

## **APPENDIX C: ROAD MAINTENANCE AGREEMENT**

**ROAD MAINTENANCE AGREEMENT**  
**(Elk County)**

**THIS ROAD MAINTENANCE AGREEMENT** (this “**Agreement**”) is made as of the 31<sup>st</sup> day of December, 2008, by and between Caney River Wind Project, LLC, a Kansas limited liability company (“**Caney River**”), and The Board of County Commissioners of Elk County, Kansas (“**County**”) (collectively, Caney River and County are sometimes referred to as the “**Parties**”).

**RECITALS:**

A. Caney River intends to develop and construct a wind-powered electrical generating facility located in Elk County, together with all necessary and ancillary improvements thereto, including access improvements (the “**Project**”).

B. The development and construction of the Project will entail the traverse of special construction equipment and/or heavily laden trucks over roads maintained by the County;

C. The Parties agree that it is in the best interest of each to memorialize the rights, obligations and responsibilities of the Parties with respect to Caney River’s use of County roads during the construction and operation of the Project.

**AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties to this Agreement hereby stipulate and agree as follows:

1. **Obligations of Caney River.**

a. **Roads; Maintenance and Repairs:**

(i) **Pre-construction consultation and documentation:** Prior to the commencement of construction of the Project, Caney River shall consult with the County’s Road Supervisor (or equivalent responsible County representative) regarding any available information on load pass and restrictions and bridge inspections on the respective roads or bridges. Also prior to the commencement of construction of the Project, Caney River shall, at its expense, provide the Road Supervisor with videotape or other media documenting the pre-construction condition of all County roads to be used by Caney River during the construction or operation of the Project.

(ii) **Construction improvements:** Subject to (b) and (c) below, Caney River shall, at its expense, construct any improvements to roads that Caney River deems necessary to construct the Project. If Caney River reasonably

deems it necessary to improve any bridge, box culvert or other similar facility, County and Caney River shall mutually agree on a cost-sharing arrangement for such improvement prior to Caney River constructing such improvements.

- (ii) Repair to roads: Caney River shall, at its expense, contract with qualified contractors to repair any damage to the roads and bridges directly arising out of Caney River's transportation of equipment and project components during the construction of the Project. Caney River shall complete its final road repair obligations to the reasonable satisfaction of the Road Supervisor within one (1) month after Caney River completes construction of the Project, or as soon thereafter as weather conditions permit.
- (iii) Emergency conditions and repairs: Caney River shall promptly notify the Road Supervisor or his representatives of any road or bridge emergency conditions discovered by Caney River or its contractors. In the event such hazardous road or bridge condition directly arises out of Caney River's use thereof and is not corrected by Caney River within a reasonable time after the discovery of such hazardous road or bridge condition, the Road Supervisor may cause emergency road or bridge repair to be performed by qualified contractors at the County's initial expense ("**Emergency Repair**"), and Caney River shall promptly reimburse the County for the reasonable, out-of-pocket repair costs incurred by the County for such Emergency Repairs.

b. Transportation Route Consultation: Prior to commencing construction activities for the Project, Caney River agrees to consult with and receive input from the Road Supervisor regarding the transportation route(s) to be used by Caney River. Caney River shall prepare a map indicating the approximate 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. Cooperation: Caney River 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.

d. Engineer: If necessary to determine appropriate and safe routes, the County may consult with a qualified and certified engineer regarding load pass or restrictions. Caney River shall reimburse the County for all reasonable out-of-pocket expenses and fees incurred by the County for such consultation.

e. Temporary Access: Caney River 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 the County shall cooperate in providing such permit or other documentation reasonably requested by Caney River to evidence the County's approval of such access.

f. Escrow Payment:

- (i) On or before the commencement of construction of the Project, Caney River shall deliver to a Qualified Escrow Agent (defined below) a payment of \$200,000.00 (“**Escrow Payment**”) to be held in escrow pursuant to the terms of this subsection 1(f). The Escrow Payment, together with any interest or investment income with respect thereto, shall be subject to and available to the County upon the terms and definitions as set forth below.
- (ii) A “**Qualified Escrow Agent**” means an escrow agent mutually acceptable to the Parties that has entered or will enter into an escrow agreement with Caney River and the County substantially in the form attached hereto as Exhibit “B”, pursuant to which Caney River has authorized and directed the escrow agent to deliver a portion of the Escrow Payment to the County upon the County’s written certification to the Qualified Escrow Agent and Caney River that the County has conducted an Emergency Repair in accordance with subsection 1(a)(iii) of this Agreement, together with invoices for the cost of such Emergency Repairs evidencing the amounts so requested by the County.
- (iii) The amount of the Escrow Payment or the actual disbursement thereof in no way limits the liability of Caney River to reimburse the County for expenses and costs associated with this Agreement. Any further payment above and beyond the Escrow Payment amount shall be by mutual agreement between the Parties.

2. **Indemnification.** Caney River agrees to defend, indemnify and hold harmless the County and its commissioners, administrators, employees and representatives (collectively the “**Indemnified Party**”) 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 (i) any operations or activities of Caney River on the property of the County; (ii) any negligent or intentional act or omission on the part of Caney River; or (iii) any breach of this Agreement by Caney River. Furthermore, Caney River agrees to defend, indemnify and hold harmless the Indemnified Party from any third party claims arising out of the terms and conditions of this Agreement. Notwithstanding the foregoing, Caney River’s obligations under this Section 2 shall not apply to the extent any such losses, damages, claims or injuries arise out of the negligence or willful misconduct of the County or its commissioners, administrators, employees or representatives. This indemnification obligation shall survive the termination of this Agreement.

3. **Insurance.** Caney River shall at 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 Kansas; (ii) commercial general liability insurance with minimum limits of \$1,000,000.00 per occurrence; and (iii) automobile liability insurance. Caney River shall provide proof of such insurance to the County upon the written request of the County.

4. **Compliance with Law.** Caney River 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 Caney River's activities associated with the Project and shall obtain permits, licenses and orders required to conduct any and all such activities.

5. **Separate Right Of Way Permit.** If it becomes necessary, in Caney River's sole discretion, for Caney River to construct any facilities, including, without limitation, overhead or underground transmission wires and appurtenances, within the right of way of the County's roads, County agrees to execute and deliver a separate right-of-way permit authorizing the placement of such facilities within the County right-of-way. Prior to the construction of such facilities, Caney River shall consult with the County Roads Overseer regarding the location and placement of such facilities.

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

7. **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 extend for a time period reasonably sufficient for the default to be remedied.

8. **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 be not 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 to act or be an agent or representative of, or to otherwise bind, the other party.

9. **Assignment.** Caney River may wholly or partially assign its rights and obligations under this Agreement, including, without limitation, an assignment to a lender or tax credit investor, without the consent of the County, in which event Caney River shall deliver written notice of such assignment to the County. Notwithstanding the contrary contained herein, if this Agreement is assigned by Caney River to an entity for any purpose other than the development, construction, and operation of a wind-powered electrical generating facility, the County shall have the right to increase the amount of Escrow Payment, or terminate the Agreement.

County acknowledges that the Project may be developed in one or more phases of construction (with the first phase of construction hereinafter referred to as “**Phase I**” and future phases of construction hereinafter referred to as “**Future Phases**”). To the extent Caney River assigns the rights, obligations and interests of this Agreement as they relate to one or more Future Phases, the County agrees to look solely to (i) the owner of Phase I and the Escrow Payment made and maintained by the owner of Phase I, with respect to the rights and obligations under this Agreement as they relate to Phase I (the “**Phase I Rights and Obligations**”), and shall release the owner of Future Phases (and any Escrow Payment made by the owner of such Future Phases) from any and all liability under the Phase I Rights and Obligations, and (ii) the owner of any Future Phases and the Escrow Payment to be made and maintained by the owner of any Future Phases, with respect to the rights and obligations under this Agreement as they relate to Future Phases (the “**Future Phase Rights and Obligations**”), and hereby releases the owner of Phase I (any the Escrow Payment made by the owner of Phase I) from any and all liability under the Future Phase Rights and Obligations. To the extent of an occurrence and continuance of a default caused by the owner of either Phase I or Future Phases under this Agreement, the County acknowledges and agrees that the County shall have the right to partially exercise its remedies under this Agreement with respect only to that phase of the Project under which a default has occurred and is continuing, and the non-defaulting phase or phases and the respective owner or owners thereof shall not be subject to any such remedies and this Agreement with respect to such non-defaulting phases shall remain in full force and effect. The County’s remedies shall include the right to pursue reimbursement out of the respective Escrow Payment in accordance with the terms of the respective Escrow Agreement to the extent, and only to the extent, and with respect only to that phase or phases of the Project in which a default has occurred and is continuing beyond applicable cure periods.

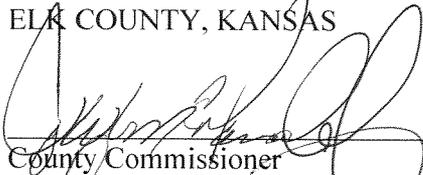
10. **Termination.** The Parties hereby agree this Agreement shall terminate immediately following the Project ceasing to operate as a wind development project including, but not limited to, the removal of wind turbines and other items ancillary to the Project by Caney River (“**Decommission**”). Caney River hereby agrees to provide notice to the County of such Decommission and the Parties agree to mutually execute a termination agreement and neither party shall have any further obligations under this Agreement.

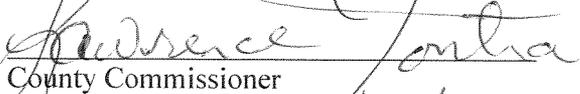
11. **Counterparts.** This Agreement may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

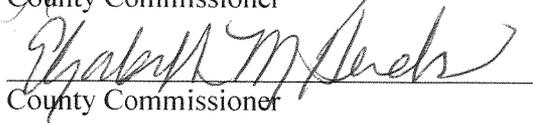
[The remainder of this page intentionally left blank. Signature pages follow.]

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

BOARD OF COUNTY COMMISSIONERS,  
ELK COUNTY, KANSAS

  
\_\_\_\_\_  
County Commissioner

  
\_\_\_\_\_  
County Commissioner

  
\_\_\_\_\_  
County Commissioner

STATE OF KANSAS

COUNTY OF ELK

BE IT REMEMBERED, that on this 31 day of December, 2008, before me, the undersigned, a notary public in and for the County and State aforesaid, came J.W. McDonald Lawrence Jindra and Elizabeth M Hendricks, who comprise the County Board of County Commissioners, Elk County, Kansas, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

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

Term expires: \_\_\_\_\_



  
\_\_\_\_\_  
Notary Public  
Charly M Watkins  
\_\_\_\_\_  
Name of Notary Public

CANEY RIVER WIND PROJECT, LLC

By: TradeWind Energy, LLC, Member

By: *Robert H. Freeman*  
Robert H. Freeman, Manager

STATE OF KANSAS

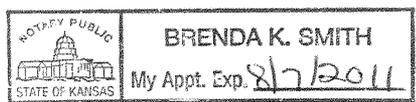
COUNTY OF *Johnson*

BE IT REMEMBERED, that on this *9<sup>th</sup>* day of *January*, 20*09*, before me, the undersigned, a notary public in and for the County and State aforesaid, came Robert H. Freeman, Manager of Tradewind Energy, the Member of Caney River Wind Project, LLC, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

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

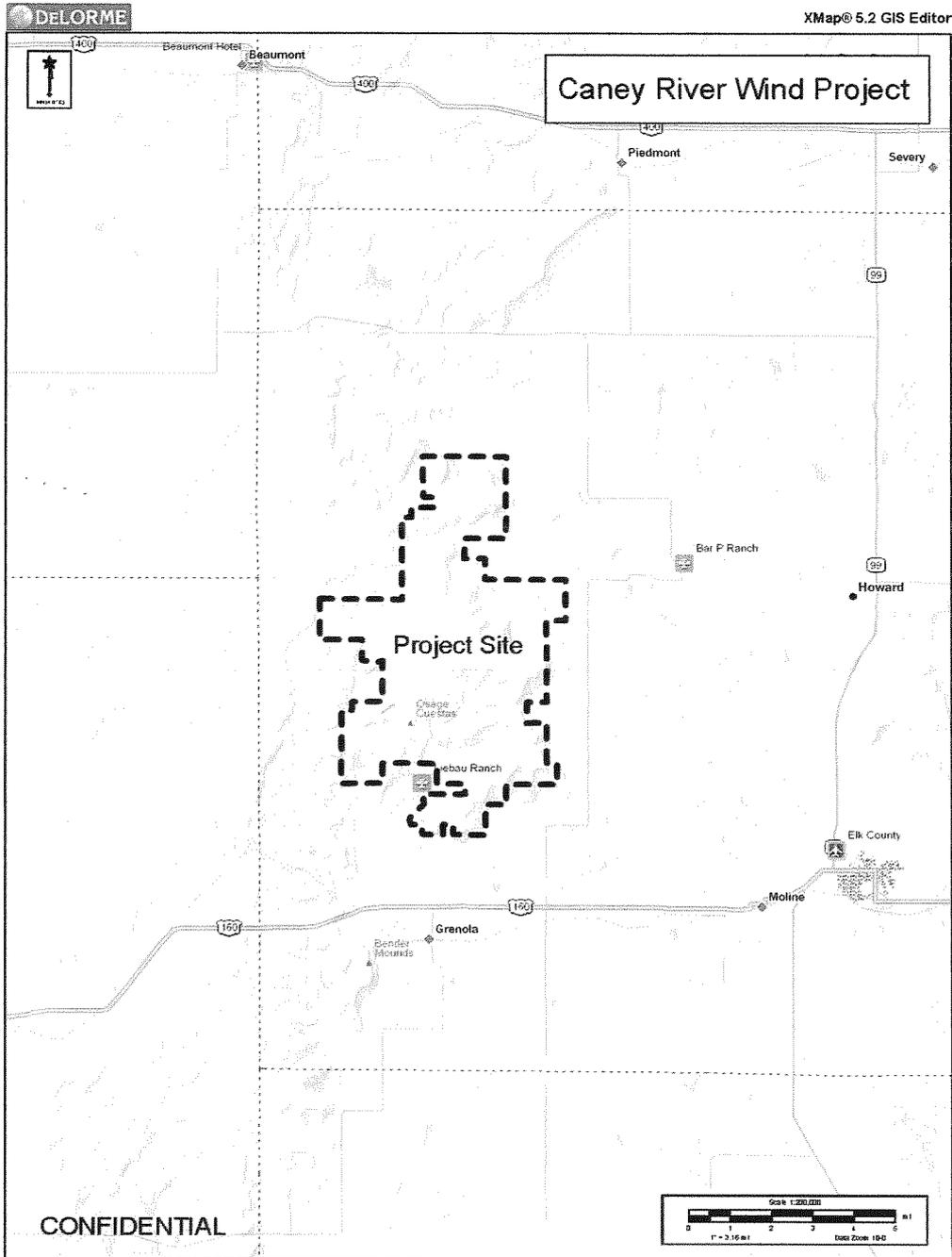
*Brenda K. Smith*  
Notary Public  
*Brenda K. Smith*  
Name of Notary Public

Term expires: \_\_\_\_\_



# EXHIBIT A

## Depiction of the Project



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**EXHIBIT B**

Form of Escrow Agreement

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## ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Caney River Wind Project, LLC, a Kansas limited liability company (the “**Caney River**”), the Board of County Commissioners of Elk County, Kansas (the “**County**”), and \_\_\_\_\_ (the “**Escrow Agent**”).

WHEREAS, Caney River and County are parties to that certain Road Maintenance Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Road Agreement**”);

WHEREAS, pursuant to the Road Agreement, Caney River has agreed to reimburse County for the cost of repair of certain roads owned by the County to the extent such roads are not repaired by Caney River as contemplated therein; and

WHEREAS, pursuant to the Road Agreement, Caney River has agreed to place funds into escrow with Escrow Agent for such reimbursements.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Caney River and County agree that \$\_\_\_\_\_ shall be held in escrow with the Escrow Agent in accordance with the terms hereof. Capitalized terms not otherwise defined here in shall have the meanings ascribed to them under the Road Agreement.

### **SPECIFIC TERMS AND CONDITIONS**

1. The recitals stated above are incorporated by reference as if fully set forth herein.
2. In accordance with the Road Agreement, Caney River shall deposit with Escrow Agent \$\_\_\_\_\_ (the “**Deposit**”). The Deposit shall be retained by the Escrow Agent pursuant to the terms and conditions set forth in this Section 2. Pursuant to the Road Agreement, County shall provide to Caney River and Escrow Agent: (i) written certification that the County has completed an Emergency Repair (as defined in the Road Agreement) to County roads directly caused by Caney River and Caney River has refused to reimburse the County in accordance with the Road Agreement (“**Certification**”), and (ii) invoices for the cost of such repairs evidencing the amounts so requested by County (“**Invoices**”). Upon the receipt of the Certification and Invoices from County, Escrow Agent is authorized and directed to deliver such portion of the Deposit as evidenced by the Certification and Invoices. During the construction phase of Phase I of the Project, Caney River shall replenish the Deposit so that the amount of the Deposit is \$\_\_\_\_\_ at all times during such construction phase. After the construction phase of Phase I of the Project is completed, and for so long as the Project remains operational in Elk County, Caney River shall have the option to continue to hold the Deposit in escrow (but shall have no obligation to replenish the Deposit to the extent any funds are withdrawn therefrom) or to terminate this Escrow Agreement by presenting to the County a Letter of Credit from a lending institution in the amount of the Deposit, in which event the Deposit shall be released to Caney River upon written notice thereof by Caney River.

3. Escrow Agent's obligations and duties in connection herewith are confined to those specifically enumerated in this Escrow Agreement. Escrow Agent may rely upon any instruments delivered to it under this Escrow Agreement and shall not in any manner be liable or responsible for the correctness, genuineness or validity of any instruments deposited with it or with reference to the form of execution thereof, or the identity, authority or rights of any person executing or depositing same, and Escrow Agent shall not be liable for any loss that may occur by reason of forgery, false representation or the exercise of its discretion in any particular manner or for any other reason, except for its own gross negligence or willful misconduct.

4. In the event of a dispute between the parties hereto sufficient in the reasonable opinion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction all money or property in its hands under this Escrow Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Escrow Agreement. Any such legal action may be brought in such court as Escrow Agent shall determine to have jurisdiction thereof.

5. Escrow Agent shall have the right to resign as Escrow Agent hereunder by giving thirty (30) days written notice delivered to the parties, and the parties acting reasonably shall have the right to remove the Escrow Agent by giving thirty (30) days written notice delivered to Escrow Agent. In the event the Escrow Agent resigns or is removed, a successor Escrow Agent shall be appointed by unanimous agreement of the parties; it being understood and agreed that Escrow Agent shall not be permitted to resign or withdraw unless and until the parties shall agree upon a satisfactory successor escrow agent. Any successor escrow agent at any time serving hereunder shall be entitled to all rights and powers granted to the Escrow Agent hereunder as if originally named herein.

6. The Escrow Agent is not a party to, nor is it bound by, nor need it give consideration to the terms or provisions of, any other agreement or undertaking among the undersigned or any of them, or between the undersigned or any of them and other persons, or any agreement or undertaking which may be evidenced by or disclosed by the Deposit, it being the intention of the parties hereto that the Escrow Agent assent to and be obligated to give consideration to only the terms and provisions hereof. The Escrow Agent shall have no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of any of the undersigned with respect to arrangements or contracts with each other or with others, the Escrow Agent's sole duty hereunder being to safeguard the Deposit and to dispose of and deliver the same in accordance with instructions given to it as provided herein.

7. The Escrow Agent shall not have any obligation, liability or duty whatever to perform any duty or obligation not expressly stated herein or agreed in writing to be done by it pursuant to this Escrow Agreement.

8. The Escrow Agent shall not be responsible or liable to the undersigned or to any other person in any manner whatever for the sufficiency of the Deposit, or for the identity or authority of any person depositing the same. If any of the undersigned are acting as agent for

others, all of the undersigned represent and warrant that each such agent is authorized to make and enter into this Escrow Agreement. This Escrow Agreement is a personal one between the undersigned and the Escrow Agent. The Escrow Agent is authorized by each of the undersigned to rely upon all representations, both actual and implied, of the undersigned and all other persons relating to this Escrow Agreement and/or the Deposit, including without limitation representations as to marital status, authority to execute and deliver this Escrow Agreement, notifications, receipts or instructions hereunder, and relationships among persons, including persons authorized to receive delivery hereunder, and the Escrow Agent shall not be liable to any person in any manner by reason of such reliance. The duty of the Escrow Agent hereunder shall be only to the undersigned, their respective successors, heirs, assigns, executors and administrators and to no other person or persons whomsoever.

9. Any notices or other communications required hereunder shall be in writing and shall be deemed duly given if delivered in person, by overnight courier, by certified mail, return receipt requested, or by registered mail, postage prepaid to the relevant party as its address set forth below, with a copy of such notice or other communication given to all other parties set forth below:

If to Caney River to: Caney River Wind Project, LLC  
16105 West 113<sup>th</sup> Street, Suite 105  
Lenexa, Kansas 66219  
Attention: Rob Freeman

If to County to: Board of County Commissioners of Elk County  
P.O. Box 606  
Howard, Ks.  
67349

If to the Escrow Agent to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

The party to receive notices and the place notices are to be sent for each party may be changed by such party by notice given pursuant to the provisions of this section.

10. The terms and provisions of this Escrow Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

11. This Escrow Agreement and the rights and obligations of the parties hereto shall be governed and controlled by the laws of the State of Kansas.

12. If any provision of this Escrow Agreement or the application thereof to any person or circumstance is to any extent held invalid or unenforceable by a court of competent

jurisdiction, then the remainder of this Escrow Agreement or the application or any other provision shall be valid and enforced to the fullest extent permitted by law.

13. For purposes of executing this Escrow Agreement, this document signed and transmitted by facsimile machine or telecopier is to be treated as an original document. This Escrow Agreement may be executed in one or more counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which shall constitute one instrument.

[Remainder of page intentionally left blank. Signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Escrow Agreement as of the date first written above.

**CANEY RIVER:**

CANEY RIVER WIND PROJECT, LLC

By: TradeWind Energy, LLC, Member

By:   
Robert H. Freeman, Manager

**COUNTY:**

**BOARD OF COUNTY COMMISSIONERS  
OF ELK COUNTY, KANSAS**

\_\_\_\_\_, Commissioner

\_\_\_\_\_, Commissioner

\_\_\_\_\_, Commissioner

**ATTEST:**

\_\_\_\_\_  
Elk County Clerk

**ESCROW AGENT:**

\_\_\_\_\_

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

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

Title: \_\_\_\_\_