

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT ("Agreement") is made and entered into as of the 14th day of DECEMBER, 2018, by and between Henry County, Indiana (the "County") and Big Blue River Wind Farm, LLC, a Delaware limited liability company, qualified to do business in Indiana (the "Company"). The County and the Company may be referenced herein individually as a "Party" and together as the "Parties".

WITNESSETH:

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

WHEREAS, Section 9.17 of the County's Wind Energy Conversion System Ordinance was recently added via Ordinance No. 2018-(04)-08-22 (as amended, the "Ordinance") and requires the Company enter into an indemnity agreement in connection with its application for commission approved use in connection with the Project;

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

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

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

ARTICLE I. RECITALS

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

ARTICLE II. INDEMNITY

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

causes of action or award of damages as may be attributable to the sole negligence or intentional misconduct of an Indemnitee ("Excluded Claims"). With respect to the penalties, damages or charges referenced herein, attorneys' fees, consultants' fees and expert witness fees in each case as are reasonable are included in those costs that are recoverable by the County.

ARTICLE III. TERM AND TERMINATION

The effectiveness of this Agreement is expressly conditioned on the issuance of the Commission Approved Use for the Project. This Agreement will automatically terminate on the date that is the earlier of (a) any final determination by the Planning Commission or the Zoning Administrator not to issue the Commission Approved Use or the Improvement Location Permit, as applicable, or (b) 180 days after expiration of the latest statute of limitations for filing litigation related to the Project. The parties may agree to any earlier termination only by express, mutual, written agreement.

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

- 4.01 County. The County represents and warrants to the Company as follows:
- a. The County has all requisite authority to enter into this Agreement.
 - b. The County has full constitutional and a lawful right, power and authority to execute and deliver and perform its obligations under this Agreement.
- 4.02 Company. The Company represents and warrants to the County as follows:
- a. The Company has full power and authority to execute, deliver, and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.
 - b. This Agreement has been duly executed and delivered, by the Company and constitutes the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms.

ARTICLE V. GENERAL PROVISIONS

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

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

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

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

To the County:

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

with copy to:

Joel E. Harvey, Esq.
Hayes Copenhaver Crider Harvey, LLP
214 S. Main Street
New Castle, IN 47362
Email: JHarvey@hcclaw.com

If to Developer:

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

with copy to:

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

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

5.04 Assignment.

- a. This Agreement shall (i) remain in full force and effect until the expiration or termination hereof; and (ii) be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.
- b. Except as provided in subsections (c), (d) and (e) below, no Party to this Agreement shall assign, transfer, delegate, or encumber this Agreement or any or all of its rights, interests, or obligations under this Agreement without the prior written consent of the other Party. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned, or delayed; and (ii) without limiting the foregoing, in the case of the County, the County's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of the Company pursuant to this Agreement.
- c. Company may, without the consent of the County, but upon notice to County, assign or transfer this Agreement or any or all of its rights, interests, and obligations under this Agreement to any affiliate or subsidiary, or with the consent of the County (not to be unreasonably withheld), a company that acquires substantially all the assets of Company. Additionally, upon the prior written notice to the County and without consent of the County, Company may assign this Agreement to (i) a public utility (ii) a developer, or (iii) a pension fund, infrastructure fund or similar investment holding company, provided that such assignee shall have comparable experience in constructing and/or operating a wind project in the United States and a net worth of a minimum of \$25,000,000 as confirmed by audited financial statements as of the most immediately prior year end.
- d. Any assignment pursuant to this Section shall be subject to the assignee agreeing in writing to be bound by the terms of this Agreement. Any notice of assignment required to be delivered by Company pursuant to this Section shall be in writing, shall set forth the basis for the assignment, including such supporting information as may be necessary to demonstrate compliance with this Section, and shall be delivered to the County not less than forty-five (45) days prior to the effective date of the assignment. The restrictions on the Company's ability to assign this Agreement set forth in this Section shall expire ten (10) years after the date of the completion of the Project; provided however, following the expiration of such restrictions, the Company shall still provide notice of any assignment of this Agreement to the County not less than forty-five (45) days prior to the effective date of the assignment, the assignee shall still agree in writing to be bound by the terms of this Agreement.

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

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

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

5.07 Consent to Jurisdiction. This Agreement has been delivered to the County and is to be performed in Henry County, Indiana, and shall be governed and construed according to the laws of the State of Indiana. With respect to all matters arising under this Agreement to be filed with courts of general jurisdiction, Company hereby designate(s) all courts of record sitting in Henry County, Indiana with respect to state subject matter jurisdiction and Marion County, Indiana with respect to federal subject matter jurisdiction, as forums where any such action, suit, or proceeding in respect of or arising from or out of this Agreement, its making, validity or performance, may be prosecuted as to all parties, their successors and assigns, and by the foregoing designation the undersigned consent(s) to the jurisdiction and venue of such courts. Company hereby waives any objection which it may have to any such proceeding commenced in a state court located within Henry County, Indiana, based upon proper venue or forum non conveniens. With respect to all legal matters arising under this Agreement which are required by law to be initiated before a state or federal administrative agency, or for which jurisdiction is

assigned by statute to a state or federal court with exclusive jurisdiction over such matter, jurisdiction shall be proper before such agency or court. All service of process may be made by messenger, or certified mail, return receipt requested or by registered mail directed to the Party at the address indicated herein and each Party hereto otherwise waives personal service of any and all process made upon such Party.

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

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

5.10 Force Majeure. If the Company's performance of its obligations under this Agreement is prevented, delayed, or otherwise impaired at any time due to any of the following causes, then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances: acts of God, extreme weather, war, civil strife or other violence, riots, or damage to work in progress by reason of fire or other casualty, strikes, lock outs or other labor disputes; delays in transportation; inability to secure labor or materials in the open market; terrorism, sabotage; the effect of any law, proclamation, action, demand or requirement of any government agency.


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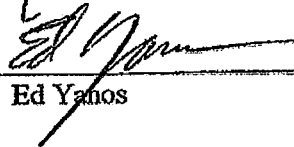
IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

HENRY COUNTY, INDIANA


Board of Commissioners of Henry County, Indiana


By: 
Bruce Baker


By: 
Kim L. Cronk

By: 
Ed Yanos

ATTEST


Patricia A French
Auditor, Henry County, Indiana

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

By: 
Vice President