Working Group During Decommissioning. The Roads Management Working Group shall meet at least every two weeks during Decommissioning. The Roads Management Working Group shall implement reasonable Rules for Decommissioning related to Roads use, closure, dust control, and shall oversee the enforcement of such Rules.

ARTICLE VI: INSURANCE; INDEMNIFICATION

Section 6.1 Limitations of Liability. In no event shall Expedition Wind or any of its members, officers, directors, or employees or the County or any of its boards, elected officials, officers, employees, or attorneys be liable (in contract or tort, involving negligence, strict liability, or otherwise) to any Party or their contractors, suppliers, employees, members, and shareholders for incidental, consequential, or punitive damages resulting from the performance, non-performance or delay in performance under this Agreement, unless such acts or omissions constitute independent, intentional torts.

Section 6.2 Insurance. Expedition Wind shall initially maintain CGL Insurance by the NTP Notice Date and for the period of Construction Activities. Additionally, Expedition Wind shall maintain CGL Insurance during Decommissioning. For purposes of this Section, "CGL Insurance" means commercial general liability insurance naming Marion County, the Board and Marion County employees as additional insureds, with a primary limit per occurrence of \$2,000,000, and also a limit of \$10,000,000 in the aggregate. Expedition Wind may utilize any combination of primary and/or excess insurance to satisfy this requirement and may satisfy this requirement under existing insurance policies for the Project. Expedition Wind will provide a certificate of insurance evidencing the insurance limits and coverage to County prior to commencement of Construction Activities or Decommissioning (as applicable) and thereafter on an annual basis while CGL Insurance is required pursuant to this Section, or upon written request from the County. All CGL Insurance limits during Decommissioning will be adjusted up or down if at the time of Decommissioning the CGL Insurance limits identified pursuant to this Section 6.2 are materially different than the typical limits required by other Kansas counties at that time for a wind energy project's decommissioning period.

Section 6.3 Indemnification. Expedition Wind agrees to defend, indemnify and hold harmless County, the Board, and the County's employees against any and all losses, damages, claims, expenses and liabilities for physical damage to the property of Marion County and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of Expedition Wind on the property of Marion County; (ii) any negligent or intentional act or omission on the part of Expedition Wind; or (iii) any breach of this Agreement by Expedition Wind. County agrees to defend, indemnify and hold harmless Expedition Wind and its members, managers, officers and employees against any and all losses, damages, claims, expenses and liabilities for physical damage to the property of Expedition Wind and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the County within the Project; (ii) any negligent or intentional act or omission on the part of the County; or (iii) any breach of this Agreement by the County. This indemnification obligation shall survive the termination of this Agreement.

ARTICLE VII: EVENT OF DEFAULT

Section 7.1 Default. Each of the Parties covenants and agrees that an event of default shall occur upon failure by either Party to observe or perform any material covenant, condition or agreement, or a representation or warranty to fail to remain true and accurate (each, an "Event of Default") required of such Party ("Defaulting Party") under this Agreement, which Event of Default is not caused by the Party seeking to enforce said covenant, condition, Agreement, representation or warranty ("Non-Defaulting Party"), and continues for a period of sixty (60) days ("Cure Period") after written notice of such Event of Default has been given to the Defaulting Party by the Non-Defaulting Party. But, the Cure Period will extend for such additional time beyond sixty (60) days as may be reasonable to complete the cure, if the Event of Default reasonably cannot be cured within said 60-day period and the Defaulting Party commences to cure the Event of Default within the initial 60-day Cure Period and diligently, continuously and in good faith pursues the cure to completion.

Section 7.2 Mediation; Legal Action. The Parties will attempt in good faith to resolve all disputes (which throughout this Section includes any Event of Default), under this Agreement promptly by negotiation. If a dispute cannot be resolved within thirty (30) days of written notice of the dispute duly delivered by one Party to the other Party, either Party may request that the Parties submit to mediation of the dispute with the assistance of a mutually agreed mediator. If the Parties agree to submit the dispute to mediation, (a) any statute of limitations that had not expired as of the date of the delivery of written notice of the dispute shall be extended so as not to expire prior to fifteen (15) days after the termination of the mediation, and (b) any applicable Cure Period will extend to end on the same date that the mediation efforts cease. In the event that the Parties do not agree to submit the dispute to mediation, any statute of limitation that had no expired as of the date of the delivery of written notice of the dispute shall be extended so as not to expire prior to forty-five (45) days after the delivery of such notice. The prevailing party in any legal action for the interpretation or enforcement of this

Agreement or any of the CUPs or ROW Use Agreements, or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of this Agreement or any of the CUPs or ROW Use Agreements, shall reimburse the other party that other party's reasonable attorneys' fees, costs and expenses incurred related thereto.

Section 7.3 Remedies. Whenever any Event of Default arises, the Non-Defaulting Party may seek and receive any and all remedies at law or in equity; including without limitation damages (including reimbursement of amount paid to the Defaulting Party), termination, self-help (including offset against other amounts due to the Defaulting Party) or cure of an Event of Default and reimbursement of all costs and expenses incurred related to the cure or self-help, sale and disposal of Project components for Company failure to decommission (said components at that point will be deemed abandoned) and retention of the salvage value proceeds, injunctive, declaratory, specific performance, and other equitable relief; except modified as follows:

- a. **Termination.** County may not terminate this Agreement for an Event of Default that continues past all applicable Cure Periods sooner than the date that all CUPs are terminated and any dispute regarding a CUP termination has been adjudicated to a final non-appealable judgment.
- b. **Interest.** Any amount due from a Defaulting Party will accrue interest at the Default Interest rate from the first date such cost, damage or amount is incurred by the Non-Defaulting Party until paid in full including all Default Interest. "**Default Interest**" is the lesser of fifteen percent (15%) per annum or the highest rate allowed by applicable law.
- c. **Damages.** Each Party's damages remedies are limited to actual damages, and neither Party may recover against the other any punitive, exemplary, special or consequential damages. But, this sub-section does not modify, limit, or waive any obligation of Company pursuant to Article VII; and County's damages include the cost to the County for the time that County employees incur related to the Event of Default. Each party will use reasonable efforts to mitigate its damages incurred.
- d. **Road Security, Communications Security, and Decommissioning Security.** In addition to all other remedies available: upon a Company Event of Default that continues beyond all applicable Cure Periods, County may access funds pursuant to the terms of the Road Security, Communications Security, Initial Decommissioning Security, or Decommissioning Security, to the extent such security is applicable to and posted to secure performance of the specific Event of Default by Expedition Wind.
- e. **Force Majeure.** If a Party's performance of its non-monetary obligations 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; damage to work in progress by reason of fire or other casualty; strikes; lock outs or other labor disputes; terrorism; sabotage; or the effect of any law, proclamation, action, demand or requirement of any government agency. Any failure or shortcoming of County to have authority to enter into any provision of this Agreement will not at any time constitute an Event of Default or otherwise give rise to any liability of County to Company.

ARTICLE VIII: MISCELLANEOUS

Section 8.1 Notices. Any communication between the Parties or regular notices provided herein to be given shall be given to the following:

To Expedition Wind: Expedition Wind LLC
c/o National Renewable Solutions, LLC
1907 Wayzata Blvd., Suite 220
Wayzata, MN 55391

To County: Board of County Commissioners Marion County, Kansas
200 South Third Street
Marion, KS 66861

Any notice which is personally delivered shall be effective upon the date of service. Any notice given by U.S. Mail shall be deemed effectively given if deposited in the U.S. Mail, registered or certified with return receipt requested, postage prepaid and addressed as provided above, on the date of receipt, refusal or non-delivery indicated on the return receipt. In addition, either Party may send notices by a nationally recognized overnight courier service which provides written proof of delivery (such as United Parcel Service or Federal Express). Either Party may, by notice to the other from time to time in the manner provided herein, specify a different address for notice purposes.

Section 8.2 Entire Agreement; Conflict With Participation Agreements; Amendments. The Recitals, and Exhibits A-E inclusive, are incorporated by reference and if fully set out within the body of this Agreement. This Agreement amends, restates and supersedes each of the Doyle CUP Agreements as each relates to the Expedition Wind Project Footprint, which means the Expedition Wind Project Footprint is subject to this Agreement and not any of the Doyle CUP Agreements, while any other real property subject to any of the Doyle CUPs that is not Expedition Wind Project Footprint remains subject to the Doyle CUP Agreements and is not subject to this Agreement.

If any term of a Participation Agreement conflicts with, or waives, any term of this Agreement: (1) County has no obligation to enforce this Agreement for the benefit of the land or owner subject to that Participation Agreement; and (2) Expedition Wind is only obligated to perform the Participation Agreement terms for the benefit of the land or owner subject to that Participation Agreement. If the immediately preceding sentence conflicts with any other provision of this Agreement, the immediately preceding sentence controls. "Participation Agreement" means any lease, easement, consent, waiver, contract, option, or other agreement with or for the benefit of Expedition Wind (or any of its predecessors, successors, assignors or assignees) regarding the Project.

The Parties may amend or modify this Agreement only by a written instrument executed by the Parties. Nothing in this Agreement is intended to either impair or reach a consensus as to the scope of the County's police powers with respect any aspect of Decommissioning.

Section 8.3 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Kansas. Original jurisdiction venue for any litigation concerning the interpretation or enforcement of this Agreement is proper and exclusive only in either Marion County District Court, Eighth Judicial District of Kansas, or federal district court for the District of Kansas sitting in Wichita, Kansas.

Section 8.4 Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall have the effect of and be considered as an original of this Agreement. Transmission of a facsimile or .pdf version of any signed original document, and retransmission of any such transmission, will be the same as delivery of an original document. At the request of the other Party, each Party will confirm transmitted facsimile or .pdf signatures by signing an original document.

Section 8.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Expedition Wind, its successors and assigns, may assign this Agreement to any holder of a CUP, provided that the assignee assume the Agreement obligations allocable to the assign's interest in the assigned CUP and remaining to be performed on and after the assignment date. Upon such assignment and assumption, the assignor is relieved of any Agreement obligations first arising after the assignment date. Expedition Wind shall notify the County in writing of each assignment and assumption. .

Section 8.6 Severability of Provision. If any of the terms or conditions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement shall not be affected and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law; except that as to any such provisions or conditions declared invalid and unenforceable the Parties agree to negotiate in good faith a comparable substitute provision.

Section 8.7 County Laws. The County shall not unreasonably modify or supplement any of its existing Zoning Regulations or other laws, rules, regulations or permit requirements (collectively, "County Laws"), or unreasonably enact new County Laws that prohibit, limit, provide standards for, or otherwise materially burden the commercially reasonable development, construction, or operation of the Project, including any and all Phases of the Project, and including, without limitation, any such County Laws applicable to or requiring supplemental or additional building permits for construction of wind turbine generators, meteorological towers, substations, electronic collection lines, access roads, temporary construction areas, operations and maintenance facilities, and other infrastructures relating to any and all Phases of the Project. To the extent the County modifies or supplements, or enacts new, County Laws, any and all such County Laws shall not unreasonably fail in the exercise of the County's police powers to specifically exempt the Project and any and all Phases of the Project from compliance therewith in the Expedition Wind Project Footprint area, unless Expedition Wind elects to become subject to the new County Laws. Nothing in this Section shall be deemed to permit or substitute a breach of contract claim for existing statutory, administrative and legal processes for challenging an unreasonable action of the County. But, nothing in this Section restricts County's ability to change County Laws that will not apply to or affect any Phase of the Project or the CUPs.

Section 8.8 Certification. County agrees and certifies to and for the reliance by Expedition Wind, and Expedition Wind accepts and agrees, that:


- a. CUPs. The CUPs remain in full force and effect, that no failure or breach of any of the CUPs has occurred by Windborne or any of its successors and assigns, including without limitation Expedition Wind, and that Expedition Wind is recognized as the owner and holder of the CUPs as they relate to the Expedition Wind Project Footprint.
- b. Certain Requirements, Conditions and Terms Met. This Agreement accomplishes and is deemed to accomplish, full satisfaction of those specific requirements, conditions and terms of the CUPs identified on attached Exhibit E, and also those specific Zoning Regulations identified on attached Exhibit E.
- c. ROW Use Agreements. That certain Amended Permit Agreement for Use of Public Road Right of Way between County and Windborne, dated as of June 15, 2015, regarding Doyle 1 CUP, that certain Amended Permit Agreement for Use of Public Road Right of Way between County and Windborne, dated as of June 15, 2015, regarding Doyle 2 CUP, that certain Amended Permit Agreement for Use of Public Road Right of Way between County and Windborne, dated as of June 15, 2015, regarding Doyle 3 CUP, that certain Amended Permit Agreement for Use of Public Road Right of Way between County and Windborne, dated as of June 15, 2015,

regarding Doyle 4 CUP and that certain Permit Agreement for Use of Public Road Right of Way between County and Windborne, dated as of June 15, 2015, regarding Doyle A CUP, (collectively, the "ROW Use Agreements"):

- i. remain in full force and effect,
 - ii. that no failure or breach of any of the ROW Use Agreements has occurred by Windborne or any of its successors and assigns, including without limitation Expedition Wind,
 - iii. that Expedition Wind is recognized as the counterparty to the ROW Use Agreements as they relate to the Expedition Wind Project Footprint, and
 - iv. that the ROW Use Agreements granted and continue to grant the unconditional Right-of-Way use rights to all County roads and associated right-of-way area throughout the County, upon and subject only to their express terms.
- d. Roads Use. To the extent any further permit, grant or similar is required by any County Laws for Expedition Wind to use any Roads for Construction Activities or for Decommissioning, this Agreement constitutes such permit, grant and similar.

EXPEDITION WIND LLC
a Kansas limited liability company

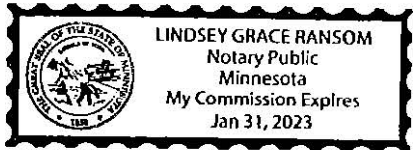
By: National Renewable Solutions, LLC, a Minnesota limited liability company
Its: Manager

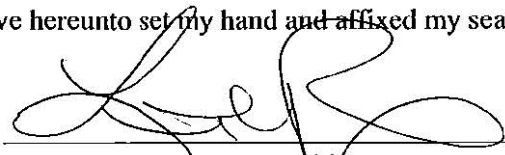
By: 
Patrick Pelstring
Its: President and CEO

STATE OF Minnesota
COUNTY OF Hennepin

BE IT REMEMBERED, that on this 27 day of January, ~~2019~~²⁰²⁰, before me, the undersigned, a notary public in and for the County and State aforesaid, came Patrick Pelstring, the President and CEO of National Renewable Solutions, LLC, a Minnesota limited liability company, the Manager of Expedition Wind, LLC, a Kansas limited liability company, on behalf of the limited liability company, personally known to me to be the same person who executed the within instrument of writing, and that he executed the foregoing instrument for the purposes therein contained on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.




Notary Public

LINDSEY RANSOM
Name of Notary Public

Term expires: 1/31/23

THE COUNTY:

**THE BOARD OF COUNTY
COMMISSISONERS OF MARION COUNTY,
KANSAS**

Executed on 11-28, 2019

By: 

Name: Kent D. Becker

Title: Chairman

ATTEST:

By: 

Name: Tina D. Spencer

Title: Co. Clerk

Reviewed and approved by:

By: _____

Name: _____

Title: _____

Exhibit A

Page 1 of Development Plan

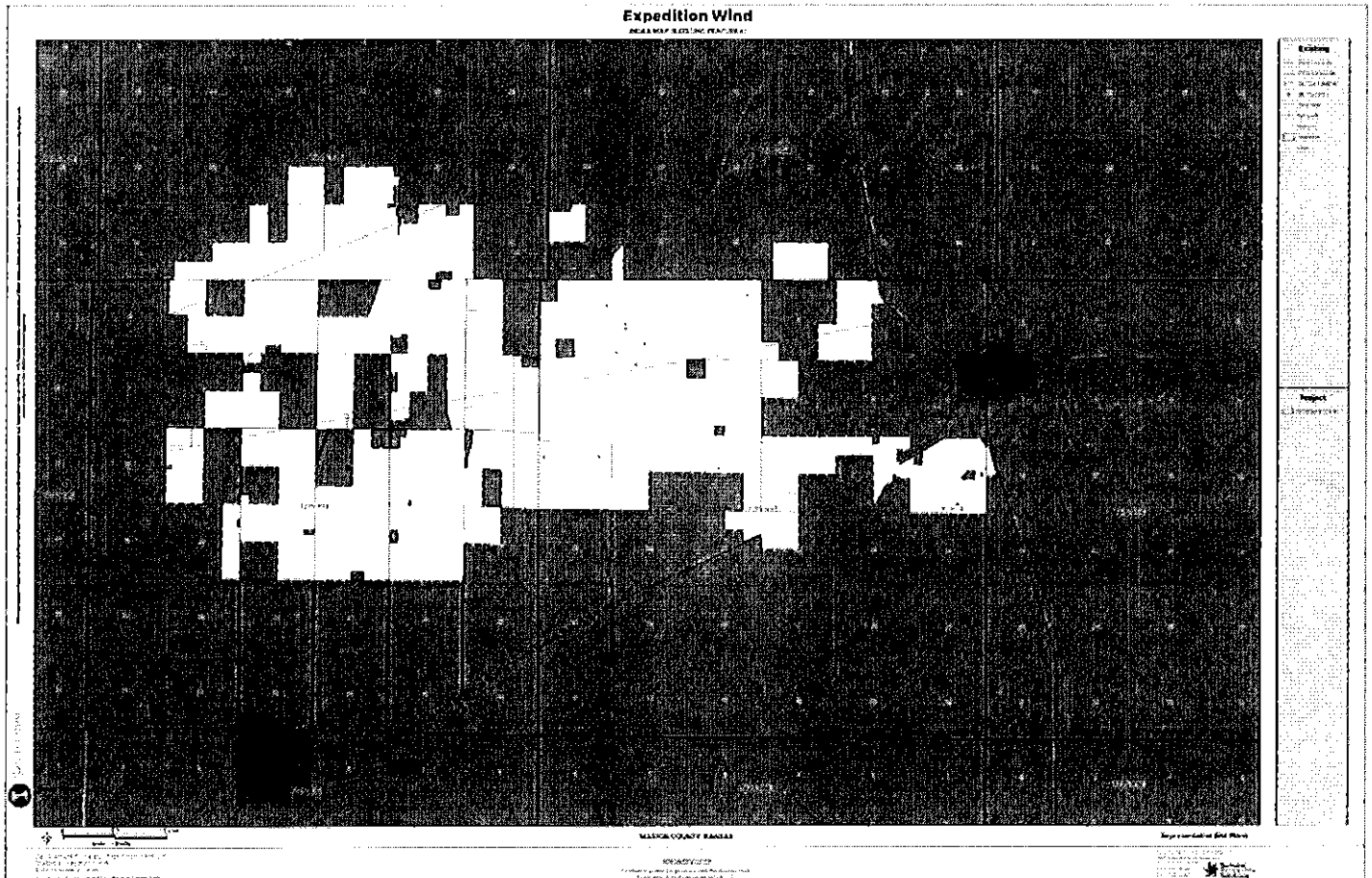


Exhibit B

Illustrative Example of Financial Commitments

(subject to change based on actual facts; not dispositive; if any conflict with the Agreement text the Agreement controls)

Agmt §	Purpose	Amount	Type	Frequency	Period
2.2(a), 2.2(b)	Estimated PILOT Annual Payment (\$2000/MW) *	\$400,000	Cash Payment	Annual	Years 1-10 of project operation – includes all CUP MWs
2.2(c)	Estimated PILOT Annual Payment (\$2500/MW) *	\$330,600	Cash Payment	Annual	Years 1-15 of project operation – only Doyle CUP MW's
2.2(d)	Estimated PILOT Annual Payment (\$5000/MW) *	\$660,000	Cash Payment	Annual	Years 16+ of project operation – only Doyle CUP MW's
2.4	Professional Service Fees Cap **	\$250,000	Cash Payment	Drawn as Incurred	Entire Agreement
2.4, Art III	County Engineer Support Costs Cap **	\$350,000	Cash Payment	Drawn as Incurred	\$100,000 initial deposit posted from NTP Notice Date thru Year 1 of Operation
3.1(q)	Contractor Road Incident Fees per day	\$0 \$2,500 \$7,500	Cash Payment	1 st occurrence 2 nd occurrence 3 rd and thereafter	NTP Notice Date thru Construction Activities
3.5(a)	Road Security	\$2,000,000	Bond, LC, Guarantee or Cash Escrow	One Time	NTP Notice Date thru Year 1 of operation
4.2(a)	Communications Security	\$50,000	Bond, LC, Guarantee or Cash Escrow	Drawn as Incurred	NTP Notice Date thru Year 1 of operation
5.3	Decommissioning Security ~	\$9,360,000	Bond, LC, Guarantee or Cash Escrow	One Time; but updated during project to reflect updated estimates.	NTP Notice Date thru life of project
6.2	General Liability Insurance	\$2,000,000 per occurrence; and \$10,000,000 aggregate	Insurance	One Time each, to insure during Construction Activities and during Decommissioning	NTP Notice Date. Decommissioning commencement.

* Assumes 200 MW gross nameplate capacity installed for entire Project CUPs, and 132 MW (of the total 200 MW) installed within Doyle CUP areas; and assumes no offsets. This amount does not include any property tax payments.

** EXW reimburses actual costs incurred up to this capped amount. But in addition to this capped amount, costs incurred above the cap amount will also be paid by Expedition, then offset from PILOT payments on a dollar for dollar basis beginning in the year incurred.

~ Assumes 72 turbines, and no O&M Contract

Exhibit C

Example Calculation of Estimated PILOT Payments

(subject to change based on actual facts; not dispositive; if any conflict with the Agreement text the Agreement controls)

WIND FARM VALUATION										Expedition Wind Property Tax with PILOT									
										Assumptions									
										S/NW									
										All CUP Years 1-10									
										Pre 2016 CUP Year 11-25									
										Pre 2016 CUP Years 16-									
										S									
										2,000									
										5									
										5,000									
										PILOT Period									
										Pre 2016 PILOT(s)									
										66%									
										2019 CUP									
										34%									
										66%									
										TOTAL (198.38 MW)									
Yr	Avg/S/Turbine	# of Turbines	Total Value	% of Full Value	Depr Adj. Value	Commercial Value %	Commercial Value	Mill Rate	Total Tax (No PILOT)	Yr	132.2	66%	2019 CUP 34%	66%					
1	1,657,332	72	119,327,904	100.00%	\$ 119,327,904	25%	\$ 29,831,976	0.1583	Exempt	1	\$ 264,480	\$ 133,280	\$ 133,280	\$ 397,760					
2	1,657,332	72	119,327,904	85.71%	\$ 102,281,061	25%	\$ 25,570,265	0.1599	Exempt	2	\$ 264,480	\$ 133,280	\$ 133,280	\$ 397,760					
3	1,657,332	72	119,327,904	71.43%	\$ 85,234,217	25%	\$ 21,308,554	0.1615	Exempt	3	\$ 264,480	\$ 133,280	\$ 133,280	\$ 397,760					
4	1,657,332	72	119,327,904	57.14%	\$ 68,187,374	25%	\$ 17,046,843	0.1631	Exempt	4	\$ 264,480	\$ 133,280	\$ 133,280	\$ 397,760					
5	1,657,332	72	119,327,904	42.86%	\$ 51,140,530	25%	\$ 12,795,139	0.1647	Exempt	5	\$ 264,480	\$ 133,280	\$ 133,280	\$ 397,760					
6	1,657,332	72	119,327,904	28.57%	\$ 34,093,687	25%	\$ 8,523,421	0.1664	Exempt	6	\$ 264,480	\$ 133,280	\$ 133,280	\$ 397,760					
7	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1680	Exempt	7	\$ 264,480	\$ 133,280	\$ 133,280	\$ 397,760					
8	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1697	Exempt	8	\$ 264,480	\$ 133,280	\$ 133,280	\$ 397,760					
9	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1714	Exempt	9	\$ 264,480	\$ 133,280	\$ 133,280	\$ 397,760					
10	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1731	Exempt	10	\$ 264,480	\$ 133,280	\$ 133,280	\$ 397,760					
11	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1749	\$ 1,045,294	11	\$ 330,000	\$ 349,583	\$ 680,483						
12	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1766	\$ 1,053,727	12	\$ 330,000	\$ 349,583	\$ 680,483						
13	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1784	\$ 1,064,264	13	\$ 330,000	\$ 349,583	\$ 680,483						
14	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1802	\$ 1,074,907	14	\$ 330,000	\$ 349,583	\$ 680,483						
15	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1820	\$ 1,085,656	15	\$ 330,000	\$ 349,583	\$ 680,483						
16	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1838	\$ 1,096,512	16	\$ 330,000	\$ 349,583	\$ 680,483						
17	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1856	\$ 1,107,478	17	\$ 330,000	\$ 349,583	\$ 680,483						
18	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1875	\$ 1,118,552	18	\$ 330,000	\$ 349,583	\$ 680,483						
19	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1894	\$ 1,129,738	19	\$ 330,000	\$ 349,583	\$ 680,483						
20	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1912	\$ 1,141,035	20	\$ 330,000	\$ 349,583	\$ 680,483						
21	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1932	\$ 1,152,456	21	\$ 330,000	\$ 349,583	\$ 680,483						
22	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1951	\$ 1,163,970	22	\$ 330,000	\$ 349,583	\$ 680,483						
23	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1970	\$ 1,175,610	23	\$ 330,000	\$ 349,583	\$ 680,483						
24	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.1990	\$ 1,187,366	24	\$ 330,000	\$ 349,583	\$ 680,483						
25	1,657,332	72	119,327,904	20.00%	\$ 23,865,581	25%	\$ 5,966,395	0.2010	\$ 1,199,239	25	\$ 330,000	\$ 349,583	\$ 680,483						

Exhibit D

Form of Security

DATE:

ISSUING BANK:

BENEFICIARY:

(COMPLETE ADDRESS)

APPLICANT:

(COMPLETE ADDRESS)

EXPIRY DATE: XXXXXX

LADIES AND GENTLEMEN,

AT THE REQUEST OF OUR CLIENT, XXXXX (THE 'APPLICANT'), WE HEREBY OPEN OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____, IN YOUR FAVOR FOR AN AMOUNT NOT TO EXCEED IN USD _____ (IN WORDS), EFFECTIVE IMMEDIATELY AND EXPIRING AT THE OFFICE OF _____ OR SUCH OTHER OFFICE AS WE MAY ADVISE YOU FROM TIME TO TIME (THE 'OFFICE'), ON _____.

FUNDS UNDER THIS STANDBY ARE AVAILABLE TO YOU AGAINST PRESENTATION OF YOUR SIGHT DRAFT(S), DRAWN ON US, MENTIONING THEREON OUR LETTER OF CREDIT NUMBER _____, ACCOMPANIED BY YOUR WRITTEN AND DATED STATEMENT, SIGNED BY AN OFFICER OF YOUR COMPANY.

ALTERNATIVELY, PRESENTATION OF SUCH DRAWING DOCUMENTS MAY BE MADE BY FAX TRANSMISSION TO _____, OR SUCH OTHER FAX NUMBER IDENTIFIED BY _____ IN A WRITTEN NOTICE TO YOU. TO THE EXTENT A PRESENTATION IS MADE BY FAX TRANSMISSION, YOU SHOULD (I) PROVIDE TELEPHONE NOTIFICATION THEREOF TO _____ TO _____ PRIOR TO OR SIMULTANEOUSLY WITH THE SENDING OF SUCH FAX TRANSMISSION AND (II) SEND THE ORIGINAL OF SUCH DRAWING DOCUMENT[S] TO _____ BY OVERNIGHT COURIER, AT THE SAME ADDRESS PROVIDED ABOVE FOR PRESENTATION OF DOCUMENTS, PROVIDED, HOWEVER, THAT _____'S RECEIPT OF SUCH TELEPHONE NOTICE OR ORIGINAL DOCUMENT(S) SHALL NOT BE A CONDITION TO PAYMENT HEREUNDER

A COPY OF THIS STANDBY AND A COPY OF ALL AMENDMENTS, IF ANY MUST ACCOMPANY ALL DRAWINGS.

ALL BLANKS AND DRAFTS OR ANY OTHER DOCUMENTS MUST BE FILLED IN. ALL DRAFTS AND DOCUMENTS MUST BE MARKED 'DRAWN UNDER STANDBY LETTER OF CREDIT NUMBER XXXXX DATED XXXX

WE HEREBY AGREE WITH YOU TO HONOR EACH DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT IF

PRESENTED, TOGETHER WITH THE DOCUMENTS SPECIFIED AT THIS OFFICE ON OR BEFORE THE STATED EXPIRATION DATE.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED. ANY PAYMENT MADE UNDER THIS STANDBY LETTER OF CREDIT SHALL REDUCE THE AMOUNT AVAILABLE UNDER IT.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT, FOR ADDITIONAL PERIOD(S) OF ONE YEAR FROM THE EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, BUT NOT BEYOND _____, UNLESS AT LEAST _____ (_____) DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU BY REGISTERED MAIL OR BY ANY OTHER RECEIPTED MEANS THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD, WHEREUPON YOU MAY DRAW FOR THE AVAILABLE AMOUNT UNDER THIS LETTER OF CREDIT BY MEANS OF YOUR SIGHT DRAFT(S), DRAWN ON US, MENTIONING OUR LETTER OF CREDIT NUMBER. BENEFICIARY MUST NOTIFY US IN WRITING AT OUR OFFICE, SPECIFYING THIS STANDBY BY REFERENCE NUMBER, PRIOR TO ANY CHANGE TO ITS ADDRESS FROM THAT STATED AT THE TOP OF THIS STANDBY. UPON RECEIPT BY US OF ANY SUCH NOTICE, WE WILL PROMPTLY ADJUST OUR RECORDS ACCORDINGLY, PROVIDED THAT ANY NOTICE SENT BY US UNDER THIS STANDBY PRIOR TO ANY SUCH ADJUSTMENT SHALL BE EFFECTIVE IF SENT TO THE ADDRESS FOR BENEFICIARY STATED AT THE TOP OF THIS STANDBY OR, IF APPLICABLE, TO THE ADDRESS LAST NOTIFIED TO US BY BENEFICIARY AS PROVIDED ABOVE.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT IS TRANSFERABLE AND MAY BE TRANSFERRED IN ITS ENTIRETY, BUT NOT IN PART, AND MAY BE SUCCESSIVELY TRANSFERRED BY YOU OR ANY TRANSFEREE HEREUNDER TO A SUCCESSOR TRANSFEREE(S). TRANSFER UNDER THIS LETTER OF CREDIT TO SUCH TRANSFEREE SHALL BE EFFECTED UPON PRESENTATION TO US OF THE ORIGINAL OF THIS LETTER OF CREDIT AND ANY AMENDMENTS HERETO ACCOMPANIED BY A REQUEST DESIGNATING THE TRANSFEREE IN THE FORM OF EXHIBIT "A" ATTACHED HERETO APPROPRIATELY COMPLETED, TRANSFER FEE WILL BE FOR THE ACCOUNT OF THE APPLICANT.

SHOULD YOU HAVE OCCASION TO COMMUNICATE WITH US REGARDING THIS LETTER OF CREDIT, PLEASE DIRECT YOUR CORRESPONDENCE TO OUR OFFICE, MAKING SPECIFIC MENTION OF THE LETTER OF CREDIT NUMBER INDICATED ABOVE.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, TERRITORIES, INDIVIDUALS, ENTITIES, AND VESSELS. CITIGROUP ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF APPLICABLE SANCTIONS.

EXCEPT AS FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS STANDBY LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES ('ISP98'), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 590, AND AS TO MATTERS NOT GOVERNED BY THE ISP98, SHALL BE GOVERNED BY AND CONSTRUED IN

ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE U.S.
FEDERAL LAW.

AUTHORIZED SIGNATURE

NAME:

TITLE:

EXHIBIT A

REQUEST FOR FULL TRANSFER RELINQUISHING ALL RIGHTS AS BENEFICIARY

(THIS FORM IS TO BE USED WHEN THE LETTER OF CREDIT IS TO BE TRANSFERRED IN ITS ENTIRETY AND , NO SUBSTITUTION OF INVOICES IS INVOLVED AND, NO RIGHTS ARE TO BE RETAINED BY THE UNDERSIGNED BENEFICIARY.)

DATE: _____

RE: L/C NO. _____

ISSUED BY: _____

LADIES AND GENTLEMEN:

RECEIPT IS ACKNOWLEDGED OF THE ORIGINAL INSTRUMENT WHICH YOU FORWARDED TO US RELATIVE TO THE ISSUANCE OF A LETTER OF CREDIT (HEREIN CALLED THE "CREDIT") BEARING YOUR REFERENCE NUMBER AS ABOVE IN FAVOR OF OURSELVES AND/OR TRANSFEREES AND WE HEREBY REQUEST YOU TO TRANSFER THE SAID LETTER OF CREDIT, IN ITS ENTIRETY, TO:

WHOSE ADDRESS IS -----

(OPTIONAL) PLEASE ADVISE BENEFICIARY THROUGH THE BELOW INDICATED ADVISING BANK:

WE ARE RETURNING THE ORIGINAL INSTRUMENT TO YOU HERewith IN ORDER THAT YOU MAY DELIVER IT TO THE TRANSFEREES TOGETHER WITH YOUR CUSTOMARY LETTER OF TRANSFER.

IT IS UNDERSTOOD THAT ANY AMENDMENTS TO THE LETTER OF CREDIT WHICH YOU MAY RECEIVE ARE TO BE ADVISED BY YOU DIRECTLY TO THE TRANSFEREES AND THAT THE DRAFTS AND DOCUMENTS OF THE TRANSFEREES, IF ISSUED IN ACCORDANCE WITH THE CONDITIONS OF THE LETTER OF CREDIT, ARE TO BE FORWARDED BY YOU DIRECTLY TO THE PARTY FOR WHOSE ACCOUNT THE CREDIT WAS OPENED (OR ANY INTERMEDIARY) WITHOUT OUR INTERVENTION.

SINCERELY YOURS,

(NAME OF FIRST BENEFICIARY)

(TELEPHONE NUMBER)

(AUTHORIZED NAME AND TITLE)

(AUTHORIZED SIGNATURE)

(AUTHORIZED NAME AND TITLE)

(IF APPLICABLE)

(AUTHORIZED SIGNATURE)

(IF APPLICABLE)

SIGNATURE GUARANTEED

THE FIRST BENEFICIARY'S SIGNATURE(S) WITH TITLE(S) CONFORMS WITH THAT ON FILE
WITH US AND SUCH IS/ARE AUTHORIZED FOR THE EXECUTION OF THIS INSTRUMENT.

(NAME OF BANK)

(BANK ADDRESS)

(CITY, STATE, ZIP CODE)

(TELEPHONE NUMBER)

(AUTHORIZED NAME AND TITLE)

(AUTHORIZED SIGNATURE)

Exhibit E

Requirements, Conditions and Terms of CUPs and Zoning Code Now Covered By Development Agreement

Doyle 1 CUP:

Obtain qualified personnel for inspection;

A timeframe be in place in case of bankruptcy for decommission or reoccupation;

That a bond agreement for roads include the following:

- All roads not a part of the primary highway system of the State of Kansas intended to be used by the applicant as a means of ingress and egress to the proposed facility shall be designated on the application.
- Final approval of the designated roads to be used shall be made a part of the Conditional Use Permit, if approved.
- A maintenance agreement between the applicant and the County responsible for road maintenance shall be required designating the applicant and/or successor thereto responsible for the maintenance of the designated roads that provide the ingress/egress to the operation.
- Such agreement shall specify the standards to which such roads will be reconstructed prior to development, if necessary, and the standards to which such roads will be subsequently maintained by the owner/operator of the Wind Energy System (WES).
- In addition, such agreement shall specify the form, manner, timing, and frequency of maintenance and upkeep, and will also include training for local Emergency Medical Service (EMS) and fire protection personnel due to project risks.
- The responsibility of determining sufficiency of compliance with the road agreement shall be with Marion County or its designee.

Doyle 2 CUP:

Obtain qualified personnel for inspections;

have a timeframe in place in case of bankruptcy for decommission or reoccupation;

have a bond agreement for roads with the following:

- 1) All roads not part of the primary highway system of the State of Kansas intended to be used by the applicant as a means of ingress and egress to the proposed facility shall be designated on the application.
- 2) Final approval of the designated roads to be used shall be made a part of the CUP.
- 3) A maintenance agreement between the applicant and the county responsible for road maintenance shall be required, designating the applicant and/or successor thereto responsible for the maintenance of the designated roads that provide the ingress/egress to the operation.
- 4) Such agreement shall specify the standards to which such roads will be reconstructed prior to development, if necessary, and the standards to which such roads will be subsequently maintained by the owner/operator of the Wind Energy System (WES).
- 5) In addition, such agreement shall specify the form, manner, timing, and frequency of maintenance and upkeep, and will also include training for local Emergency Medical Service (EMS) and fire protection personnel due to project risks.
- 6) The responsibility of determining sufficiency of compliance with the road agreement shall be with Marion County or its designee;

all conditions must be met as required for approval, including, but not limited to, ... a Payment In Lieu Of Taxes (PILOT) agreement will in place.

Doyle 3 CUP:

- 1) Must obtain qualified personnel for inspection;
- 3) Must have a timeframe in place in case of bankruptcy for decommission or reoccupation;
- 4) Must have a bond agreement for roads including the following:
 - A) All roads not part of the primary highway system of the State of Kansas intended to be used by the applicant as a means of ingress and egress to the proposed facility must be designated on the application.
 - B) Final approval of the designated roads to be used shall be made a part of the CUP.
 - C) A maintenance agreement between the applicant and the county shall be required designating the applicant and/or successor thereto responsible for the maintenance of the designated roads that provide the ingress/egress to the operation.
 - D) Such agreement shall specify the standards to which such roads will be reconstructed prior to development, if necessary, and the standards to which such roads will be subsequently maintained by the owner/operator of the Wind Energy System (WES).
 - E) In addition, such agreement shall specify the form, manner, timing and frequency of maintenance and upkeep, and will also include training for local Emergency Medical Service (EMS) and fire protection personnel due to project risks.
 - F) The responsibility of determining sufficiency of compliance with the road agreement shall be with Marion County or its designee.
- 5) All conditions must be met as required for approval, including, but not limited to...a payment in lieu of taxes (PILOT) agreement will be in place.
- 7) Finally, must honor all conditions for Doyle 1 and 2.

Doyle 4 CUP:

- 1) Must obtain qualified personnel for inspections;
- 3) Must have a timeframe in place in case of bankruptcy for decommission or reoccupation;
- 4) Must have a bond agreement for roads including the following:
 - A) All roads not part of the primary highway system of the State of Kansas intended to be used by the applicant as a means of ingress and egress to the proposed facility must be designated on the application.
 - B) Final approval of the designated roads to be used shall be made a part of the CUP.
 - C) A maintenance agreement between the applicant and the county shall be required designating the applicant and/or successor thereto responsible for the maintenance of the designated roads that provide the ingress/egress to the operation.
 - D) Such agreement shall specify the standards to which such roads will be reconstructed prior to development, if necessary, and the standards to which such roads will be subsequently maintained by the owner/operator of the Wind Energy System (WES).
 - E) In addition, such agreement shall specify the form, manner, timing and frequency of maintenance and upkeep, and will also include training for local Emergency Medical Service (EMS) and fire protection personnel due to project risks.

- F) The responsibility of determining sufficiency of compliance with the road agreement shall be with Marion County or its designee.
- 5) All conditions must be met as required for approval, including, but not limited to ...a payment in lieu of taxes (PILOT) agreement will be in place.
- 7) Finally, must honor all conditions for Doyle 1, 2, & 3.

Doyle A CUP:

- 1) Must obtain qualified personnel for inspections;
- 3) Must have a timeframe in place in case of bankruptcy for decommission or reoccupation;
- 4) Must have a bond agreement for roads including the following:
 - A) All roads not part of the primary highway system of the State of Kansas intended to be used by the applicant as a means of ingress and egress to the proposed facility must be designated on the application.
 - B) Final approval of the designated roads to be used shall be made a part of the CUP.
 - C) A maintenance agreement between the applicant and the county shall be required designating the applicant and/or successor thereto responsible for the maintenance of the designated roads that provide the ingress/egress to the operation.
 - D) Such agreement shall specify the standards to which such roads will be reconstructed prior to development, if necessary, and the standards to which such roads will be subsequently maintained by the owner/operator of the Wind Energy System (WES).
 - E) In addition, such agreement shall specify the form, manner, timing and frequency of maintenance and upkeep, and will also include training for local Emergency Medical Service (EMS) and fire protection personnel due to project risks.
 - F) The responsibility of determining sufficiency of compliance with the road agreement shall be with Marion County or its designee.
- 5) All conditions must be met as required for approval; including, but not limited to... a payment in lieu of taxes (PILOT) agreement will be in place.
- 7) Finally, must honor all conditions for Doyle 1, 2, & 3, and Doyle South.

Expedition 6 CUP:

- 1) Conditional Use Permit ("CUP") holder must provide initial drafts of the following agreements within thirty (30) days following the adoption of a County Resolution approving this CUP, and will work diligently in good faith with the County with a goal of both parties executing such agreements within one hundred twenty (120) days of the Resolution date:
 - a. Must have a Decommissioning Agreement in place covering the decommission and/or reoccupation of the Wind Energy Conversion System ("WECS") in case of bankruptcy.
 - b. Must have a Road Maintenance Agreement in place covering the following:
 - i. The roads to be used for ingress and egress from the WECS that are not part of the State of Kansas highway system;
 - ii. The standards to which such roads will be constructed prior to development, if necessary;
 - iii. The standards to which such roads will be subsequently maintained by the CUP holder;
 - iv. The form, manner, timing and frequency of maintenance and upkeep; and

- v. Training for local Emergency Medical Service (EMS) and fire protection personnel;
 - vi. Reimbursement to the County of expenses of administration of the road use agreement and impact fees, based upon mutually agreed plan for County Administration.
 - c. Must have an agreement in place ensuring the County has adequate security to draw upon in order to cover the cost to mitigate material interference with any of the following systems during the first five years from the commencement of construction:
 - i. 911 emergency radio systems;
 - ii. AM/FM radio systems;
 - iii. County communication towers; and
 - iv. County radar systems, including Doppler Radar;
 - d. Must have an agreement to adequately compensate Marion County for third-party governmental services and for impacts related to the Project.
- 9) Must designate a field representative responsible for overseeing compliance with these CUP conditions.
- 10) Providing and maintaining throughout the life of the Project an indemnification agreement with Marion County, which indemnification terms the County may elect to include instead in other agreements between the CUP Holder and the County rather than a stand-alone agreement, and a policy of general liability insurance with policy limits reasonably satisfactory to the Board of County Commissioners which identifies Marion County as an additional insured.

Zoning Regulations:

27-105(4) this Agreement is the Road Maintenance Agreement referenced therein,
 27-105(10),
 27-105(11) second sentence, and
 27-107(4).

Pursuant to Regulation 26-105, any prior zoning regulations applicable to the terms covered by this Development Agreement are deemed to be in conflict and have been superseded by the current Zoning Regulations.

AFFIDAVIT OF PUBLICATION

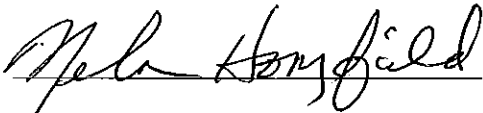
STATE OF KANSAS, MARION COUNTY, ss:

Melvin Honeyfield, being first duly sworn, deposes and says:

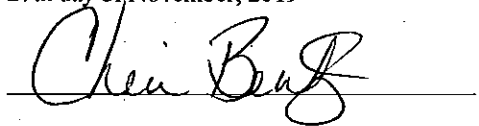
That he is the production manager of the Marion County Record (Hillsboro Star-Journal and Peabody Gazette-Bulletin), a weekly newspaper printed in the State of Kansas, and published in and of general circulation in Marion County, Kansas, with a general paid circulation on a weekly basis in Marion County, Kansas, and that said newspaper is not a trade, religious or fraternal publication.

That said newspaper is a weekly newspaper published at least 50 times a year; has been so published continuously and uninterruptedly in said county and state for a period of more than five years prior to the first publication of said notice; and has been admitted at one or more post offices in said County as Periodical Class matter.

That the attached notice is a true copy thereof and was published in the regular and entire issue of said newspaper, the first publication thereof being made as aforesaid on the 27th day of November, 2019.



Subscribed and sworn to before me this
27th day of November, 2019



Notary Public, Marion County, Kansas
My appointment expires the
12th day of October, 2022

(Seal)

PUBLICATION FEE:
\$306.00 plus \$5.00 for affidavit(s)



First published Nov. 27, 2019, in the
Hillsboro Star-Journal,
Peabody Gazette-Bulletin,
and Marion County Record,
Marion, Kansas (1t)

**MARION COUNTY, KANSAS
RESOLUTION NO. 2019-21**

**A RESOLUTION APPROVING A
COMPREHENSIVE DEVELOPMENT
AGREEMENT FOR A WIND ENERGY
CONVERSION SYSTEM FOR CER-
TAIN LANDS LOCATED WITHIN
THE UNINCORPORATED AREA OF
MARION COUNTY, KANSAS, UNDER
THE AUTHORITY GRANTED BY THE
MARION COUNTY ZONING REGU-
LATIONS ARTICLES 24 AND 27.**

WHEREAS, Expedition Wind LLC ("Ex-
pedition Wind") is the holder of the
following existing Conditional Use
Permits: Marion County Commis-
sion Resolutions Numbered 2010-
19; 2011-22; 2014-13; 2014-22; 2015-5;
2019-11; and 2019-15 (collectively, the
"CUPs"); and

WHEREAS, in accordance with the
CUPs, Expedition Wind desires to con-
struct and operate a wind energy con-
version system on the real property
subject to the CUPs, with an expected
total gross nameplate capacity of ap-
proximately two hundred (200) mega-
watts, subject to total size and con-
figuration in Expedition Wind's dis-
cretion; and consisting of wind tur-
bine generators, meteorological tow-
ers, substations, collection and trans-
mission lines (overhead and under-
ground), access roads, temporary con-
struction areas, operation and mainte-
nance facilities, and other infrastruc-
tures relating thereto (all collectively
referred to as the "Project"); and

WHEREAS, it is in the best interest
of the public health, safety and wel-
fare of Marion County, Kansas ("County")
that Expedition Wind and County
reach an agreement to address pos-
sible issues that may arise pertain-
ing to the design, construction, de-
velopment, use, operation, mainte-
nance, and decommissioning of the
Project, including potential issues that
may arise pertaining to the roads in,
around and near the Project; and

WHEREAS, in accordance with the
CUPs, and to effectuate the forego-
ing, County and Expedition Wind de-
sire to enter into that certain Devel-
opment Agreement, presented in the
form as attached hereto as Exhibit "A"
and incorporated herein (the "Devel-
opment Agreement"), a copy of such
agreement is available for public in-
spection at the Marion County Plan-
ning and Zoning Department, 203 S.
3rd Street, Marion, Kansas, during nor-
mal business hours; and

WHEREAS, the Board of County Com-
missioners of Marion County, Kansas
(the "Governing Body") desire to au-
thorize Kent D. Becker, as Chairman
of the Governing Body, in the name
and on behalf of the Governing Body,
to execute and deliver the Develop-
ment Agreement and all such further
documents, agreements, and instru-
ments necessary or advisable to car-
ry out the intent and accomplish the
purpose of the Development Agree-
ment and the transaction contem-
plated thereby.

**NOW, THEREFORE, BE IT RE-
SOLVED BY THE BOARD OF COUN-
TY COMMISSIONERS OF MARION
COUNTY, KANSAS**, that the Devel-
opment Agreement, as provided in
Exhibit A, is approved and is the cur-
rent and only Development Agree-
ment in effect regarding any of the
CUPs.

FURTHER RESOLVED, that Kent D.
Becker, as Chairman of the Governing
Body, in the name and on behalf of the
Governing Body, is hereby authorized
to execute and deliver the Develop-
ment Agreement and all such further
documents, agreements, and instru-
ments necessary or advisable to car-
ry out the intent and accomplish the
purpose of the Development Agree-
ment and the transaction contem-
plated thereby.

This Resolution shall be in full force
and effect from and after its publi-
cation in the official county news-
paper.

**ADOPTED BY THE BOARD OF
COUNTY COMMISSIONERS** of Mar-
ion County, Kansas, this 25 day of No-
vember, 2019.

BOARD OF COUNTY
COMMISSIONERS
MARION COUNTY, KANSAS

[x] Yea [] Nay [] Abstain

Kent D. Becker

Chairman

[] Yea [x] Nay [] Abstain

Dianne R. Novak

Member

[x] Yea [] Nay [] Abstain

Randy Dallke

Member

[x] Yea [] Nay [] Abstain

David Crofoot

Member

[] Yea [x] Nay [] Abstain

Jonah Gehring

Member

ATTEST:

Tina D. Spencer

Marion County Clerk

A-10-3463