

Casey A. Furey  
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P.O. Box 2798  
Bismarck, ND 58502-2798  
701.223.6585  
cfurey@crowleyfleck.com

July 6, 2016

*Via US Mail*

Mr. Darrell Nitschke  
Executive Director  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480



In re: Oliver Wind III, LLC  
Case Nos. PU-16-122 and PU-16-123  
Our File No. 35-218-029

Dear Mr. Nitschke:

Enclosed for filing in the captioned cases please find two copies of the Morton County Road Agreement.

Please call should you have any questions.

Sincerely,

**CROWLEY FLECK PLLP**

A handwritten signature in blue ink, appearing to read "Casey A. Furey", written over the firm name.

Casey A. Furey

CAF/rw

Enc.

cc: Sara Cardwell (via email)

## ROAD MAINTENANCE AGREEMENT

This ROAD MAINTENANCE AGREEMENT (“**Agreement**”) is made and entered into this 5<sup>th</sup> day of July, 2016, between Oliver Wind III, LLC, a Delaware limited liability company, its successors and assignees, whose address for purposes of notices is 700 Universe Boulevard, FEW/JB, Juno Beach, FL 33408 (hereinafter referenced as “**Wind Company**”) and Morton County, North Dakota, whose address for purposes of notices is 2916 37<sup>th</sup> Street NW, Mandan ND 58554 (hereinafter referenced as “**County**”). Wind Company and County are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”).

WHEREAS:

1. Wind Company is developing a wind-powered electric generating facility project known as the Oliver III Wind Energy Center (“**Project**”) with all necessary access needs located in Morton and Oliver Counties, North Dakota.
2. County is responsible for the maintenance of certain county roads within Morton County, North Dakota.
3. In connection with the development, construction and operation of the Project, it will be necessary for the Wind Company, its contractors and subcontractors or designees to: (i) transport heavy equipment and materials over designated haul routes located in the county and on county roads, which may in certain cases be in excess of the design limits of such roads, (ii) transport personnel, equipment and materials on such roads; (iii) widen such roads, widen radius of field entrances, and make certain other modifications and improvements (temporary and permanent) to such roads (including to certain culverts, bridges, road shoulders and other related fixtures) to permit such equipment and materials to pass, and (iv) place certain electrical cables for the project adjacent to or under certain roads for the purposes of the collection, distribution, and transmission of electricity to and from, and between and among the various parts of the Project. Wind Company, its contractors and subcontractors will permit all oversize and overweight loads with Morton County through the Morton County Moving Permit application process.
4. County and Wind Company wish to enter into an agreement for the use, repair, maintenance and improvement of the designated roads, all in accordance with the terms and conditions set forth herein.

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

1. Obligations of Wind Company

a. Roads: Maintenance and Repairs:

- i. Pre-construction, consultation and documentation: Prior to the commencement of construction of the Project, Wind Company shall consult with County's Road Supervisor regarding any available information on load pass and restrictions and bridge inspections on the respective roads or bridges on the proposed project transportation route.
  - ii. Documentation: Wind Company shall, at its expense, provide County with videotape or other media documenting the preconstruction condition of all County roads to be used by Wind Company during the construction or operation of the Project.
  - iii. Repair to roads: Wind Company shall, at its expense, contract with qualified contractors to repair any damage to the roads and bridges directly arising out of Wind Company, its contractors and subcontractors transportation of equipment and project components during the construction of the Project. Wind Company shall complete its final road repair obligations to the reasonable satisfaction of the Road Supervisor within one (1) month after Wind Company completes construction of the Project, or as soon thereafter as weather conditions permit.
  - iv. Emergency conditions and repairs: Wind Company shall promptly notify the Road Supervisor or his representatives of any road or bridge emergency discovered by Wind Company, its contractors or subcontractors. In the event such hazardous road or bridge condition arises out of use associated with the development of the Project, and is not corrected by Wind Company within a reasonable time after the discovery of such condition, the Road Supervisor may cause emergency road or bridge repair to be conducted at the County's initial expense, and Wind Company shall reimburse the County for the reasonable repair costs incurred by the County for such emergency repairs within thirty (30) days after receiving a written invoice of such repair costs.
- b. Transportation route consultation: Prior to commencing construction activities for the Project, Wind Company agrees to consult with and receive input from the Road Supervisor regarding the transportation route(s) to be used by Wind Company, its contractors and subcontractors. Prior to construction, but within thirty (30) days of receiving notification of the proposed transportation route, the Road Supervisor (and Bridge Supervisor) will notify Wind Company if certain roads or bridges included in the proposed route are not suitable for Wind Company's use. Wind Company may then choose to either make any necessary improvements to such unsuitable road or bridge to accommodate the utilization of the

proposed transportation route, or, if the proposed route would require major improvement, Wind Company may revise the proposed route to include alternative routes. Wind Company shall prepare a map indicating the routes to be used in the construction and maintenance of the Project based on its consultations with the Road Supervisor and shall provide a copy of such map to the Road Supervisor.

- c. Road Treatment. Wind Company is responsible for a one-time treatment using magnesium chloride to County specifications on County Road 83 for the Morton and Oliver County Line to the North exit ramp of I-94 and County Road 140 from the intersection of County Road 83 to the East boundary of the Oliver III Subdivision.
- d. Alternate routes: It is the expectation of the Parties that all contractors and subcontractors associated with this Project shall use the agreed upon project transportation route. If it is learned by either Party that a contractor or subcontractor is using an alternate route not considered by the Parties in this Agreement, the Party learning of the use of the alternate route shall notify the other Party in writing. Wind Company shall be responsible for the repair and maintenance of the alternate routes being used in the same manner as the project transportation route agreed to by the Parties prior to construction.
- e. Cooperation: Wind Company and the County agree to communicate and cooperate in good faith concerning the safe implementation of the Project and preventing or correcting any hazardous road conditions that may be created by the Project.
- f. Engineer: If necessary to determine appropriate and safe routes, Morton County, at its discretion, may consult with a qualified and certified bridge engineer regarding load pass. Wind Company shall reimburse Morton County for all reasonable expenses and fees incurred by the County for such consultation.
- g. Temporary access: Wind Company shall promptly notify the Road Supervisor if it shall be necessary to construct or partially construct any temporary access on County roads in order to construct the Project and Wind Company shall further agree to return such access to its original status unless agreement is reached by the Parties.
- h. Indemnification: Wind Company, to the fullest extent permitted by law, agrees to defend, indemnify and hold harmless the County and its commissioners, administrators, employees and representatives against any and all losses, damages and claims, expenses and liabilities for physical damage to the property of the County and for physical injury to any

person, including, without limitation reasonable attorney fees, to the extent directly resulting from or arising out of performance of work upon County roads by Wind Company or result from any breach of any representation or warranty made in this Agreement by Wind Company. Furthermore, Wind Company agrees to defend, indemnify and hold harmless the County from any third party claims arising out of the terms and conditions of this Agreement. Notwithstanding the foregoing, Wind Company obligations under this section shall not apply to the extent any such losses, damages, claims or injuries arise out of the negligence or willful misconduct of the County, its commissioners, administrators, employees or representatives. This indemnification obligation shall survive the termination of this Agreement.

- i. Insurance: Wind Company shall at all times during construction and operation of the Project carry (i) worker's compensation insurance and employer's liability insurance in accordance with the laws of the State of North Dakota, (ii) commercial general liability insurance with minimum limits of \$1,000,000.00 per occurrence, and (iii) automobile liability insurance. Certificates of insurance shall be provided to the County upon written request to the Company.
- j. Compliance with Law: Wind Company shall at all times comply with all federal, state and local laws, statutes, ordinances, rules and regulations, judgments and other valid orders of any governmental authority with respect to Wind Company's activities associated with the Project and shall obtain all necessary permits, licenses and orders required to conduct any and all such activities.

## 2. Obligations of Morton County

- a. Notification: County shall give timely notification to Wind Company of any condition which comes to its attention which may give rise to a road repair obligation, or which would constitute a hazardous road condition.
- b. Cooperation: Wind Company and County agree to communicate and cooperate in good faith concerning the safe implementation of the Project and preventing or correcting any hazardous road conditions that may be created by the Project.

3. Entire Agreement: It is mutually understood and agreed that this Agreement constitutes the entire agreement between the Parties regarding road maintenance and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representations or statements, verbal or written, have been made to modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in writing executed by the Parties.

4. **Default:** Any failure by a Party to this Agreement to perform a material obligation hereunder which is not remedied within thirty (30) days after receipt by the defaulting party of written notice of such failure shall be deemed a default under this Agreement and allow the non-defaulting party to terminate this Agreement. Notwithstanding the foregoing, so long as the defaulting party has initiated and is diligently attempting to affect a cure, the defaulting party's cure period shall be extended for a time period reasonably sufficient for the default to be remedied.

5. **Relationship of the Parties:** The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between the Parties or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act or be an agent or representative of, or to otherwise bind, the other Party.

6. **Severability:** Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated are fulfilled to the fullest extent possible.

7. **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Dakota. In any litigation arising from or related to this Agreement, the Parties hereto each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement.

8. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page to this Agreement by electronic mail shall be as effective as delivery of an originally signed counterpart to this Agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written.

**MORTON COUNTY ENGINEER  
MORTON COUNTY, NORTH DAKOTA**

Mike Aubol  
Mike Aubol, PE

*Agreement includes additional items on following email correspondence.*

ATTEST:

Brandy Selland  
Brandy Selland

**OLIVER WIND III, LLC**

By:

John DiDonato  
John DiDonato, Vice President

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## Mike Aubol

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**From:** Trumbauer, Mark <MARK.TRUMBAUER@nexteraenergy.com>  
**Sent:** Wednesday, June 29, 2016 9:53 AM  
**To:** Mike Aubol  
**Cc:** Rausch, Dick  
**Subject:** Re: add on for Road Use/Morton County/[Oliver III] Morton County, ND

Mike, I concur with Dick and approve of the items listed. Thank you.

Mark Trumbauer  
Project Manager  
NextEra Energy Resources  
(515) 664-0050

On Jun 28, 2016, at 11:26 PM, Rausch, Dick <[Dick.Rausch@nexteraenergy.com](mailto:Dick.Rausch@nexteraenergy.com)> wrote:

I agree and have no issues with the requirements proposed.

Dick Rausch  
512-970-6254

On Jun 28, 2016, at 7:39 PM, Trumbauer, Mark <[MARK.TRUMBAUER@nexteraenergy.com](mailto:MARK.TRUMBAUER@nexteraenergy.com)> wrote:

Dick, please confirm you are ok with this.

Mark Trumbauer  
Project Manager  
NextEra Energy Resources  
(515) 664-0050

Begin forwarded message:

**From:** Mike Aubol <[Mike.Aubol@mortonnd.org](mailto:Mike.Aubol@mortonnd.org)>  
**Date:** June 28, 2016 at 5:16:17 PM EDT  
**To:** "Trumbauer, Mark" <[MARK.TRUMBAUER@nexteraenergy.com](mailto:MARK.TRUMBAUER@nexteraenergy.com)>  
**Subject:** add on for Road Use/Morton County/[Oliver III] Morton County, ND

**CAUTION - EXTERNAL EMAIL**

Mark,

This should do it.

To be included in Road Treatment is:

and maintenance of County 83 and County 140 from the east subdivision line to County 83 which includes continued

stabilization of said roadways by either watering or re-application of magnesium chloride

All section line roadways utilized by Wind Company that Morton County does not currently maintain under full maintenance will be reshaped by Wind Company and 4" gravel surfacing applied.

Temporary approaches and widened radius' will be removed once construction is complete.

Sincerely,

Mike Aubol, PE  
Morton County Engineer  
2916 37<sup>th</sup> St NW  
Mandan ND 58554  
(701)667-3346

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**From:** Trumbauer, Mark  
[mailto:[MARK.TRUMBAUER@nexteraenergy.com](mailto:MARK.TRUMBAUER@nexteraenergy.com)]  
**Sent:** Monday, June 27, 2016 8:34 AM  
**To:** Mike Aubol  
**Cc:** Natalie Pierce; Wilhelm, Tyler  
**Subject:** FW: Road Use/Morton County/[Oliver III] Morton County, ND

Mike, please find the attached Road Agreement.

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**From:** Llama, Nancy  
**Sent:** Monday, June 27, 2016 9:32 AM  
**To:** Trumbauer, Mark  
**Subject:** FW: Road Use/Morton County/[Oliver III] Morton County, ND

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**From:** Llama, Nancy  
**Sent:** Friday, June 24, 2016 4:59 PM  
**To:** Shakerdge, Orin  
**Subject:** RE: Road Use/Morton County/[Oliver III] Morton County, ND