

CASS COUNTY
DECOMMISSIONING AGREEMENT

This Decommissioning Agreement (“Agreement”) dated as of _____, 2018 (“Effective Date”) by and between Harvest Wind Energy LLC, a Delaware limited liability company, qualified to do business in Indiana (the “Company”) and Cass County, Indiana (the “County”).

RECITALS

WHEREAS, the Company desires to build a wind-powered electric generating facility in the County (the “Wind Farm” or “Project”);

WHEREAS, the Company has or will enter into certain lease and easement agreements (collectively, the “Landowner Agreements”) with the landowners within the Wind Farm area (the “Landowners”);

WHEREAS, pursuant to Section 523 of the Cass County, Indiana Zoning Ordinance in effect as of the Effective Date (the “Ordinance”), the County and the Company are required to formulate a decommissioning plan for the Project, including the anticipated means and cost of removing a Wind Energy Conversion System (“WECS”) at the end of its serviceable life or upon becoming a discontinued or abandoned use to ensure that the WECS is properly decommissioned, and for the provision by the Company of financial assurance, in the form of a bond, letter of credit or other security acceptable to the County, to cover at least the estimated cost of decommissioning the Wind Farm;

WHEREAS, the Company shall post a performance or surety bond or letter of credit to cover the estimated cost of decommissioning the Wind Farm upon the terms and conditions more fully set forth below;

WHEREAS, pursuant to Section 523.08(E) of the Ordinance, if the County removes towers and appurtenant facilities related to the Project, the County may, but shall not be required to, use the salvage value of Generating Units (as defined below) located within the Wind Farm to cover the costs of decommissioning in the event the Company and its lenders fail to complete the decommissioning in accordance with the Ordinance; and

WHEREAS, for purposes of this Agreement, “Generating Units” are defined to include, but not be limited to, wind power facilities, transformers, met towers, underground cable circuits, site roads and collector substations.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1
BOND ISSUANCE

Section 1.1 Agreement to Decommission; Restoration Fund Amount. Company shall decommission each Generating Unit and related improvements pursuant to the terms of this Agreement and the Ordinance. This Agreement shall be deemed the decommissioning plan under Section 523.08 of the Ordinance. The Company shall decommission each Generating Unit and related improvements upon the discontinuation of use (“Discontinuation of Use”), which, under Section 523.08 (B) of the Ordinance, shall be deemed to occur upon the failure of such Generating Units to produce electricity for twelve (12) consecutive months, unless a plan outlining the steps and schedule for returning the Generating Units to service is submitted and approved by the Cass County Planning Department or such failure is a result of a Force Majeure event (defined below). The approval of the Cass County Planning Department of such a plan may not be unreasonably withheld. If the Company’s performance of its obligations to decommission pursuant to such a plan is prevented, delayed, or otherwise impaired at any time due to any of the following causes, then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances: acts of God, extreme weather, war, civil commotion, riots, or damage to work in progress by reason of fire or other casualty, strikes, lock outs or other labor disputes; delays in transportation; inability to secure labor or materials in the open market; war, terrorism, sabotage, civil strife or other violence; or the effect of any law, proclamation, action, demand or requirement of any government agency (any such cause, a “Force Majeure event”).

After the Cass County Plan Commission approves the Wind Farm use and prior to the issuance of the Improvement Location Permit and Building Permit, the Company shall deliver to County a bond, letter of credit or other security securing performance of the decommissioning obligations, in such form as reasonably acceptable to the County (the “Restoration Fund”), issued by a financial institution, one of the companies listed in the latest version of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies,” Department Circular 570, issued by the Department of the Treasury, or other company reasonably acceptable to the County (the “Assurance Provider”). The amount of the Restoration Fund shall be equal to the greater of one hundred twenty percent (120%) of the amount by which the cost of removing the Generating Units exceeds the salvage value of such Generating Units (the “Net Removal Cost”) or twenty-five percent (25%) of the estimated costs of removing the Generating Units (the “Removal Cost”). The Net Removal Cost and the Removal Cost shall be determined as follows. The Company shall retain a licensed professional engineer, a contractor capable of completing the decommissioning, or a person with suitable expertise or experience with decommissioning wind farms (a “Professional Engineer”), to provide an estimate of the Net Removal Cost and the Removal Cost, which Professional Engineer shall be subject to reasonable approval of the County. If the Parties cannot agree on the Professional Engineer, then the County and the Company shall each select a Professional Engineer licensed in Indiana and the Professional Engineers thus selected shall select a third Professional Engineer which shall each provide an estimate of the Decommissioning Costs. The amount of the Restoration Fund shall be based on the average of the three estimates. The Professional Engineer’s estimate of the Net Removal Cost and the Removal Cost shall include a reasonable adjustment factor for inflation. Company shall pay the cost of retaining the Professional Engineer or Engineers. Company shall keep the Restoration Fund, or a like replacement security, in force throughout the remainder of the term of this Agreement..

Beginning with any replacement or extension of the Restoration Fund on or after five (5) years from the date of this Agreement, an updated estimate of the Net Removal Cost and the Removal Cost shall be prepared by the Professional Engineer or Engineers who provided the original estimates (as set out in Section 1.1) or if such engineer is unwilling or unable to provide a new estimate, a new Professional Engineer or Engineers selected based on the above process, and the Restoration Fund shall be in an amount equal to the greater of one hundred twenty percent (120%) of the Net Removal Cost or twenty-five percent (25%) of the Removal Cost, and for purposes of estimating the salvage value, any turbine or other portion of the Generating Unit that is subject to a lien or security interest for the benefit of a lender or creditor of the Company or other party (other than the County) shall be deemed to have salvage value only to the extent that the salvage value exceeds the amount of the lien. At least ten business (10) days prior to such delivery of the initial or any replacement or extension of the Restoration Fund, the Company shall submit to the County the name of the provider of the Restoration Fund and the documents governing the issuance of the Restoration Fund, both of which shall be subject to the approval of the County, such approval not to be unreasonably withheld.

Section 1.2 Restoration Fund Provider; Restoration Fund Beneficiaries. At least sixty (60) days prior to delivery of the Restoration Fund to the County, the Company shall submit to the County the name of the Assurance Provider and the proposed form of the Restoration Fund, both of which shall be subject to the approval of the County, such approval not to be unreasonably withheld. The County shall be named as the beneficiary of the Restoration Fund, provided, however, that the disbursement of and rights to the Restoration Fund funds shall be governed by Article 2 below; and provided further, that the Landowners may also be beneficiaries of the Restoration Fund. The Company represents that it has not granted and the Company shall not grant to the Landowners or any other party rights to the Restoration Fund senior to the rights of the County to the Restoration Fund.

Section 1.3 Restoration Fund Renewal. The Company shall deliver to the County not later than one hundred twenty (120) days prior to the expiration date of the then-current Restoration Fund (the "Renewal Deadline"), a certificate of continuation extending the expiration date of the then-existing Restoration Fund for an additional period of five (5) years (the "Certificate of Continuation").

Section 1.4 Failure to Provide Restoration Fund. If the Company fails to provide the Restoration Fund or Certificate of Continuation as provided in Sections 1.2 and 1.3, the County shall provide written notice to Company and Company shall be afforded thirty (30) business days' opportunity to cure prior to County's declaring a default under this Agreement. If Company fails to provide the Restoration Fund or Certificate of Continuation as provided in Sections 1.2 and 1.3 after such thirty (30) business days and the County declares an event of default hereunder, the County shall have the right to (a) seek any necessary injunctive or equitable relief available under applicable law to effect the providing of the Restoration Fund or any other requirement under this Agreement, (b) pay any premium necessary to continue or establish the Restoration Fund, in which case Company shall reimburse the County for the amount of such premium, (c) draw on the Restoration Fund, deposit the drawn funds in a bank account, and apply such funds to the decommissioning the Generating Units, and (d) seek all remedies at law. Company shall pay to County the County's reasonable attorney and

professional fees and other costs with respect to the pursuit and implementation of such remedies.

ARTICLE 2
DISBURSEMENT OF SECURITY

Section 2.1 Rights of County. In the event of Discontinuation of Use, if the Company and its lenders fail to decommission the Wind Farm in accordance with the requirements of the Ordinance, the County may, in its sole election, undertake the decommissioning of the Wind Farm. The County's election to decommission all or any portion of the Wind Farm shall not create an obligation to the Landowners, the Company or any other third party to complete the decommissioning of all or part of the Wind Farm. In the event the County elects to undertake the decommissioning of the Wind Farm, it may make a claim(s) upon the Restoration Fund to the Assurance Provider for the Net Removal Cost subject to the limitations set forth herein. Any claim made by the County upon the Restoration Fund shall be limited to such expenses incurred by the County for the removal of all Generating Units to no less of a depth of four (4) feet below the surface and the restoration of the Wind Farm area, as set forth in Section 523.08(C) of the Ordinance, including reasonable professional fees (the "Decommissioning Obligations").

Section 2.2 County Cooperation. In the event of Discontinuation of Use, if the County elects not to undertake or complete the decommissioning of all or any portion of the Wind Farm, the County shall execute all documentation reasonably required or requested by the Restoration Fund, the Assurance Provider, the Landowners, the Company and/or its lenders necessary to waive the County's rights to all or the corresponding portion, as applicable, of the Restoration Fund funds and to otherwise permit any of the foregoing to make claims against all or the corresponding portion, as applicable, of the Restoration Fund or at the request of any of the foregoing, return all or the corresponding portion, as applicable, of the Restoration Fund to Company. Additionally, the County and any Landowners may enter into a "Letter of Understanding" (in recordable form) by which certain Wind Farm facilities such as access roads and out buildings, as deemed necessary or useful by such Landowners, may be allowed to remain.

Section 2.3 Landowner Agreements. The Company represents that all Landowner Agreements for Generating Units shall contain terms that provide financial assurance in the event of abandonment of the Project by the Company, including access to the salvage value of the Generating Units, for Landowners to ensure that the Generating Units and related improvements are properly decommissioned within one (1) year of expiration or earlier termination of the Project, as required by Section 523.08 of the Ordinance.

Section 2.4 Release of Restoration Fund. The Assurance Provider shall release the Restoration Fund when the Company has demonstrated to the reasonable satisfaction of the County that the Decommissioning Obligations have been satisfied.

ARTICLE 3
SALVAGE VALUE

Section 3.1 County Right to Salvage Value of Generating Units. If the Company fails to decommission the Wind Farm in accordance with the terms of the Ordinance and this Agreement in the event of a Discontinuation of Use, or if the Company fails to provide the Certificate of Continuation as required under this Agreement, then, in addition to any rights to make a claim upon the Restoration Fund, the Generating Units within the Wind Farm shall be deemed abandoned and pursuant to Section 523.08(B) of the Ordinance, the County is hereby afforded a license to enter the Wind Farm to remove Generating Units and shall be entitled to apply the salvage value of the Generating Units to any costs of decommissioning the Wind Farm in excess of the funds available under the Restoration Fund. Provided, however, in no event shall salvage value be retained by the County if the Restoration Fund is adequate to cover the Decommissioning Obligations, and any amount recovered by the County in excess of its actual incurred decommissioning costs, the costs incurred by the County in selling the Generating Units to collect the salvage value, and any and all other expenses and damages incurred by the County as a result of the Company's failure to decommission the Wind Farm or additional default of the Company under this Agreement shall be promptly refunded by the County to the Company.

Section 3.2 Salvage Value. For purposes of this Agreement, the salvage value is the net value of the towers, nacelle; generators, turbines, blades, wires, transformers, and all other saleable parts and commodities which make up the Generating Units (except for underground cable circuits), whether sold as used parts or on a commodity/scrap basis, or any combination thereof (whichever is greater) after deducting the amount necessary to pay and satisfy all liens, security interests, and other encumbrances attaching to the Generating Units and the sum of all costs incurred in connection with the sale of Generating Units, including advertising and reasonable professional fees.

Section 3.3 Underground Cabling Circuits. Notwithstanding any provision to the contrary in this Agreement, the obligation of the Company to decommission the Generating Units pursuant to the terms of this Agreement shall not include an obligation to remove any underground cable circuits or cabling, unless specifically requested to do so in writing by the owner of the land upon which such underground cable circuits or cabling are located or by the County with respect to any underground cable circuits or cables located in the right-of-way of County roads.

ARTICLE 4

OTHER RIGHTS OF COUNTY

Section 4.1 Other Relief. If the Company fails to decommission the Wind Farm in accordance with the terms of the Ordinance and this Agreement in the event of a Discontinuation of Use, or if the Company fails to provide the Certificate of Continuation as required under this Agreement, then, in addition to any other rights and remedies granted herein, the County shall have the right to seek any injunctive relief available under applicable law to effect or complete the decommissioning of the Wind Farm. In addition, the County shall have the right to seek reimbursement from Company, its successors or assigns, for any costs of decommissioning the Wind Farm incurred by the County in excess of the funds available under the Restoration Fund and the salvage value of the Generating Units.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

Section 5.1 Representations, Warranties and Covenants of County. The County represents and warrants to the Company as follows:

- a. The County 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 County and constitutes the legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.
- c. The execution, delivery, and performance of this Agreement by the County will not, to the best of County's knowledge, violate any applicable law of the State of Indiana.

Section 5.2 Representations, Warranties and Covenants of 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 6
DISPUTES; DETERMINATIONS

Section 6.1 Default; Disputes. The breach of or default under this Agreement by the Company shall constitute a breach of the Ordinance, and any remedies set forth under the Ordinance shall be in addition to the remedies set forth in this Agreement. In the event of any dispute as to any amount to be paid pursuant to this Agreement, the right of the County to the Restoration Fund funds and the salvage value of the Generating Units shall take priority over the rights of the Landowners as set forth in this Agreement.

ARTICLE 7
TERM

Section 7.1 Term. The term of this Agreement shall commence on the date of this Agreement, and this Agreement and County's rights hereunder shall terminate upon the completion of the decommissioning of the Wind Farm in accordance with the terms of this Agreement. Upon termination of this Agreement, the County shall execute all documentation necessary or reasonably required in order to release and waive all claims to the Restoration Fund and the salvage value of the Generating Units upon the request of the Company.

ARTICLE 8
MISCELLANEOUS

Section 8.1 No Waiver; Remedies Cumulative. No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or remedy shall operate as a waiver thereof. No single or partial exercise by any party hereto of any such right, power or remedy hereunder shall preclude any other further exercise of any right, power or remedy hereunder. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

Section 8.2 Notices. All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given or made in writing (including by telecopy) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by telecopier with confirmation of receipt received, personally delivered, delivered by overnight courier upon confirmation receipt, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein.

If to Company:

Harvest Wind Energy, LLC
11101 W. 120th Avenue
Broomfield, CO 80021

If to Financing Parties: To the address indicated in each Financing Party's notice sent to County under Section 8.4(f) hereof

If to the County:

Cass County Commissioners
Cass County Government Building
200 Court Park
Logansport, IN 46947
Attn: County Auditor

All notices to the County shall include a copy to:

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

Section 8.3 Amendments. This Agreement may be amended, supplemented, modified or waived only by an instrument in writing duly executed by each of the parties hereto.

Section 8.4 Successors and Assigns.

- a. This Agreement shall (i) remain in full force and effect until the termination hereof pursuant to Section 7.1 herein; 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) (e) and (f) below, no party to this Agreement shall assign, transfer, delegate, or encumber this Agreement or any or all of its rights, interests, or obligations under this Agreement without the prior written consent of the other party. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned, or delayed; and (ii) without limiting the foregoing, in the case of the County, the County's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of the Company pursuant to this Agreement.
- c. Company may, without the need for consent of the County, but upon notice to County, assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement to any affiliate or subsidiary or, with the consent of the County (not to be unreasonably withheld), a company or other entity that acquires substantially all of the assets of the Company. So long as assignee assumes in writing all assigned obligations under this Agreement, Company shall be released from liability for the assigned obligations hereunder. Additionally, with prior written notice to the County but without the need for consent of the County, Company may assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement, to a public utility
- d. Company will not be required to obtain consent of the County for or in connection with (i) a corporate reorganization of Company or any of its direct or indirect affiliates, or (ii) a sale or transfer of equity interest of Company or any direct or indirect affiliate of Company.
- e. Any transfer or assignment pursuant to this Section shall be subject to the assignee agreeing in writing to be bound by the terms of this Agreement to the extent of the assigned rights, interests, and obligations hereunder. Any transfer or assignment of this Agreement by Company to an assignee shall be subject to Company assigning its rights and obligations under the Agreement for Use of Roads and Drainage Agreement dated the date hereof (the "Road Use Agreement") and the Economic Development Agreement dated the date hereof (the "Economic Development Agreement") to the same assignee to the extent of the assigned rights, interests, and obligations hereunder. Any notice of assignment required to be delivered by Company pursuant to this Section shall be in writing, shall set forth contact information for the assignee and 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 thirty (30) days prior to the effective date of the assignment. The restrictions on the Company's ability to transfer or assign this Agreement set forth

in this Section shall expire on the later of (i) the payment of the last Economic Development Payment by the Company to the County, or (ii) ten (10) years after the date of the completion of the Project; provided however, following the expiration of such restrictions, the Developer shall still provide notice of any assignment of this Agreement to the County not less than forty-five (45) days prior to the effective date of the assignment, the assignee shall still agree in writing to be bound by the terms of this Agreement, and any assignment of this Agreement by Company to an assignee shall still be subject to Company assigning its rights and obligations under the Road Use Agreement and the Economic Development Agreement to the same assignee, all as provided in this Section.

- f. Company may also, without the need for prior approval of the County, enter into any partnership, joint venture or contractual arrangement, including but not limited to, a partial or conditional assignment of equitable interest in whole or in part in the Company or its parent or affiliate to any person or entity, including but not limited to tax equity investors, or by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Project or any portion thereof (any of the foregoing actions, a "Collateral Assignment") and County shall agree to execute and deliver any reasonably requested estoppels related to a Collateral Assignment. Promptly after making such encumbrance, 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. Upon its receipt of notice of any Financing Parties, County shall provide all such Financing Parties with notice of any alleged breach or default under this Agreement and a reasonable time to cure such breach or default, and shall accept any cure of a breach or default by a Financing Party.

Section 8.5 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement constitutes the entire agreement and understanding among the parties hereto with respect to matters covered by this Agreement and supersedes any and all prior agreements and understandings, written or oral, relating to the subject matter hereof.

Section 8.6 Severability. If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by applicable law: (a) the other provisions hereof shall remain in full force and effect in such jurisdiction in order to carry out the intentions of the

parties hereto as nearly as may be possible; and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

Section 8.7 Headings. Headings appearing herein are used solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 8.8 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Indiana. Venue for any action related to this Agreement shall be in a court of appropriate jurisdiction located in Cass County, Indiana.

Section 8.9 Road Use Agreement. Company and the County acknowledge that decommissioning of the Wind Farm may, to the extent oversize and overweight vehicles are used, constitute an "Extraordinary Event" under Section 27 of the Road Use Agreement, which may require the provision of additional amounts for the Restoration Fund to cover the cost of any potential damage or destruction to the County roads which may be incurred during such decommissioning.

IN WITNESS WHEREOF, this Agreement has been duly executed on the date and year first written above.

Company:

Harvest Wind Energy, LLC

By: _____

Name: _____

Title: _____

County:

Board of Commissioners of Cass County,
Indiana

By: _____

By: _____

By: _____

ATTEST:

By: _____
Auditor, Cass County, Indiana